

Agenda item 68 (continued)**Report of the Human Rights Council****Draft resolution (A/61/L.67)**

The President: Members will recall that the General Assembly held a debate on this item at its 51st plenary meeting, on 10 November 2006, and adopted resolution 61/177, entitled “International Convention for the Protection of All Persons from Enforced Disappearance”, on 20 December 2006.

In connection with this item, the Assembly now has before it a draft resolution entitled “United Nations Declaration on the Rights of Indigenous Peoples”, issued as document A/61/L.67.

I now give the floor to the representative of Peru to introduce draft resolution A/61/L.67.

Mr. Chávez (Peru) (*spoke in Spanish*): It is an honour for the delegation of Peru to introduce document A/61/L.67, which contains the text of the draft resolution whereby the General Assembly would adopt the United Nations Declaration on the Rights of Indigenous Peoples. The draft resolution is sponsored by Andorra, Armenia, Austria, Belgium, Bolivia, Costa Rica, Croatia, Cuba, Cyprus, Denmark, the Dominican Republic, Ecuador, Estonia, Fiji, Finland, France, Germany, Greece, Guatemala, Honduras, Hungary, Italy, Latvia, Lithuania, Luxembourg, Malta, Nauru, Nicaragua, Panama, Portugal, Serbia, Slovenia, South Africa, Spain, Switzerland, the former Yugoslav Republic of Macedonia and Timor-Leste.

Today, the General Assembly faces the enormous responsibility and challenge of bridging a significant gap in the area of promoting and protecting human rights: the protection of indigenous peoples. As attested by the various human rights protection mechanisms, such peoples are among the most vulnerable groups.

The process that brings us here began in 1982, within an expert group of the SubCommission on Prevention of Discrimination and Protection of Minorities. Thirteen years later, that group submitted to the former Commission on Human Rights a first draft declaration on the rights of indigenous peoples. Beginning in 1995, the draft was submitted for consideration to a working group of the Commission. I must stress that, for the first time in the history of the United Nations, representatives of indigenous peoples, who would enjoy the rights cited in the Declaration,

actively participated in such a working group, lending unquestionable legitimacy to the document.

The working group concluded its work in 2006 with a draft text adopted that year by the Human Rights Council and submitted to the General Assembly for consideration during the present session. In our sphere of competence, the Third Committee decided last November to postpone its consideration of the Declaration so as to have more time to continue consultations in that regard. It also decided to conclude its consideration of the item during the present session.

Pursuant to those decisions, various efforts were made in recent months to address the concerns that a number of Member States expressed about the draft Declaration adopted by the Human Rights Council. As a result of those efforts and the will to find areas of agreement, a revised draft version was elaborated that made several clarifications to the text, which we now present to the General Assembly for adoption. Those clarifications have been duly communicated to Member States and to representatives of indigenous peoples. On the basis of our consultations, we are convinced that the changes do not undermine the substantive aspects of the protection of indigenous peoples and, at the same time, that they guarantee adoption of the Declaration at the present session.

Now that this 25-year process is concluding, I wish to particularly thank you, Madam President, and your facilitator, Ambassador Davide of the Philippines, for your efforts to bring the parties together. I also express my gratitude for the flexibility shown by our interlocutors, both governmental representatives and representatives of indigenous peoples. We are certain that this text will lay the foundations for a sound new relationship between the world’s indigenous peoples and the States and societies in which they live and with which they coexist.

In that connection, we call upon all delegations to join in this human rights and development initiative and to adopt the draft resolution without a vote.

The President: We shall now proceed to consider draft resolution A/61/L.67.

Before giving the floor to speakers in explanation of vote before the voting, may I remind members that explanations of vote are limited to 10 minutes and should be made by representatives from their seats.

Mr. Hill (Australia): Australia has actively worked to ensure the adoption of a meaningful declaration. We have seized every opportunity within the Commission on Human Rights Working Group on the draft declaration on the rights of indigenous peoples, the Human Rights Council and the further consultation process mandated by resolution 61/178 to engage constructively in the elaboration of the declaration. Within that process, Australia and others repeatedly called for a chance to participate in the negotiations on the current text of the declaration.

We are deeply disappointed that no such opportunity has been afforded to us. Having an opportunity to negotiate the text would have allowed us to work constructively with the entire membership of the United Nations to improve the declaration, and might have resulted in a text that enjoyed consensus. Australia wanted to ensure that any declaration could become a tangible and ongoing standard of achievement that would be universally accepted, observed and upheld. In our view, the text of the declaration before us fails to reach that high standard. Australia continues to have many concerns with the text. I would now like to touch upon a few of them.

The first has to do with self-determination. The Australian Government has long expressed its dissatisfaction with the references to self-determination in the declaration. Self-determination applies to situations of decolonization and the break-up of States into smaller States with clearly defined population groups. It also applies where a particular group within a defined territory is disenfranchised and is denied political or civil rights. It is not a right that attaches to an undefined subgroup of a population seeking to obtain political independence. The Government of Australia supports and encourages the full and free engagement of indigenous peoples in the democratic decision-making processes in their country, but it does not support a concept that could be construed as encouraging action that would impair, even in part, the territorial and political integrity of a State with a system of democratic representative Government.

Secondly, with regard to lands and resources, the declaration's provisions could be read to require recognition of indigenous rights to lands without regard to other existing legal rights pertaining to land, both indigenous and non-indigenous. It is important to stress that any right to traditional lands must be subject to national laws, otherwise the provisions would be

both arbitrary and impossible to implement, with no recognition being given to the fact that ownership of land may lawfully vest in others — for example, through grants of freehold or leasehold interests in land. Many national legal systems, including Australia's, also provide for lawful compulsory acquisition of interests in land. Australia will read the lands and resources provisions of the declaration in line with its existing domestic laws, including the Native Title Act, which includes provisions for the compulsory acquisition of native title rights and interests with an entitlement to compensation.

Thirdly, with regard to free, prior and informed consent, Australia has concerns that the declaration expands any right to free, prior and informed consent too far. For example, the declaration provides that States shall obtain the free, prior and informed consent of indigenous peoples before adopting or implementing certain measures that may affect them. The scope of that proposed right is too broad. It could mean that States are obliged to consult with indigenous peoples about every aspect of law that might affect them. That would not only be unworkable, but would also apply a standard for indigenous peoples that does not apply to others in the population. Australia cannot accept a right that allows a particular subgroup of the population to be able to veto legitimate decisions of a democratic and representative Government. The provisions relating to free, prior and informed consent are also potentially inconsistent with, and go well beyond, any concept of free and informed consent that may be developing in other international forums.

With regard to intellectual property, Australia does not support the inclusion in the text of intellectual property rights for indigenous peoples. Australia extends protection to indigenous cultural heritage, traditional knowledge and traditional cultural expressions to the extent that it is consistent with Australian and international intellectual property law. However, Australia will not provide *sui generis* intellectual property rights for indigenous communities as envisaged in the declaration.

With regard to third-party rights, in seeking to give indigenous people exclusive rights over property, both intellectual, real and cultural, the declaration does not acknowledge the rights of third parties — in particular the rights of third parties to access indigenous land, heritage and cultural objects where appropriate under national law. The declaration fails to

consider the different types of ownership and use that can be accorded to indigenous people and fails to consider the rights of third parties to property.

With regard customary law, Australia is also concerned that the declaration places indigenous customary law in a superior position to national law. Customary law is not law in the sense that modern democracies use the term; it is based on culture and tradition. It should not override national laws and should not be used selectively to permit the exercise of practices by certain indigenous communities that would be unacceptable in the rest of the community. Australia will read the whole of the declaration in accordance with domestic laws as well as international human rights standards.

In conclusion, with regard to the nature of the declaration, it is the clear intention of all States that it be an aspirational declaration with political and moral force but not legal force. It is not intended itself to be legally binding or reflective of international law. As this declaration does not describe current State practice or actions States consider themselves obliged to take as a matter of law, it cannot be cited as evidence of the evolution of customary international law. This declaration does not provide a proper basis for legal actions, complaints or other claims in any international, domestic or other proceedings. Nor does it provide a basis for the elaboration of other international instruments, whether binding or non-binding.

Nevertheless, the text contains recommendations regarding how States can promote the welfare of indigenous peoples. Clearly, while the declaration will not be binding on Australia and other States as a matter of international law, we are aware that its aspirational contents will be relied on in setting standards by which States will be judged in their relations with indigenous peoples. Accordingly, the Government of Australia has been concerned throughout the negotiations to ensure that the declaration is meaningful, is capable of implementation and enjoys wide support in the international community. We believe that this declaration unfortunately fails in all those respects. Australia therefore cannot support it.

Mr. McNee (Canada): Canada has long demonstrated our commitment to actively advancing indigenous rights at home and internationally. We recognize that the situation of indigenous peoples

around the world warrants concerted and concrete international action. We have strongly supported the establishment and ongoing work of the Permanent Forum on Indigenous Issues and the Special Rapporteur on the situation of the fundamental freedoms and human rights of indigenous peoples, and have promoted the consideration of indigenous issues within a variety of international conferences. We have a constructive, far-reaching international development programme targeted specifically at improving the situation of indigenous peoples in many parts of the world.

Canada continues to make further progress at home, working within constitutional guarantees for aboriginal and treaty rights, and with negotiated self-government and land claims agreements with several aboriginal groups in Canada. Canada also intends to continue active international engagement, both multilaterally and bilaterally. It is therefore with disappointment that we find ourselves having to vote against the adoption of this Declaration as drafted.

Since 1985, when the United Nations expert Working Group on Indigenous Populations decided to produce a declaration on indigenous rights, Canada has been an active participant in its development. Canada has long been a proponent of a strong and effective declaration that would promote and protect the human rights and fundamental freedoms of every indigenous person without discrimination and recognize the collective rights of indigenous peoples around the world. We have sought for many years, along with others, an aspirational document that would advance indigenous rights and promote harmonious arrangements between indigenous peoples and the States in which they live.

However, the text that was presented at the Human Rights Council in June 2006 did not meet such expectations and did not address some of our concerns. That is why Canada voted against it. We also expressed dissatisfaction with the process followed in Geneva.

Canada's position has remained consistent and based on principle. We have stated publicly that Canada has significant concerns with respect to the wording of the current text, including the provisions on lands, territories and resources; on free, prior and informed consent when used as a veto; on self-government without recognition of the importance of negotiations; on intellectual property; on military

issues; and on the need to achieve an appropriate balance between the rights and obligations of indigenous peoples, Member States and third parties.

The recognition of indigenous rights to lands, territories and resources is important to Canada. Canada is proud of the fact that aboriginal and treaty rights are given strong recognition and protection in Canada's constitution. We are equally proud of the processes that have been put in place to deal with aboriginal claims respecting those rights and are working actively to improve these processes to address such claims even more effectively. Unfortunately, the provisions in the Declaration on lands, territories and resources are overly broad and unclear and are susceptible of a wide variety of interpretations, discounting the need to recognize a range of rights over land and possibly putting into question matters that have already been settled by treaty in Canada.

Mr. Wali (Nigeria), Vice-President, took the Chair.

Similarly, some of the provisions dealing with the concept of free, prior and informed consent are unduly restrictive. Provisions such as article 19 provide that the State cannot act on any legislative or administrative matter that may affect indigenous peoples without obtaining their consent. While there are already strong consultation processes in place, and while Canadian courts have reinforced these as a matter of law, the establishment of a complete veto power over legislative and administrative action for a particular group would be fundamentally incompatible with Canada's parliamentary system.

In Geneva, leading up to the Human Rights Council's adoption of the text, and in New York throughout this session of the General Assembly, Canada has been very clear in proposing that further negotiations take place in an open and transparent process with the effective involvement of indigenous peoples. Over the past year, had there been an appropriate process to address these concerns, and the concerns of other Member States, a stronger declaration could have emerged, one acceptable to Canada and other countries with significant indigenous populations and which could have provided practical guidance to all States. Very unfortunately, such a process has not taken place. The few modifications presented to the General Assembly at the last minute did not arise from an open, inclusive or transparent

process and do not address key areas of concern of a number of delegations, including Canada's.

It is particularly unfortunate that a number of States, such as Canada, with significant indigenous populations, cannot solidly support the adoption of this particular text as a meaningful and effective United Nations declaration on the rights of indigenous peoples.

(spoke in French)

However, allow me to reiterate that Canada will continue to take effective action, at home and abroad, to promote and protect the rights of indigenous peoples based on our existing human rights obligations and commitments. Such effective action, we must be clear, would not be undertaken on the basis of the provisions of this Declaration.

By voting against the adoption of this text, Canada puts on record its disappointment with both the text's substance and the process leading to it. For clarity, we also underline our understanding that this Declaration is not a legally binding instrument. It has no legal effect in Canada, and its provisions do not represent customary international law.

In conclusion, for the reasons stated today, Canada will vote against adoption of this text.

Ms. Banks (New Zealand): New Zealand is one of the few countries that from the start supported the elaboration of a declaration that promoted and protected the rights of indigenous peoples.

In New Zealand, indigenous rights are of profound importance. They are integral to our identity as a nation-State and as a people. New Zealand is unique: a treaty concluded at Waitangi between the Crown and New Zealand's indigenous people in 1840 is a founding document of our country. Today, we have one of the largest and most dynamic indigenous minorities in the world. The Treaty of Waitangi has acquired great significance in New Zealand's constitutional arrangements, law and government activity.

The place of Maori in society, their grievances and the disparities affecting them are central and enduring features of our domestic debate and of Government action. Furthermore, New Zealand has an unparalleled system for redress, accepted by indigenous and non-indigenous citizens alike. Nearly

40 per cent of the New Zealand fishing quota is owned by Maori as a result. Claims to over half of New Zealand's land area have been settled.

For those reasons, New Zealand fully supports the principles and aspirations of the Declaration on the Rights of Indigenous Peoples. New Zealand has been implementing most of the standards in the Declaration for many years. We share the belief that a declaration on the rights of indigenous peoples is long overdue and the concern that, in many parts of the world, indigenous peoples continue to be deprived of basic human rights.

New Zealand is proud of our role in improving the text over the past three years, with the objective of turning the draft declaration into one that States would be able to uphold, implement and promote. We worked hard to the very end to narrow our concerns and to be able to support this text. We appreciate the efforts made by others, in particular the African Group.

It is therefore a matter of deep regret that we find ourselves unable to support the text before us today annexed to draft resolution A/61/L.67. Unfortunately, we have difficulties with a number of provisions in the text. Four provisions in the Declaration are fundamentally incompatible with New Zealand's constitutional and legal arrangements, with the Treaty of Waitangi and with the principle of governing for the good of all our citizens. These are article 26 on lands and resources, article 28 on redress and articles 19 and 32 on a right of veto over the State.

The provision on lands and resources simply cannot be implemented in New Zealand. Article 26 states that indigenous peoples have a right to own, use, develop or control lands and territories that they have traditionally owned, occupied or used. For New Zealand, the entire country is potentially caught within the scope of the article. The article appears to require recognition of rights to lands now lawfully owned by other citizens, both indigenous and non-indigenous and does not take into account the customs, traditions and land tenure systems of the indigenous peoples concerned. Furthermore, that article implies that indigenous peoples have rights that others do not have.

In addition, the provisions on redress and compensation, in particular in article 28, are unworkable in New Zealand despite the unparalleled and extensive processes that exist under New Zealand law in this regard. Again, the entire country would

appear to fall within the scope of the article. The text generally takes no account of the fact that land may now be occupied or owned legitimately by others or subject to numerous different, or overlapping, indigenous claims. It is impossible for the State in New Zealand to uphold a right to redress and provide compensation for value for the entire country. And indeed, financial compensation has generally not been the principal objective of most indigenous groups seeking settlements in New Zealand.

Finally, the Declaration, in particular its article 19 and paragraph 2 of article 32, implies that indigenous peoples have a right of veto over a democratic legislature and national resource management. We strongly support the full and active engagement of indigenous peoples in democratic decision-making processes. Seventeen per cent of our parliament identifies as Maori, compared to 15 per cent of the general population. We also have some of the most extensive consultation mechanisms in the world, where the principles of the Treaty of Waitangi, including the principle of informed consent, are enshrined in resource management law. But these articles in the Declaration text imply different classes of citizenship, where indigenous people have a right of veto that other groups or individuals do not have.

Unfortunately, those are not the only provisions that cause us difficulties. For example, we also have concerns about article 31 concerning intellectual property. But I have focused today on the provisions of central concern to New Zealand.

New Zealand takes international human rights and our international human rights obligations extremely seriously. But we are unable to support a text that includes provisions that are so fundamentally incompatible with our democratic processes, our legislation and our constitutional arrangements. These provisions are all discriminatory in the New Zealand context. This text is also clearly unable to be implemented by many States, including those that will be voting in favour of its adoption today.

The Declaration is explained by its supporters as being an aspirational document intended to inspire rather than to have legal effect. New Zealand does not, however, accept that a State can responsibly take such a stance towards a document that purports to declare the contents of the rights of indigenous people. We take the statements in the Declaration very seriously. For

that reason we have felt compelled to take the position that we do.

Lest there be any doubt, we place on record our firm view that the history of the negotiations on the Declaration and the divided manner in which its text has been adopted demonstrate that this text, particularly in the articles to which I have referred, does not state propositions which are reflected in State practice or which are or will be recognized as general principles of law.

In our experience, the promotion and protection of indigenous rights requires a partnership between the State and indigenous peoples that is constructive and harmonious. That is the foundation of New Zealand as a nation-State. It is with genuine regret and disappointment, therefore, that New Zealand is unable to support the Declaration on the Rights of Indigenous Peoples and must dissociate itself from that text.

Mr. Hagen (United States of America): We regret that we must vote against the adoption of the Declaration on the Rights of Indigenous Peoples, annexed to draft resolution A/61/L.67. We worked hard for 11 years in Geneva for a consensus declaration, but the document before us is a text that was prepared and submitted after the negotiations had concluded. States were given no opportunity to discuss it collectively. It is disappointing that the Human Rights Council did not respond to calls we made, in partnership with Council members, for States to undertake further work to generate a consensus text. This Declaration was adopted by the Human Rights Council in a splintered vote. That process was unfortunate and extraordinary in any multilateral negotiating exercise and sets a poor precedent with respect to United Nations practice.

The Declaration on the Rights of Indigenous Peoples, if it were to encourage harmonious and constructive relations, should have been written in terms that are transparent and capable of implementation. Unfortunately, the text that emerged from that failed process is confusing and risks endless conflicting interpretations and debate about its application, as already evidenced by the numerous complex interpretative statements that have been issued by States at its adoption in the Human Rights Council. We cannot lend our support to such a text.

Our views with respect to the core provisions of the text can be found in a separate document, entitled "Observations of the United States with respect to the

Declaration on the Rights of Indigenous Peoples", which will be available in the Hall and posted on the Web site of the United States Mission to the United Nations, and which will be circulated as an official United Nations document. That document is incorporated by reference herein and discusses the core provisions of the Declaration, including but not limited to self-determination, lands and resources, redress and the nature of the Declaration. Because the flaws in the text run through its most significant provisions, the text as a whole is rendered unacceptable.

Although we are voting against this flawed document, my Government will continue its vigorous efforts to promote indigenous rights domestically. Under United States domestic law, the United States Government recognizes Indian tribes as political entities with inherent powers of self-government as first peoples. In our legal system, the Federal Government has a government-to-government relationship with Indian tribes. In that domestic context, this means promoting tribal self-government over a broad range of internal and local affairs, including determination of membership, culture, language, religion, education, information, social welfare, maintenance of community safety, family relations, economic activities, lands and resources management, environment and entry by non-members, as well as ways and means for financing those autonomous functions.

At the same time, the United States will continue its work to promote indigenous rights internationally. In its annual human rights report, the United States Department of State reports on the situation of indigenous persons in communities throughout the world. In our diplomatic efforts, we will continue our opposition to racial discrimination against indigenous individuals and communities, and continue to press for full indigenous participation in democratic electoral processes throughout the world. We will also continue with our international assistance programmes involving indigenous peoples.

We are deeply disappointed that, in seeking to make a practical difference in the lives of indigenous peoples around the globe, the international community has not been presented with a text that is clear, transparent or capable of implementation. Those fundamental shortcomings, unfortunately, mean that the document cannot enjoy universal support to become a true standard of achievement.

Mr. Rogachev (Russian Federation) (*spoke in Russian*): The Russian Federation attaches great importance to the protection of the rights of indigenous peoples and to the strengthening of international cooperation in that area. From the very outset, we adopted a responsible approach to the process of developing a United Nations declaration on the rights of indigenous peoples. We believe that the adoption of the declaration by consensus would represent a significant step forward in ensuring the interests and rights of indigenous peoples.

The President returned to the Chair.

Many provisions of the draft declaration are appropriate and acceptable to us. Russia is convinced that such an all-encompassing document as the United Nations declaration on the rights of indigenous peoples should be a balanced, carefully weighed and authoritative international text.

Unfortunately, we are obliged to note that the draft declaration before the Assembly for adoption is not such a text. We note with satisfaction that the declaration was supplemented at the last minute with provisions on the non-impairment of the integrity and political unity of sovereign and independent States. However, in our opinion that and other useful amendments are not in themselves sufficient to make the declaration a truly balanced document. As we have noted, we cannot agree with the document's provisions relating in particular to the rights of indigenous peoples to land and natural resources, and to the procedure for compensation and redress.

The text clearly does not enjoy consensus support. It has not been duly endorsed by all interested parties. Furthermore, in the course of this session, a non-transparent format was chosen for work on the document. That ensured that a group of countries, on the territory of which live a significant number of those who may be considered indigenous peoples, was excluded at a decisive stage from the negotiation process. Such an approach is a source not only of regret to us, but also of fundamental disagreement. We hope that the manner in which the declaration is to be adopted will not set a negative precedent for the General Assembly's activities or for the United Nations work in developing new norms and standards.

Having assumed a responsible approach to this important aspect of the United Nations work, the Russian Federation nevertheless notes with regret that,

in the light of the foregoing, we cannot support the draft United Nations declaration on the rights of indigenous peoples and shall abstain in the voting on draft resolution A/61/L.67. However, we intend, as in the past, to make every effort to foster international cooperation in the promotion and protection of the rights of indigenous peoples.

Mr. Ehouzou (Benin) (*spoke in French*): My country supports the text of the draft United Nations declaration on the rights of indigenous peoples before the General Assembly for adoption. I recall that Benin has been a sponsor of the draft from the very outset because we are convinced that it represents progress in the field of human rights and in particular the rights of indigenous peoples.

During the negotiating procedure, countries raised legitimate concerns and, for the sake of solidarity, my delegation supported the African position so that we might take into account the misgivings expressed by the continent. Throughout the discussions on the document within the African Group, Benin continuously called for an approach of limited openness on the text in order not to engage in endless debates.

My delegation therefore welcomes the compromise achieved and it is with true pleasure that Benin opts to vote in favour of the text before us, despite the flaws that have been stressed by some delegations, in the hope that the opportunity will arise for the declaration to be improved. It is most important to note that the text has numerous imperfections, but that it remains desirable for it to be implemented on an interim basis while improvements are introduced so that it can be endorsed by all delegations.

Mr. Montoya (Colombia) (*spoke in Spanish*): The Colombian State has incorporated into its legal system a broad range of rights aimed at recognizing, guaranteeing and implementing the rights and constitutional principles of pluralism and national ethnic and cultural diversity.

In the framework of its 1991 Constitution, Colombia has distinguished itself as one of the most advanced countries with regard to the recognition of the collective rights of indigenous peoples. According to the indigenous legislation index of the Inter-American Development Bank, Colombia is first in terms of the quality of its legislation in the sphere of cultural, economic, territorial and environmental rights,

as well as in terms of the overall quality of its indigenous legislation.

Our diversity is reflected in the existence of 84 indigenous peoples. According to the 2005 census, some 3.4 per cent of Colombians identify themselves as belonging to indigenous communities. For the Colombian State, the recognition of the traditional territories of those communities is fundamental. Today there are 710 reservations occupying an area of approximately 32 million hectares, corresponding to 27 per cent of the national territory. By the end of 2007, that area should extend to 29 per cent of the national territory. Those properties cannot be proscribed, seized or transferred. Indigenous peoples' access to collective or individual land ownership is regulated by legal and administrative provisions guaranteeing that right, in keeping with the State's objectives and with principles such as the social and ecological functions of ownership and State ownership of the subsoil and non-renewable natural resources.

In these territories, indigenous peoples carry out their own political, social and legal organization. By constitutional mandate, their authorities are recognized as public State authorities having a special nature. As far as the legal area is concerned, a special indigenous jurisdiction is recognized, which is significant progress compared with that made by other countries in the region.

Reservations participate in the central Government's budgetary transfer system. It should also be noted that all members of these communities are covered by the State-subsidized health service. In addition, the law establishes that indigenous peoples are exempt from compulsory military service — an essential provision aimed at preserving their cultural identity. And there are special electoral districts for indigenous peoples in national political elections.

In the international context, Colombia has been a leading country in implementing the prior-consultation provisions of International Labour Organization (ILO) Convention 169, to which our country is a party. Since 2003, 71 prior-consultation proceedings have been undertaken for natural resource prospecting and extraction projects and other development projects in established indigenous territories.

Cooperation with indigenous communities is a priority for the State. In this area, there are permanent forums such as the national coordination board, the

national rights commission, the Amazon regional board and the national territories board. Those forums have made it possible to jointly elaborate norms and policies concerning indigenous communities from a multi-ethnic and inclusive perspective.

In order to continue these activities over the long term, the State, with participation by indigenous experts, is currently developing a comprehensive policy for indigenous communities, crucial aspects of which are related to, inter alia, territories, human rights and self-government.

In the General Assembly, Colombia has reaffirmed its commitment to the rights of indigenous communities. My delegation nevertheless supported the initiative to postpone a decision on the Declaration, because we believed that it was important to seek an agreement enabling us to adopt a Declaration acceptable to all countries — a text that would be adopted by consensus and would conform to general international and national normative frameworks. We even supported the establishment of a forum that would have enabled indigenous communities to participate in the discussion. Regrettably, the most recent consultative process in the Assembly was characterized by a lack of transparency, a lack of willingness to negotiate and a lack of openness, which did not permit such a consensus to be reached.

The Colombian constitution and body of law, as well as the international instruments ratified by our country, conform with most provisions of the Declaration on the Rights of Indigenous Peoples. However, while the Declaration is not a legally binding norm for the State and in no way constitutes the establishment of conventional or customary provisions that are binding for Colombia, my delegation finds some aspects of the Declaration to be in direct contradiction with the Colombian internal legal system, which obliged us to abstain in the voting. I shall refer briefly to some of these.

For example, article 30 of the Declaration provides that effective consultations must be held with indigenous communities prior to using their lands or territories for military activities. Under the mandate set out in our constitution, the State security forces must be present throughout the national territory to provide and guarantee to all inhabitants protection of and respect for their lives, honour and property, both individual and collective. Protecting the rights and

integrity of indigenous communities depends to a great extent on security in their territories. In that connection, instructions have been issued to the security forces to fulfil their obligation to protect the rights of such communities. Nevertheless, this provision of the Declaration contradicts the principle of the necessity and effectiveness of the State security forces, preventing the fulfilment of their institutional mission. That is not acceptable to Colombia.

Moreover, articles 19 and 32 of the Declaration refer to consultations to obtain the free, prior and informed consent of indigenous communities before adopting measures that may affect their lands or territories and other resources. In particular, the development, utilization or exploitation of mineral, water or other resources is mentioned.

The right of these communities to prior consultation is defined in our constitution and in ILO Convention No. 169. In that regard, Colombia's Constitutional Court has reiterated in its jurisprudence that there must be compatibility between the exploitation of natural resources and the protection of the social, cultural and economic integrity of indigenous communities. Therefore, it is necessary to guarantee their full, free and informed participation in the decisions taken to authorize such exploitation in their territories.

However, that Court has indicated that, while the Government is obligated to provide effective and reasonable mechanisms for participation, it is not obligatory to reach an agreement. Indigenous peoples' right to consultation is not absolute. Both the Constitutional Court and the ILO Committee of Experts have established that prior consultation does not imply a right to veto State decisions, but that it is an ideal mechanism for enabling indigenous and tribal peoples to exercise the right to express themselves and to influence the decision-making process.

The Declaration's approach to prior consent is different and could amount to a possible veto on the exploitation of natural resources in indigenous territories in the absence of an agreement. That could interfere with processes benefiting the general interest.

Other articles of the Declaration state that indigenous peoples have the right to own, develop and control the territories that they possess by reason of traditional ownership, as well as the underlying natural resources. Other related rights, such as protection

against the dispossession of such resources, are also recognized. It is important to stress that many States, including Colombia, constitutionally stipulate that the subsoil and non-renewable natural resources are the property of the State in order to protect and guarantee their public use for the benefit of the entire nation. Therefore, accepting provisions such as those I have cited would run counter to the internal legal order, which is based on the national interest.

Moreover, the Declaration refers to archaeological and historical sites as well as to lands and territories, without clearly defining the concept of indigenous territories, which is relevant to achieving effective protection in terms of the rights of peoples and the obligations of the State.

Finally, Colombia has been and will continue to be a country committed to facts and realities in protecting the rights of indigenous peoples, from a realistic and participatory perspective that harmonizes national identity with the development of the State, to which all Colombians belong. The decision to abstain in the voting on this text because of the legal incompatibilities that I have identified does not change the State's firm national commitment to implementing the constitutional provisions, internal norms and assumed international obligations aimed at preserving the Colombian nation's multi-ethnic nature and protecting its ethnic and cultural diversity.

The President: We have heard the last speaker in explanation of vote.

The Assembly will now take action on draft resolution A/61/L.67, entitled "United Nations Declaration on the Rights of Indigenous Peoples". A recorded vote has been requested.

I call on the representative of Guatemala on a point of order.

Mr. Briz Gutiérrez: (Guatemala) (*spoke in Spanish*): My delegation would simply like to ask the President which delegation requested a recorded vote on draft resolution A/61/L.67.

The President: The representatives of Australia, New Zealand and the United States of America requested a recorded vote on draft resolution A/61/L.67.

We shall now begin the voting process.

A recorded vote was taken.

In favour:

Afghanistan, Albania, Algeria, Andorra, Angola, Antigua and Barbuda, Argentina, Armenia, Austria, Bahamas, Bahrain, Barbados, Belarus, Belgium, Belize, Benin, Bolivia, Bosnia and Herzegovina, Botswana, Brazil, Brunei Darussalam, Bulgaria, Burkina Faso, Cambodia, Cameroon, Cape Verde, Central African Republic, Chile, China, Comoros, Congo, Costa Rica, Croatia, Cuba, Cyprus, Czech Republic, Democratic People's Republic of Korea, Democratic Republic of the Congo, Denmark, Djibouti, Dominica, Dominican Republic, Ecuador, Egypt, El Salvador, Estonia, Finland, France, Gabon, Germany, Ghana, Greece, Guatemala, Guinea, Guyana, Haiti, Honduras, Hungary, Iceland, India, Indonesia, Iran (Islamic Republic of), Iraq, Ireland, Italy, Jamaica, Japan, Jordan, Kazakhstan, Kuwait, Lao People's Democratic Republic, Latvia, Lebanon, Lesotho, Liberia, Libyan Arab Jamahiriya, Liechtenstein, Lithuania, Luxembourg, Madagascar, Malawi, Malaysia, Maldives, Mali, Malta, Mauritius, Mexico, Micronesia (Federated States of), Moldova, Monaco, Mongolia, Mozambique, Myanmar, Namibia, Nepal, Netherlands, Nicaragua, Niger, Norway, Oman, Pakistan, Panama, Paraguay, Peru, Philippines, Poland, Portugal, Qatar, Republic of Korea, Saint Lucia, Saint Vincent and the Grenadines, San Marino, Saudi Arabia, Senegal, Serbia, Sierra Leone, Singapore, Slovakia, Slovenia, South Africa, Spain, Sri Lanka, Sudan, Suriname, Swaziland, Sweden, Switzerland, Syrian Arab Republic, Thailand, the former Yugoslav Republic of Macedonia, Timor-Leste, Trinidad and Tobago, Tunisia, Turkey, United Arab Emirates, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, Uruguay, Venezuela (Bolivarian Republic of), Viet Nam, Yemen, Zambia, Zimbabwe

Against:

Australia, Canada, New Zealand, United States of America

Abstaining:

Azerbaijan, Bangladesh, Bhutan, Burundi, Colombia, Georgia, Kenya, Nigeria, Russian Federation, Samoa, Ukraine

Draft resolution A/61/L.67 was adopted by 143 votes to 4, with 11 abstentions (resolution 61/295).

[Subsequently the delegation of Montenegro advised the Secretariat that it had intended to vote in favour.]

The President: Before giving the floor to speakers in explanation of vote following the voting, may I remind delegations that explanations of vote are limited to 10 minutes and should be made by representatives from their seats.

Mr. Argüello (Argentina) (*spoke in Spanish*): Argentina was actively and constructively engaged throughout the long process of dialogue, agreement and negotiation that led to today's adoption of the Declaration on the Rights of Indigenous Peoples. When the draft text of the Declaration was adopted by the Human Rights Council, Argentina regretted that it had to abstain in the voting rather than vote in favour — despite our clear political will in favour of recognition of the rights of indigenous peoples and given that the majority of the Declaration's provisions were in line with our own proposals. On that same occasion, we also regretted not having had more time to reconcile references to the right to self-determination with principles pertaining to the territorial integrity, national unity and organizational structure of each State. Fortunately, the efforts made since then to resolve those issues without undermining the rights set out and protected in the Declaration have achieved the expected results. That success was due to the inclusion in paragraph 1 of article 46 of conditions for the application of the Declaration that made it fully compatible with the principles to which I have referred.

It was thanks to those efforts and the results they achieved that Argentina was today pleased to be able to join with all the other countries that voted in favour of the adoption of the Declaration. In doing so, we reaffirmed our commitment in favour of due recognition of the rights of indigenous peoples, which is one of the most legitimate and important questions that the international community must address.

Mr. Shinyo (Japan): It was from the viewpoint of respect for the rights of indigenous peoples that the Government of Japan voted in favour of the Declaration. We would like to state our views on the Declaration.

The revised version of article 46 correctly clarifies that the right of self-determination does not give indigenous peoples the right to be separate and independent from their country of residence and that that right shall not be invoked for the purpose of impairing a State's sovereignty, national and political unity or territorial integrity. The Government of Japan shares that understanding of that right and we welcome the revision.

While the Declaration stipulates that some rights are collective rights, it seems that the concept of collective human rights is not widely recognized as a well-established concept in general international law, and most States do not accept it. Nevertheless, we are fully aware and would like to emphasize that everyone, including indigenous peoples, has fundamental human rights in international law. In that respect, taking note of the thinking at which the Declaration aims, the Government of Japan thinks that indigenous individuals bear the rights contained in the Declaration, and that with regard to certain rights they can exercise them along with other individuals who have the same rights.

The Government of Japan thinks that the rights set out in the Declaration should not harm the human rights of the others. We are also aware that, regarding property rights, the content of the rights of ownership and others relating to land and territory is firmly stipulated in the civil law and other laws of each State. Therefore, the Government of Japan thinks that the rights relating to land and territory set out in the Declaration, as well as the way those rights are exercised, are limited by due reason in the light of harmonizing and protecting third-party interests and other public interests.

Mr. Andereya (Chile) (*spoke in Spanish*): The delegation of Chile voted in favour of the United Nations Declaration on the Rights of Indigenous Peoples, for we recognize the important and valuable contribution of indigenous peoples in building and developing our societies. The Declaration is a significant step in our great national undertaking to build a more inclusive, diverse and tolerant society.

In that context, we would like to reaffirm a crucial principle of our domestic legal system, namely, the need to "respect, protect and promote the development of indigenous people, including their culture, families and communities". That principle

underpins the public policies and initiatives we are promoting for the economic, social and cultural development of our indigenous peoples. The Declaration will serve to strengthen those national efforts, which are being carried out through dialogue, respect for our specificities, observance of our international commitments and, in particular, our domestic institutions, rule of law and legal norms. It is that spirit of consensus that is reflected in article 46.

Through her support for the Declaration, President Michelle Bachelet has reaffirmed her firm and resolute commitment to democratic governance and the comprehensive development of indigenous people, all the while respecting their dignity, rights and roots.

Ms. Pierce (United Kingdom): Allow me to say at the outset that we normally would have expected to speak after the representative of the Portuguese presidency of the European Union, but as I understand from the Secretariat, for technical reasons it is not possible for the representative of Portugal to speak before us today. Therefore, allow me to say that we associate ourselves with the statement that will be made by the representative of Portugal.

The United Kingdom welcomes the Declaration on the Rights of Indigenous Peoples as an important tool in helping to enhance the promotion and protection of the rights of indigenous peoples. We recognize that indigenous peoples continue to be amongst the poorest and most marginalized peoples of the world. For too long, their voices were not sufficiently heard within the international system and their concerns received insufficient attention.

The United Kingdom would like to record its regret that it has not been possible to reach wider consensus on this important text and that some States with large indigenous populations have had no recourse but to call for a vote on it. It is of course not desirable, either from the perspective of States or for the interests of indigenous peoples, that this should be the case. Nevertheless, the United Kingdom recognizes and welcomes the efforts that have been made to advance the Declaration to its current final form, reflecting many concerns that we and others had raised in negotiations. We were therefore pleased to be able to support its adoption.

The United Kingdom fully supports the provisions in the Declaration that recognize that

indigenous individuals are entitled to the full protection of their human rights and fundamental freedoms in international law on an equal basis with all other individuals. Human rights are universal and equal for all.

I 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, 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 would include freedom of association, freedom of religion or a collective title to property.

That remains a long-standing and well-established position of my Government. 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 groups to supersede the human rights of the individual. That is without prejudice to the United Kingdom's recognition of the fact that Governments of many States with indigenous populations have granted them various collective rights in their constitutions, national laws and agreements, as we have heard today. We warmly welcome this fact, and it has served to strengthen the political and economic position and protections for indigenous peoples in those States.

In this regard, the United Kingdom strongly endorses the twenty-second preambular paragraph of the Declaration, which we understand to distinguish between individual human rights in international law and other, collective rights bestowed at the national level by Governments to indigenous peoples. The United Kingdom wishes to reaffirm that it reads all the provisions in this Declaration in the light of that preambular clause and according to that understanding of human rights and collective rights.

Furthermore, the United Kingdom understands article 46 of the Declaration to underpin the provisions of the Declaration as a whole in emphasizing that the exercise of the rights in the Declaration should respect human rights.

We understand article 3 of the Declaration as promoting the development of a new and distinct right

of self-determination, specific to indigenous peoples. We therefore understand the right set out in article 3 of the Declaration to be separate and different from the existing right of all peoples to self-determination in international law, as recognized in common article 1 of the two International Covenants on Economic, Social and Cultural Rights and on Civil and Political Rights. Subsequent articles of the Declaration seek to set out the content of that new right, which is to be exercised, where it applies, within the territory of the State and is not intended to have an impact in any way on the political unity or territorial integrity of existing States. The United Kingdom therefore understands that the right put forward in the Declaration relates to the specific circumstances of indigenous people and their claims to self-determination within the territory of existing States.

The United Kingdom welcomes the seventeenth preambular paragraph of the Declaration, which reaffirms the right of all peoples to self-determination in international law. The United Kingdom notes that that affirmation of the general right in international law does not imply that the right of self-determination in international law is automatically applicable to indigenous peoples per se and does not indicate that indigenous peoples automatically qualify as "peoples" for the purposes of common article 1 of the International Covenants. That existing common article 1 right of all peoples is not qualified, limited or expanded by this Declaration.

The United Kingdom fully supports article 15 of the Declaration. United Kingdom museums are keen to promote understanding of the cultural achievements of indigenous peoples in their collections and to encourage tolerance and respect for different cultures.

The United Kingdom also understands the commitments in article 11 to provide redress through effective mechanisms and the commitment in article 12 to seek to enable access and/or repatriation through effective mechanisms as applying only in respect of such property or of such ceremonial objects and human remains as are in the ownership or possession of the State. The United Kingdom notes that its national museums and galleries are separate legal bodies that operate independently within the framework of their founding legislation.

The United Kingdom notes that the commitment to provide redress in article 12 and the commitment to

seek to enable access and/or repatriation in article 13 are to be fulfilled through effective mechanisms developed in conjunction with the indigenous peoples concerned.

The United Kingdom emphasizes that this Declaration is not legally binding and does not propose to have any retroactive application on historical episodes. Nonetheless, it will be an important policy tool for those States that recognize indigenous peoples within their national territories in implementing policies that help to protect indigenous peoples' rights. The United Kingdom confirms that national minority groups and other ethnic groups within the territory of the United Kingdom and its overseas territories do not fall within the scope of indigenous peoples to which this Declaration applies.

The United Kingdom has long provided political and financial support to the economic, social and political development of indigenous peoples around the world. We will continue to do so. Today we add our voice in support of this important political document that is the Declaration on the Rights of Indigenous Peoples. We hope and trust it will provide an important tool for indigenous peoples around the world to advance their rights and ensure their continued development and growing prosperity as peoples.

Mr. Løvald (Norway): The rights of indigenous peoples are of key importance to Norway. We welcome the adoption of the United Nations Declaration on the Rights of Indigenous People, which we believe will help promote the protection of the rights of indigenous peoples worldwide. The Declaration sets a standard of achievement to be pursued in a spirit of partnership and mutual respect. In Norway, we will do this in partnership with Sami people in Norway, who are recognized as indigenous people by the Government.

The recognition of the right to self-determination referred to in this Declaration requires that indigenous peoples have full and effective participation in a democratic society and in decision-making processes relevant to the indigenous peoples' concern. Several articles in the Declaration specify how the right to self-determination may be exercised. The Declaration emphasizes that the right to self-determination shall be exercised in conformity with international law.

Consultation with the peoples concerned is one of the measures outlined in the Declaration. As a State party to International Labour Organization's

Convention No. 169, concerning Indigenous and Tribal Peoples in Independent Countries, Norway has implemented the consultation requirements specified in that Convention. Self-determination is furthermore exercised through the Sami Parliament, which is an elected body with decision-making and consultative functions within the framework of the applicable legislation. The Government has also signed an agreement with the Sami Parliament in which it sets out procedures for consultations between the Government and the Sami Parliament.

Norway considers that the Declaration is to be understood within the framework of the United Nations Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, adopted by resolution 2625 (XXV) of 24 October 1970.

Mrs. Asmady (Indonesia), Vice-President, took the Chair.

For indigenous peoples, the question of land is an issue that is crucial for indigenous culture and identity. With reference to article 26 of the Declaration before us, we state that, for States parties to International Labour Organization Convention No. 169, the rights concerned must be understood to refer to the rights specified in that Convention. As concerns article 30, Norway intends to continue military activities necessary for upholding general contingency preparedness, including national and allied training and exercises, as we consider these to be justified by a significant threat to public interests.

Ms. Ahmed (Bangladesh): Bangladesh fully supports the rights of any group that is disadvantaged. Our constitution explicitly forbids discrimination on grounds of race, religion, caste, gender or place of birth. Bangladesh adheres to all major international instruments on human rights. In April this year we ratified the Convention on the Protection and Promotion of the Diversity of Cultural Expressions. In all international forums, Bangladesh has always supported the rights of indigenous peoples.

However, in our view, the Declaration on the Rights of Indigenous Peoples, in its present form, retains some ambiguities. In particular, indigenous peoples have not been defined or identified in clear terms. We had also hoped that this political Declaration

would be able to enjoy consensus among Member States, but unfortunately that has not been the case.

Under those circumstances, Bangladesh was obliged to abstain in the vote on the draft resolution.

Ms. Al-Zibdeh (Jordan) (*spoke in Arabic*): The delegation of the Hashemite Kingdom of Jordan voted in favour of draft resolution A/61/L.67, to which the Declaration on the Rights of Indigenous Peoples is annexed. It wishes, however, to explain its vote. In connection with articles 3 and 4, the right of self-determination must be exercised in accordance with the provisions of the Charter of the United Nations and in a manner consistent with the provisions of international law relating to the sovereignty and territorial integrity of States.

Ms. Rovirosa (Mexico) (*spoke in Spanish*): The Mexican delegation hails this very important step forward: the Assembly's adoption of the first universal instrument devoted to the rights of indigenous peoples. The Government of Mexico solemnly reaffirms the pride it takes in the multicultural and multi-ethnic nature of the Mexican nation. As we approach the bicentenary of Mexico's independence, my Government proclaims in this highest forum of humankind its profound gratitude to its indigenous peoples, which form the original foundation of our national identity. As the root-stock of today's Mexico, indigenous peoples bring the extraordinary richness of their social, economic, cultural and political institutions to the inalterable destiny of the Mexican nation as a single and indivisible country.

We welcome the spirit and thrust of the provisions of the Declaration which accord with the provisions of the constitution and laws of the United Mexican States. Article 2 of our constitution recognizes and guarantees the right of indigenous peoples and communities to self-determination and grants them autonomy to, inter alia, determine their internal forms of coexistence and organization and apply their own systems of rules to the settlement of internal disputes. Similarly, indigenous peoples in Mexico possess the right, in accordance with their traditional rules, procedures and practices, to elect their own authorities and representatives for the exercise of their own systems of internal governance. Moreover, our founding charter provides a framework within which to promote equal opportunity for indigenous people and eliminate all discriminatory practices.

Mexico interprets provisions of the present Declaration in the following way. The right of indigenous peoples to self-determination, autonomy and self-government, as set out in articles 3, 4 and 5 of the Declaration, shall be exercised in accordance with the constitution, so as to ensure the national unity and territorial integrity of our State. The provisions of articles 26, 27 and 28 relating to ownership, use, development and control of territories and resources shall not be understood in a way that would undermine or diminish the forms and procedures relating to land ownership and tenancy established in our constitution and laws relating to third-party acquired rights. The procedures set out in articles 27 and 28 are subordinate to national legislation.

Mr. Ritter (Liechtenstein): Liechtenstein has been a long-standing supporter of innovative approaches to the right of peoples to self-determination in order to fully explore the potential of this concept for the promotion and protection of human rights. We are therefore pleased that the Declaration on the Rights of Indigenous Peoples, just adopted, contains a number of provisions which mark an important new step in the way the United Nations deals with the concept of self-determination. The introduction of the right to autonomy or self-government in matters relating to internal and local affairs, including their financial aspect, offers a promising new approach which would help to genuinely address the aspirations and needs of many peoples to create an enabling environment for the full protection and promotion of human rights, without resorting to strife and violence.

It is our understanding that the reference to "political unity" in article 46 of the Declaration does not preclude any gradual granting of increasing levels of self-government to such peoples, which is based on a democratic process and the promotion and protection of minority rights. It does not exclude any democratic decision on the State structure either.

Liechtenstein voted in favour of the Declaration because we are convinced that such innovative concepts are particularly important for harmonious and cooperative relations between the State and indigenous peoples which are beneficial to the promotion and protection of all human rights of indigenous individuals, without any discrimination.

Mr. Park Hee-kwon (Republic of Korea): My Government voted in favour of the Declaration on the

Rights of Indigenous Peoples because of our belief that the Declaration will become an important milestone for the promotion, protection and further enhancement of indigenous peoples' rights. The Declaration is the outcome of more than 20 years of work by indigenous peoples and Member States, including the recent negotiations by the General Assembly at the sixty-first session to address the concerns of all parties, as was well explained by the representative of Peru.

Adoption of the Declaration constitutes a solemn pledge which sends a clear message to the international community for the survival and well-being of indigenous peoples, especially in support, inter alia, of their dwindling cultures and languages and of their right to pursue their vision of economic, social and cultural development.

The Government of the Republic of Korea hopes that adopting the Declaration will contribute to further strengthening the international human rights system as a whole by achieving equality and non-discrimination for all, and especially for marginalized indigenous peoples.

Ms. Ström (Sweden): Like my British colleague, I would like to start by saying that Sweden, of course, aligns itself with the statement to be delivered later by the representative of Portugal on behalf of the European Union presidency.

The Swedish Government is pleased that the United Nations Declaration on the Rights of Indigenous Peoples has finally been adopted by the General Assembly. Sweden supported the elaboration of the Declaration throughout the process and thus voted in favour of the adoption of the resolution. It is our hope that the implementation of the Declaration will improve the situation of indigenous peoples.

The Swedish Government firmly believes that the promotion of the human rights of indigenous individuals contributes to the maintenance and development of multicultural, pluralistic and tolerant societies, as well as to the creation of stable and peaceful democracies built upon effective participation by all groups of society.

The Declaration includes several references to collective rights. The Swedish Government has no difficulty in recognizing collective rights outside the framework of human rights law. However, it is the firm opinion of the Swedish Government that individual

human rights prevail over the collective rights mentioned in the Declaration.

The Sami people are recognized as an indigenous people by the Swedish Parliament. The Swedish Government bases its relations with the Sami people on dialogue, partnership and self-determination, with respect and responsibility for cultural identity. The Government looks forward to pursuing a dialogue with Sami representatives on the implementation of the Declaration.

The Sami and other indigenous peoples must have the right to influence the use of land and natural resources that are important for their survival. The political discussion on self-determination cannot be separated from the question of land rights. The Sami's relationship to the land is at the heart of the matter. The Government of Sweden must maintain a balance between the competing interests of different groups living in the same areas of northern Sweden.

During the negotiations regarding the Declaration, Sweden expressed the view that the Declaration must indeed be possible to implement. The Swedish legal system has struck a delicate balance between the rights of its citizens with a Sami background and those with different backgrounds. The areas where the Sami have reindeer herding rights are often owned and used by non-Sami.

Some clarification of Sweden's interpretation of certain specific articles in the Declaration is necessary. The right to self-determination in article 3 should not be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the principles of equal rights and self-determination of peoples and thus possessed of a Government representing the whole people belonging to the territory without distinction of any kind.

A large part of the realization of the right to self-determination is without doubt possible to ensure through article 19, which deals with the duty of States to consult and cooperate with indigenous peoples. Article 19 can be implemented in different ways, including through a consultative process between institutions representing indigenous peoples and Governments and through participation in democratic systems, such as in the current Swedish system. It does not entail a collective right to veto.

The issue of land rights has different connotations in different States owing to historic and demographic reasons. It is the interpretation of the Swedish Government that the reference to indigenous peoples' rights in articles 26.1, 27 and 28, plus references to ownership and control in article 26.2, in the Swedish context applies to the traditional rights of the Sami people. In Sweden, those rights are called reindeer herding rights and include the right to use land and water for the maintenance by Sami members of reindeer herding communities and their reindeer; the right to reindeer herding; the right to build fences and slaughterhouses for the reindeer; and the right to hunt and fish in reindeer herding areas. In the Swedish context, article 28 does not give the Sami the right to redress for regular forestry by the forest owner. Furthermore, the Swedish Government is of the opinion that its present legal system meets the general requirements in articles 27 and 28 and has presently no intention to adjust Swedish legislation in that regard.

Sweden declares that the lands or territories of indigenous peoples mentioned in article 29.2, article 30 and article 32.2 of the Declaration will be interpreted as such lands or territories that are formally owned by indigenous peoples. Sweden is furthermore of the opinion that article 32.2 shall be interpreted as a guarantee that indigenous peoples must be consulted, not as giving them a right of veto.

It is, furthermore, the Government's understanding that nothing in article 31 conflicts with existing international intellectual property obligations. Measures to recognize and protect the exercise of the rights enumerated in article 31 should be established at the international level and negotiations are currently taking place, inter alia, in the World Intellectual Property Organization's Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore.

Mr. Punkrasin (Thailand): Thailand voted in favour of the resolution because we are in agreement with the spirit and intent of the United Nations Declaration on the Rights of Indigenous Peoples, as annexed thereto, and in spite of the fact that there is still a number of articles that are of concern to us.

Thailand welcomes the spirit of flexibility and compromise shown by the parties concerned during the process of negotiation. We acknowledge that the Declaration that the General Assembly has just adopted

is an improvement on the draft that was put forward to the Third Committee in November last year. In that connection, Thailand wishes to make the following interpretive statement with regard to the adoption of the Declaration in question.

First, Thailand understands that the articles dealing with the right to self-determination and related rights, as enunciated, inter alia, in articles 3, 4, 20, 26 and 32 of the Declaration, shall be interpreted in accordance with the principles of territorial integrity or political unity as stated in the Vienna Declaration and Programme of Action. Article 46, paragraph 1 of the Declaration stipulates in unequivocal terms that the Declaration construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of any sovereign and independent State.

Secondly, Thailand understands that the Declaration does not create any new rights and that benefits, as specified in the Declaration, shall be interpreted in accordance with the Constitution of the Kingdom of Thailand, the domestic laws of Thailand, and international human rights instruments that Thailand is party to.

Last but not least, under the Constitution of the Kingdom of Thailand, every Thai citizen is entitled to equal enjoyment of basic rights and fundamental freedoms, without distinction and regardless of his or her background.

Mr. Tarragô (Brazil): The Brazilian delegation voted in favour of the present resolution, whereby the General Assembly adopted the United Nations Declaration on the Rights of Indigenous Peoples. That decision is a major achievement, long overdue, that will provide new impetus to and acknowledgement of the efforts of States and indigenous peoples to strengthen the promotion and protection of indigenous peoples' rights.

More than a year has passed since the adoption of this Declaration by the Human Rights Council. It had been our view that the text adopted by the Council, as the rightful and best-placed United Nations organ in which to discuss and elaborate international standards in the field of human rights, should not be reopened for consideration. That notwithstanding, we praised States and indigenous peoples who spared no effort and demonstrated a great deal of flexibility to ensure this memorable result.

Brazil is home to 220 indigenous peoples, who speak 180 languages and whose original rights over their lands and to their cultural identity rely on an extensive legal and institutional framework. Areas dedicated to the exclusive and permanent use of indigenous peoples encompass roughly 12.5 per cent of the whole Brazilian territory.

Brazil takes pride in being a multi-ethnic, multicultural country. The influence of our indigenous peoples is pervasive in our food, language, lore, dances, habits, values and religious manifestations. Their traditional knowledge should also be acknowledged and duly protected, as it holds promising prospects for tackling some of the most pressing issues of the development agenda, such as the protection of biodiversity and the fight against new diseases.

The history of indigenous peoples is marked by centuries of violations of their fundamental rights. Fighting discrimination while increasing the promotion and protection of indigenous rights should be our permanent endeavour, both for ethical reasons and because of the invaluable contributions of indigenous peoples to the material and spiritual life in all our countries. Brazil is certain that the Declaration on the Rights of Indigenous Peoples will play an important role in the promotion of a more harmonious relationship between indigenous peoples and the other segments of the societies in which they live.

Brazil wishes to underscore once again the understanding that presided over the negotiations and that is clearly spelled out in the Declaration: that the exercise of the rights of indigenous peoples is consistent with respect for the sovereignty, political unity and territorial integrity of the States that they inhabit. According to our understanding, the procedures and measures referred to in the Declaration to safeguard that territorial integrity and to determine the relevant public interest are those provided for in the national legislation of each country. While exercising that responsibility, States should always bear in mind their major responsibility to protect the lives and the identity of their indigenous peoples.

The United Nations Declaration on the Rights of Indigenous Peoples is a reaffirmation of the international community's commitment to ensure the enjoyment by indigenous peoples of all human rights and fundamental freedoms.

Mr. Talbot (Guyana): Guyana voted in favour of draft resolution A/61/L.67, by which the General Assembly adopted the Declaration on the Rights of Indigenous Peoples.

Guyana is home to nine distinct Amerindian peoples: the Akawaios, Arawaks, Arekunas, Caribs, Makusis, Patamonas, WaiWais, Wapisianas and Waraus. This month, September 2007, Guyana celebrates Amerindian Heritage Month, an annual tribute to our Amerindian brothers and sisters, the original inhabitants of Guyana, who form an integral part of Guyanese society and whose contributions to the forging of our nation have been and continue to be invaluable.

In supporting the adoption of the Declaration, our delegation was motivated by the commitment, which our Government and people firmly hold, to preserving the dignity and well-being of all peoples and to safeguarding the rights of all our citizens, including the original inhabitants of Guyana, who constitute a significant percentage — indeed, 9.3 per cent — of our population. We were further motivated by the consideration that the Declaration represents a good-faith effort to address the genuine concerns and special needs of indigenous peoples everywhere, many of whom live under conditions of disadvantage and deprivation.

Indeed, Guyana views the adoption of the Declaration as marking an important and historic milestone in recognizing the rights of indigenous peoples and their equal status with all peoples everywhere. We also take note of the fact that the Declaration is political in character, as opposed to being a legally binding document, though not without potential legal implications. We are aware that some of its provisions could give rise to interpretations and expectations that may be out of consonance with its fundamental spirit and intent. My delegation therefore wishes to reserve its position on provisions of the Declaration that we view as unclear or at variance, in effect or interpretation, with our Constitution and laws.

We hope that the Declaration does not become an instrument of division or fragmentation in States or societies or an impediment to the promotion of national unity and social cohesion.

My Government remains committed to advancing the interests and enhancing the welfare of indigenous peoples. At the national level, all citizens, without

distinction, enjoy equal status before the law. However, in recognition of the specific circumstances and needs of Amerindians in Guyana, the Government has taken special measures, including the creation of a dedicated Ministry of Amerindian Affairs, the extension of land reforms, the enactment of an updated Amerindian Act 2006 to take account of current realities, and the establishment of a constitutionally mandated indigenous peoples' provision to provide opportunity for redress in matters pertaining to the rights of Amerindians in Guyana. Those measures have been undertaken through a process that allows for full and active participation by Amerindian communities and representatives.

In light of our commitment, Guyana was hopeful that an opportunity would be provided to allow the adoption of this Declaration by consensus. We find it a great pity that the Declaration, which should have been adopted unanimously, has become the source of division. However, it is Guyana's hope that in the future, the international community will be able to arrive at a position of consensus in ensuring respect for and the promotion of the rights of indigenous peoples.

Mr. Mac-Donald (Suriname): The Republic of Suriname places great importance on the promotion and protection of all human rights and fundamental freedoms, including those of indigenous peoples. With the adoption today of this historic document, the international community came to agreement on principles to govern the rights of indigenous peoples. Suriname voted in favour of the Declaration today. The amendments that were made to the Declaration addressed some of the concerns about several elements included in the original text adopted by the Human Rights Council.

Aware of the fact that indigenous peoples make up a significant part of Suriname's population and contribute to our multi-ethnic, multicultural and multireligious society, we deemed it appropriate to respond positively to the Declaration. The Government of Suriname has a responsibility to all its constituents to prevent the discrimination and marginalization of any group in our society, as well as the responsibility to ensure a just balance between the different ethnic groups. Granting special rights to one part of our population may run contrary to the concept of equal treatment.

On the more substantive issues, I would like to note that, with regard to references to the right to self-determination, the Constitution of the Republic of Suriname recognizes and respects the rights of nations to self-determination and national independence on the basis of equality, sovereignty and mutual benefit. In that regard, it shall not be understood that any group or people has a right to initiate any activity that would jeopardize the territorial integrity or political unity of the State.

With regard to the provisions pertaining to free, prior and informed consent, my delegation would like to state that this concept should not be understood as an encroachment upon the rights and duties of the State to pursue society's interests by developing its natural resources and achieving sustainable development and improving the lives of the population as a whole, and the indigenous part of our people as well.

We accept that a State should seek prior consultations in order to prevent unjustified disregard for human rights. The level, nature and extent of such consultations depend, in every instance, on the specific circumstances. Consultation should not be viewed as an end in itself, but should serve the purpose of respecting the interests of those who have traditionally inhabited and used the land. In that regard, we mean both indigenous and other peoples.

The constitution of Suriname clearly states that

“Natural riches and resources are property of the nation and shall be used to promote economic, social and cultural development. The nation shall have the inalienable right to take complete possession of the natural resources in order to apply them to the needs of the economic, social and cultural development of Suriname”.

We express the hope that all groups in our society will be inspired by this Declaration to follow the path of constructive dialogue and peaceful coexistence. In that regard, we hope that the Declaration will be placed in its correct political context.

Finally, the Republic of Suriname recognizes this document as a political document to express and demonstrate the goodwill of the State regarding the promotion and protection of all human rights and fundamental freedoms, including those of indigenous peoples. We also recognize the Declaration as an instrument for raising awareness and as a reference

document on international issues pertaining to indigenous peoples.

The Acting President: I should like to inform members that, in view of the lateness of the hour, the General Assembly will continue with the list of speakers in explanation of vote following the voting on draft resolution A/61/L.67 this afternoon at 3 p.m. I

would also like to inform members that immediately following the adjournment of this afternoon's plenary meeting, there will be an informal segment to hear statements by two representatives of the indigenous community.

The meeting rose at 1.15 p.m.



General Assembly

Sixty-first session

108th plenary meeting

Thursday, 13 September 2007, 3 p.m.
New York

Official Records

President: Ms. Al-Khalifa (Bahrain)

In the absence of the President, Mr. Wali (Nigeria), Vice-President, took the Chair.

The meeting was called to order at 3.10 p.m.

Agenda item 68 (continued)

Report of the Human Rights Council

Draft resolution (A/61/L.67)

Mr. Baghaei Hamaneh (Islamic Republic of Iran): My delegation voted in favour of draft resolution A/61/L.67, entitled “United Nations Declaration on the Rights of Indigenous Peoples”, adopted this morning by the General Assembly.

The protection of the rights of indigenous peoples all around the world is a matter of principle for the Islamic Republic of Iran, although Iran does not have any indigenous people as such. We trust that the adoption of the Declaration on the Rights of Indigenous Peoples by such an overwhelming majority will further contribute to the protection and promotion of the rights of indigenous peoples, who have long been subjected to injustices and discrimination as a result of colonization and the dispossession of their land and resources.

It is our understanding that the rights of indigenous peoples should be protected and enhanced within the context of national and international law, including the purposes and principles of the Charter of the United Nations, namely, respect for the territorial integrity and political sovereignty of the State.

It was undesirable and unfortunate that steward States decided to oppose the adoption by consensus of this important document. Nonetheless, we earnestly hope that those countries — especially those having sizable indigenous communities, particularly Canada and Australia — will observe and protect the rights of their indigenous peoples.

I request that this brief statement be registered in the official records of the General Assembly as the position of my Government.

Mr. Malhotra (India): India has consistently favoured the promotion and protection of the rights of indigenous peoples. We were supportive of the efforts made in the framework of the Working Group of the Commission on Human Rights to elaborate a draft declaration on the rights of indigenous peoples. The fact that the Working Group was not able to reach a consensus on every aspect of the Declaration, despite such prolonged negotiations, was only reflective of the extreme complexity of the issues involved. After due consideration, we supported the adoption of the draft declaration at the first session of the Human Rights Council in Geneva last year.

The Declaration does not define what constitutes indigenous peoples. Yet, it is our understanding that the issue of indigenous rights pertains to peoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonization or the establishment of present State

This record contains the text of speeches delivered in English and of the interpretation of speeches delivered in the other languages. Corrections should be submitted to the original languages only. They should be incorporated in a copy of the record and sent under the signature of a member of the delegation concerned to the Chief of the Verbatim Reporting Service, room C-154A. Corrections will be issued after the end of the session in a consolidated corrigendum.



boundaries, and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions. That is precisely the definition used in International Labour Organization Convention C169 of 1989. Consistent with that definition, we regard the entire population of India at the time of our independence, and its successors, to be indigenous.

As regards the references to the right to self-determination in the Declaration, it is our understanding that the right to self-determination applies only to peoples under foreign domination and that this concept does not apply to sovereign independent States or to a section of people or a nation, which is the essence of national integrity. We note that the Declaration clarifies that this right to self-determination will be exercised by indigenous peoples in terms of their right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions. In addition, article 46 states clearly that nothing in the Declaration may be interpreted as implying for any State, people, group or person any right to engage in any activity or to perform any act contrary to the United Nations Charter or construed as authorizing or encouraging any action that would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States.

It is on the basis of those two understandings that India voted in favour of the adoption of the United Nations Declaration on the Rights of Indigenous Peoples.

Ms. Myo (Myanmar): Myanmar strongly recognizes the need to promote the political, economic and cultural rights of indigenous peoples. We have also followed the time-honoured tradition of supporting the self-determination of peoples under colonial rule. We have therefore consistently supported the right of all peoples living under colonial domination to exercise their right to self-determination in accordance with the United Nations Declaration on the Granting of Independence to Colonial Countries and Peoples.

We maintain that the indigenous peoples residing in a sovereign State that have already attained self-determination have the right to participate in the political affairs of the State in accordance with the

provisions of national laws. We are gratified by the provision that nothing contained in the Declaration may be construed as authorizing or encouraging any action which dismembers or impairs, totally or in part, the territorial integrity or political unity of sovereign and independent States.

The Declaration also clearly stipulates that the situation of indigenous peoples varies from region to region and from country to country and that the significance of national and regional particularities and various historical and cultural backgrounds should be taken into consideration.

The provisions in the Declaration will be interpreted by Myanmar in accordance with the principles of sovereignty, territorial integrity and national unity. The nature and the scope of the measures to be taken to give effect to the Declaration will be determined in a flexible manner, bearing in mind the historical background and national particularities of Myanmar. In that understanding, my delegation voted in favour of resolution 61/295.

Mr. Mbuende (Namibia): Today, we have reached another historic milestone. Namibia is pleased to have supported the adoption of the United Nations Declaration on the Rights of Indigenous Peoples by the General Assembly today. We have walked a long way to reach where we are today. Members may recall that it was Namibia, as Chairman of the Africa Group for the month of November 2006, that moved a motion for deferment of consideration of the draft declaration on the rights of indigenous peoples by the General Assembly in order to allow Member States to consult with a view to adopting the declaration before the end of the sixty-first session.

We did everything in our power to live up to that promise. We engaged in protracted consultations and negotiations with States that had concerns, as those of us who supported the declaration had, and we also had audiences with representatives of several indigenous organizations.

We made very clear from the outset that Namibia is not opposed to the idea of having a declaration on the rights of indigenous peoples. We, as historical victims of deprivation of our rights, could not do anything that would be construed as denying any peoples of their human rights. We have experienced first-hand what it is to be denied our rights. We have experienced first-hand the pain and anguish of being

treated as second-class citizens in the land of our birth. Having been victims of injustice, we became champions of human rights and the right of peoples to self-determination. We have been friends of human rights instruments.

The United Nations Declaration on the Rights of Indigenous Peoples, as adopted by the Human Rights Council, presented a number of legal problems for Namibia. The argument that the Declaration is not binding did not appeal to us. We take our obligations seriously. Once we adopt an instrument we want to promote, defend and protect it. That could not have been done if we did not effect the amendments that we did. Namibia therefore wishes to place on record its understanding of certain provisions of the Declaration.

First, Namibia understands that nothing in the Declaration may be interpreted in any way to mean that measures adopted by States for securing the equal enjoyment of human rights and fundamental freedoms of indigenous peoples and individuals create, as a consequence, new separate rights.

Secondly, Namibia wishes to place on record its understanding of article 46.1 to confirm that the Declaration does not in any way authorize or encourage any action that would dismember or impair, totally or in part, the territorial integrity and political unity of sovereign independent States.

Thirdly, Namibia understands that the word "law" in article 46.2 of the Declaration means the national laws of States. Accordingly, Namibia understands that the exercise of the rights set forth in this Declaration are subject to the limitations determined by the constitutional frameworks and other national laws of States.

Indigenous peoples are part and parcel of our society. They are not an entity distinct from the rest of us, be it culturally, linguistically or, indeed, in terms of mode of life. Hunting and gathering is a transient mode, not a permanent feature, in the life of any society. We recognize, however, that there are historically marginalized communities that need special assistance in order to be able to enjoy the rights that are enshrined in our constitution and to take advantage of political, social and economic opportunities. To that end, the Government of Namibia has designated its Deputy Prime Minister to spearhead a programme for the social and economic empowerment of marginalized communities. We

believe that it will not be long until those marginalized communities are empowered to participate on an equal footing with others in the life of society and to enjoy the social and economic benefits accruing to all members of society.

Mr. Acharya (Nepal): Nepal appreciated the opportunity to vote on this historic Declaration on the Rights of Indigenous Peoples after long negotiations both in the Human Rights Council and here in the General Assembly. Nepal voted in favour of resolution 61/295 as we are strongly committed to safeguarding and promoting the rights and interests of various ethnic and indigenous peoples.

As a nation that has a diverse ethnic composition and that is home to various indigenous peoples, Nepal consistently upholds the rights of indigenous peoples. The new democratic dispensation in Nepal is fully committed to protecting the rights of indigenous peoples and has opted to pursue the path of a fully inclusive democratic framework, which has been reflected in the comprehensive peace agreement, the interim constitution adopted last year and the agreement reached earlier this year between the Government and the representatives of the *Janjatis* and indigenous peoples. Those commitments will be accommodated in the new constitution, which will be written by the Constituent Assembly to be elected on 22 November 2007. The Assembly will take decisions with regard to these issues, articulating the interests and aspirations of all Nepalese citizens, including indigenous peoples.

It has been a principled stand of the Government of Nepal to remain fully committed to the promotion and protection of the human rights of all, including the rights of indigenous peoples, in a positive manner and to support them in every possible way within the overall framework of the country's sovereignty and territorial integrity.

It is Nepal's understanding that the principles mentioned in this Declaration are collective reflections of the good intentions of the international community as guidelines for the protection and promotion of the rights of indigenous peoples and therefore do not create any binding legal or political obligations on the part of the States that voted in favour of it.

Mr. Anshor (Indonesia): My delegation voted in favour of resolution 61/295, on the Declaration on the

Rights of Indigenous Peoples, and wishes to make the following explanation.

Even after the prolonged process of negotiation on the Declaration, it is to be regretted that several important aspects of the document remain unresolved, in particular those relating to the definition of what constitutes an indigenous people. The absence of such a definition will prevent us from having a clear idea as to the individuals or groups of individuals to whom the rights set out in the Declaration are intended to be accorded or the exact situations to which the Declaration is applicable.

It is in that context that my delegation deems it necessary to make the following interpretive statement. It is our understanding that the issue of indigenous tribes pertains to people in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonization or the establishment of present State boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions.

That is the definition used in International Labour Organization (ILO) Convention No. 169 of 1989. According to the ILO Convention, indigenous peoples are distinct from tribal peoples — a term referring to peoples in independent countries whose social, cultural and economic conditions distinguish them from other sections of the national community and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations.

Given the fact that the entire population of Indonesia has remained unchanged since the time of its colonization and subsequent independence, and the fact that Indonesia is a multicultural and multi-ethnic nation that does not discriminate against its people on any grounds, the rights stipulated in this Declaration accorded exclusively to indigenous peoples are not applicable in the context of Indonesia. However, we will continue, in accordance with our national laws, to promote and protect the traditional collective rights of the sub-ethnic communities that we call *Masyarakat Adats*, which are not equivalent to indigenous peoples as referred to in the Declaration.

However, we are of the view that the Declaration will be instrumental in the promotion and protection of

the human rights of the peoples to whom it is intended to be applicable.

Mr. Hayee (Pakistan): I am grateful for the opportunity to explain the position of my delegation regarding the United Nations Declaration on the Rights of Indigenous Peoples, which we adopted this morning as an annex to resolution 61/295.

Believing in the principle of the universality and interrelatedness of all human rights, we fully support the human rights of indigenous peoples as enshrined in the Declaration. Indeed, indigenous peoples have the right to freely pursue their economic, social and cultural practices as set out in that document. It is for that reason that Pakistan voted in favour of the Declaration both in the Human Rights Council and today in the General Assembly.

Although the Declaration does not contain a definition of indigenous peoples, we understand that that term stands for peoples in independent countries which are regarded as indigenous on account of their descent from the populations which inhabited the country, or the geographical region to which the country belongs, at the time of conquest or colonization or the establishment of present State boundaries and which, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions, as stipulated in International Labour Organization (ILO) Convention No. 169, concerning indigenous and tribal peoples in independent countries.

We hope that the adoption of this Declaration will also help to fulfil the objectives of the Decade for the promotion and protection of the rights of indigenous peoples and to enable them to retain their cultural identity while participating in political, economic and social life, with full respect for their cultural values, languages and traditions.

Mr. Buffa (Paraguay) (*spoke in Spanish*): The delegation of Paraguay welcomes the adoption of resolution 61/295, "Declaration on the Rights of Indigenous Peoples". Through our vote in favour, we supported that outcome, which was the culmination of a long negotiation process in which Paraguay participated in a constructive and supportive spirit.

At the same time, I would like to express my country's position regarding the Declaration just adopted and, in particular, its article 26. They will be

interpreted in accordance with the relevant provisions of our national constitution and the normative framework of our national legal order. Finally, I wish to indicate that the 1992 constitution of the Republic of Paraguay sets out the rights of indigenous peoples in its chapter V.

Mr. Matulay (Slovakia): Slovakia aligns itself with the statement to be delivered later by the representative of Portugal on behalf of the European Union.

My country in principle welcomes the United Nations Declaration on the Rights of Indigenous Peoples as an important tool for the promotion and protection of the rights of indigenous peoples. We therefore regret that such an important tool had to be adopted by a vote.

We fully recognize the rights of indigenous peoples under international law to be on an equal footing with those of others. We therefore voted in favour of adopting the Declaration. However, Slovakia wishes to stress that international human rights protection is based on the principle of the individual character of human rights. Slovakia therefore does not accept the concept of collective human rights in international law that has been integrated into the text. We would like to point out the distinction drawn with regard to this topic in the preamble of the Declaration. It clearly distinguishes between the individual character of the human rights of indigenous individuals and the collective rights indispensable for their existence, well-being and integral development as peoples. Those collective rights should not be considered as human rights.

Taking into account that there is no indigenous population in Slovakia, I stress that the citizens of the Slovak Republic do not fall under the scope of the Declaration.

Mr. Aksen (Turkey): Last year in the Third Committee, Turkey supported the initiative to defer consideration of the United Nations Declaration on the Rights of Indigenous Peoples so that negotiations on the text could continue, with a view to achieving broader support for this important Declaration. We are pleased to see that the amendments made to the text of the Declaration, as well as to the draft resolution by which the Declaration has been adopted, have been instrumental in achieving the desired broader support. In that regard, Turkey voted in favour of the adoption

of the Declaration. For the record, Turkey would like to underline the following interpretative points in relation to the Declaration.

The Declaration is not legally binding. However, it can constitute an important policy tool for those States that recognize indigenous peoples within their national territories. Turkey does not have any group within its territory that falls within the scope of indigenous peoples to which the United Nations Declaration on the Rights of Indigenous Peoples applies.

Turkey would like to emphasize that, as stated in paragraph 1 of article 46 of the Declaration,

“Nothing in this Declaration may be interpreted as implying for any State, people, group or person any right to engage in any activity or to perform any act contrary to the Charter of the United Nations or construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States.”

Mr. Hermoso (Philippines): My delegation is taking the floor to explain its vote following the voting on the United Nations Declaration on the Rights of Indigenous Peoples.

The Philippines has consistently upheld the promotion and protection of the rights of indigenous peoples. Section 22 of article II of the Constitution expressly provides that “The State recognizes and promotes the rights of indigenous cultural communities within the framework of national unity and development.” In addition, in 1997 the Philippine Congress passed the Indigenous Peoples Rights Act, which promotes and protects the rights of indigenous cultural communities in the Philippines.

It is on that basis that the Philippines voted in favour of the United Nations Declaration of the Rights of Indigenous Peoples. My delegation’s expressions of support is premised on the understanding that the right to self-determination as expressed in article 3 of the document shall not be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of a sovereign or independent State possessed of a Government representative of the whole of the people belonging to that territory.

Our vote of support is likewise premised on the understanding that ownership of lands and natural resources is vested in the State, in accordance with the doctrine embodied in section 2 of article XII of the Philippine Constitution.

Mr. Akindede (Nigeria): We of the Nigerian delegation are indeed very elated at seeing you in the Chair this afternoon, Sir.

Coming to the crux of the matter, today, 13 September 2007, is a very historic day indeed. We have just witnessed the adoption of the United Nations Declaration on the Rights of Indigenous Peoples. The Nigerian delegation welcomes the broad areas covered by the Declaration, which are in tandem with, and germane to, the Nigerian Constitution. Indeed, the Nigerian Constitution is replete with provisions strengthening some of those areas.

However, my delegation wishes to stress that a number of concerns critical to the interests of my country were not satisfactorily addressed. Some of those concerns include the issue of territorial integrity, self-determination — articles 3 and 4 — the control of lands, territories and resources — article 26 — and article 37, which deals with the important issue of treaties.

My country's national institutions, national laws — including its national human rights commission — and the principle of federal character — under which we established the Federal Character Commission — all ensure national integration. They will continue to promote the issue of the human rights, culture and the dignity of indigenous peoples. Indeed, those provisions affect all the rights of all Nigerians. In addition, the slogan "Unity in diversity" continues to be the guiding principle in the management of the more than 300 ethnic groups in Nigeria, which speak more than 300 languages.

We are therefore pleased to have abstained from voting this morning.

Mrs. Pérez Álvarez (Cuba) (*spoke in Spanish*): Putting an end to the isolation, discrimination and usurpation of land suffered by indigenous peoples for more than five centuries has been the driving force behind the efforts of innumerable actors throughout the world. Indigenous peoples from around the world have claimed from the international community a place from

which they can raise their voices in peaceful protest, based on concrete historical reasons.

The meeting held in Geneva in 1977 was an important milestone as regards the role played by indigenous peoples in multilateral diplomacy. Five years later, in 1982, on the initiative of the Sub-Commission on Prevention of Discrimination and Protection of Minorities of the Commission on Human Rights, the Working Group on Indigenous Populations was established as the first United Nations entity to address that question, thus opening the door for ancestral claims by indigenous peoples.

In parallel, during the first International Decade for the World's Indigenous People, 1995 to 2004, significant results were achieved in the quest for a solution to the problems facing these communities, including the reports by the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people and the establishment of the Permanent Forum on Indigenous Issues and its secretariat. In particular, we should note the dedicated work of the Working Group of the former Commission on Human Rights in completing the drafting of the United Nations Declaration on the Rights of Indigenous Peoples, which can be considered the greatest United Nations contribution to ending the predatory and discriminatory treatment to which indigenous societies have been subjected for centuries.

The adoption of the draft declaration had long been pending before the Assembly. The first International Decade of the World's Indigenous People came to an end without the adoption of that most important initiative. Today the second Decade can count among its most substantial achievements the adoption of the Declaration, the outcome most hoped for by indigenous peoples and one of the greatest commitments of the human rights movement.

The Declaration and its future impact on the work of the United Nations in this area will serve as a guide for meeting the claims of indigenous communities. Cuba believes that the Human Rights Council and its subordinate bodies should attentively follow the Declaration's implementation in order to fully realize the human rights of indigenous peoples by virtue of the Declaration. Cuba reaffirms that the purpose of the United Nations for the current Decade should not be limited to a definition of the rights of indigenous peoples or to seeking to integrate these rights within

development parameters that are virtually rejected by the majority of these peoples, since those parameters are alien to their particular and vital needs.

Furthermore, Cuba will continue to support the just claims of indigenous peoples. Finally, our national legislation must now give due recognition to the rights of indigenous peoples and foster their effective fulfilment, protecting the free exercise of these rights by those who possess them, through mechanisms that can guarantee this and for their general well-being.

Mr. Kaludjerović (Montenegro): On behalf of my delegation I should like to put on record that we welcome the adoption of the Declaration annexed to resolution 61/295. We consider that it will be an important tool that will help enhance the promotion and protection of the rights of indigenous peoples.

Ms. Gendi (Egypt): Believing in the rights of indigenous peoples, Egypt voted in favour of the adoption of the Declaration on the Rights of Indigenous Peoples, annexed to resolution 61/295. Despite the fact that the text is not a perfect one, we believe that the amendments introduced to the text of the Declaration guarantee that nothing within the text shall be interpreted as redefining self-determination, territorial integrity, the political unity of sovereign States or the right of independent States to have full control over their own land and resources, as enshrined in the Charter of the United Nations.

The Acting President: We have heard the last speaker in explanation of vote. We will now hear statements after the adoption. I give the floor to Mr. Choquehuanca Céspedes, Minister for Foreign Affairs of Bolivia.

Mr. Choquehuanca Céspedes (Bolivia) (*spoke in Spanish*): Indigenous peoples, with our characteristic patience, have waited for 25 years since the Commission on Human Rights began its preparation of this instrument on the rights of indigenous peoples. Today, 25 years later, we see fundamental worldwide changes. On the one hand, we see a world where States inspired by the West cannot maintain their development. Such development has provoked great imbalances, not only among human beings but also between human beings and nature.

We are facing various crises. We hear of worldwide institutional crises, energy crises, food crises, climate change. The age of oil is coming to an

end, and we are using up the planet's natural resources faster than it can replace them. The planet is warming; rainfall patterns have changed; hurricanes and earthquakes are becoming more and more frequent. Our mother Earth, our Pacha Mama, is mortally wounded.

In the face of these crises, indigenous peoples stand out as a reservoir of scientific knowledge about life, with their codes, values and principles which not only seek a balance between and among people but also a balance between human beings and nature. They have much to contribute to the efforts to save planet Earth. This new historic stage is giving rise to a new reading of indigenous reality.

In Bolivia, we are working to live well, not better. We indigenous peoples are not trying to live better; we are trying to live well. Our communities do not want anybody to live better. We do not want to see certain peoples living better than others or certain persons living better than others. Living well is not the same as living better. Lying is not living well; exploiting one's neighbours is not living well; destroying nature is not living well. If you exploit those around you, you might perhaps live better. That is not what we want. We do not want the misuse of nature to permit us to live better. Indigenous people are not asking for that. We are in the process of recovering our knowledge, our values and our codes.

In this context, after our peoples being neglected for hundreds of years, this Declaration is the least that could be adopted to give all of us tools for recognizing the existence of indigenous peoples.

The Declaration is not a solution and does not resolve the problems of peoples or the planet. It is, however, a step forward. As many speakers have said, its drafting was not perfect. We might have liked to see a broader consensus and more active participation on the part of indigenous peoples. It is, however, a first step. It is a very important step in helping indigenous peoples to end discrimination, strengthen their identity and spirituality, and ensure the recognition of their rights to land and natural resources and to be consulted and participate in decision-making.

That is why we welcome the adoption of the Declaration and congratulate all those who made it possible for that instrument to be adopted on behalf of indigenous peoples and the world.

The Acting President: I call on the representative of Portugal to speak on behalf of the European Union.

Mr. Salguiero (Portugal): I have the honour to deliver this general statement on behalf of the European Union. The candidate countries Turkey, Croatia and the former Yugoslav Republic of Macedonia; the countries of the Stabilisation and Association Process and potential candidates Albania, Montenegro and Serbia; as well as the Republic of Moldova and Armenia align themselves with this statement.

The European Union supported the Human Rights Council resolution adopting the text of the United Nations Declaration on the Rights of Indigenous Peoples in June 2006. Today, we adopted an amended text which aims to ensure the widest possible support for the Declaration.

The European Union supports this new compromise text and is encouraged to see that it has the support of a broad range of indigenous representatives, who played an important role during the process leading to the adoption of the Declaration. It is our belief that the adoption of the Declaration today will advance the rights and ensure the continued development of indigenous peoples around the world, and we would like to salute them for this achievement.

Mr. Briz Gutiérrez (Guatemala) (*spoke in Spanish*): As a multicultural, multilingual and multiethnic country, Guatemala wishes to express its great pleasure at the adoption of the United Nations Declaration on the Rights of Indigenous Peoples.

Today, a 20-year struggle has come to an end with the adoption of a text acceptable to a majority of Member States and with content that enhances the dignity of the world's indigenous peoples. Most valuable of all in the process is that those for whom the Declaration exists — the indigenous peoples themselves — along with many States that supported today's adoption, have achieved the goal of creating a balanced and useful instrument that is a true guide for helping to improve the individual and collective living conditions of the indigenous peoples. Great care was taken at every step to ensure the Declaration's consistency with the general principles of human rights and international law, seeking the promotion and protection of and respect for the rights of indigenous peoples.

Guatemala was convinced that the Declaration would be adopted by consensus by the Human Rights Council and by this Assembly. That was our idealistic hope, but we are aware that reality is different. That is why the text adopted by the Human Rights Council underwent various amendments before it was adopted today. Along with representatives of indigenous peoples, we would have preferred that it not be amended, but we are satisfied that consideration was taken of concerns expressed by other States that, like Guatemala, truly seek to improve the living standards of over 350 million indigenous peoples living in a variety of situations and circumstances throughout the world. May the Declaration be genuinely universal.

In Guatemala about five centuries ago, Fra Bartolomé de las Casas spoke up in defence of indigenous peoples. That task is today finding legitimate and concrete expression in the Declaration. The Declaration does not create new rights, but reaffirms the right of indigenous peoples to self-determination so that they can freely determine their own economic, political, social and cultural development. It recognizes their collective right to live in freedom, peace and security as distinct peoples within the territorial integrity and political unity of the State.

In cosponsoring the resolution whereby the United Nations Declaration on the Rights of Indigenous Peoples was adopted, Guatemala reaffirms its conviction that the full realization of those peoples' human rights is a prerequisite for attaining peaceful and harmonious coexistence. While the Declaration cannot make up for the past, it can in the future rectify unjust social relations, preventing racism, discrimination and intolerance.

The Government of Guatemala also believes that the Declaration on the Rights of Indigenous Peoples is a minimal decalogue, allowing indigenous peoples to be called by their own names and freely to participate in political, economic, social, cultural, ecological and spiritual life of the nation on an equal footing. They can also maintain their own forms of organization, lifestyle, culture and traditions, preserving and using their own language. They can participate in the development of their own education systems and programmes, and in any decision affecting the use and exploitation of resources in their territory, in accordance with primary law.

My delegation commends the efforts, tenacity, flexibility and good will of the indigenous movement and of Government delegations in Geneva and New York. Over more than two decades of continuous negotiations, they succeeded in producing this extraordinary historic instrument.

Finally, for Guatemala the Declaration is the expression of the political will of the international community to recognize, defend and respect those peoples. It is the first instrument concerning the human rights of indigenous peoples adopted by the General Assembly, and joins the Universal Declaration of Human Rights, which was also adopted by a recorded vote, in forming the backbone of this Organization, which was created for just such noble purposes and principles. With its adoption today, we open the door to a better future for indigenous peoples worldwide.

Mr. Nuorgam (Finland): I have the honour to address the Assembly not only as a member of the delegation of Finland, but also as a representative of the Sami Parliament in Finland. It is an elected body with autonomous decision-making functions through which the self-determination of the Sami people is exercised in Finland. I am therefore extremely pleased to be able to be here today to witness this important occasion.

The First International Decade of the World's Indigenous Peoples, which was initiated by the World Conference on Human Rights in 1993, had two major goals: to finalize a United Nations declaration on the rights of indigenous peoples and to establish a permanent forum for indigenous issues within the United Nations system. We succeeded in establishing the Permanent Forum on Indigenous Issues in 2000, which was a major achievement of the first Decade. While we regret that there were final delays in its adoption of the Declaration, we are pleased that, after many years of intense negotiations, we have now finalized the United Nations Declaration on the Rights of Indigenous Peoples. Today, we honour the work of hundreds of representatives of Governments and indigenous peoples from Latin America, Africa, the Arctic, North America, Asia and the Pacific by bringing this process — which started more than two decades ago — to a meaningful end.

The rights of indigenous peoples are of the utmost importance in Finland. This issue affects the lives not only of indigenous peoples, but of the

population as a whole. We view the Declaration as an important tool in underscoring the principle of full and effective participation by indigenous peoples in decision-making processes. The adoption of the Declaration will, in our view, strengthen the promotion and protection of the rights of indigenous peoples worldwide.

As the Declaration has now been adopted, it should serve as a comprehensive framework for cooperation between States and indigenous peoples in the implementation of these new international minimum standards for upholding the rights of indigenous peoples.

Mr. Riofrío (Ecuador) (*spoke in Spanish*): Ecuador is a country recognized for its cultural and ethnic diversity. It is in that context that I speak before this plenary meeting of the General Assembly, stressing the strong commitment of my Government, with the adoption of the United Nations Declaration on the Rights of Indigenous Peoples (resolution 61/295, annex). That historic and important instrument, which took more than 20 years to become a reality, will undoubtedly be the basic charter for the protection of the human rights of indigenous peoples throughout the world.

My country wishes to thank the President of the General Assembly for her resolve to see the Declaration adopted at the present session and to thank the representative of the Philippines for having led the open-ended negotiations on this instrument in New York. I wish to especially thank the delegations — particularly those of Mexico, Peru and Guatemala — that contributed to the success of those complex negotiations, as well as all the indigenous organizations that, during this year of consultations, consistently supported the sponsor countries in their efforts to arrive at this moment, which once seemed unreachable.

While Ecuador maintained a firm position that the text adopted by the Human Rights Council in June 2006 in Geneva should not be revisited, because we believed that its content had been sufficiently negotiated and had the support of the world's indigenous peoples, my country, together with the other sponsors of the Declaration, showed flexibility in allowing the inclusion in the text of the amendments proposed by the Group of African States, since they did not affect its substantive content regarding the

protection and promotion of the rights of indigenous peoples. That flexibility undoubtedly enabled us to achieve the necessary consensus with a majority of countries from various regions of the world. Those countries are aware that the instrument we have adopted today will contribute to improving the situation of great vulnerability facing our indigenous peoples.

Since 1998, Ecuador has recognized in its constitution the collective rights of indigenous peoples. Today, we express our commitment to implementing the Declaration in all State policies. My country congratulates the General Assembly on having met the historic challenge of incorporating into international human rights law a fundamental instrument for ending the exclusion, marginalization and obscurity of millions of human beings who for centuries have been traditionally exploited and humiliated and who expected from our Governments a decisive recognition of their collective rights.

Mr. González (Costa Rica) (*spoke in Spanish*): On this memorable day, my delegation hails the adoption of the United Nations Declaration on the Rights of Indigenous Peoples (resolution 61/295, annex). That act is the culmination of 25 years of work and of the even longer struggle of our indigenous peoples for recognition of, and respect for, their human rights.

In Costa Rica, our legal order promotes recognition of the rights of indigenous peoples, including, *inter alia*, the right to territoriality, established in our indigenous law of 1977, and the customary law expressed in International Labour Organization (ILO) Convention No. 169, which was ratified by Costa Rica in 1992 and which has constitutional legal status. However, much remains to be done. We admit that we must improve indigenous peoples' access to basic services such as education and health, increase our efforts to protect and conserve their cultures and languages, promote and strengthen the participation of indigenous groups and organizations in decision-making and combat poverty, marginalization and environmental degradation, which impede the full enjoyment of their human rights.

This is the beginning of a new opportunity to correct the historic injustices committed against our indigenous peoples. That is why, as we did in the Human Rights Council, we sponsored this resolution,

joining in the historic commitment to support our indigenous brothers and sisters by voting in favour of the Declaration. We hope that this new instrument will be translated into concrete actions that will benefit indigenous peoples in all parts of the world without any distinction, and that the principles of the Declaration will be incorporated, as a priority and immediately, into international efforts to protect indigenous rights carried out by the bodies, agencies, funds and programmes of the United Nations system.

Mr. Fieschi (France) (*spoke in French*): France fully subscribes to the statement made by the representative of Portugal on behalf of the European Union.

France welcomes the General Assembly's adoption of the United Nations Declaration on the Rights of Indigenous Peoples (resolution 61/295, annex). That event, which is the culmination of a process that began more than 20 years ago, is an essential step forward in the protection of human rights.

At the national level, France, which is directly concerned with the indigenous populations of its overseas territorial communities, carries out programmes to support their economic and social development within a framework that is tailored to the specificities of those populations and to their cultural expression. That is why France has supported all processes under way at the multilateral level. In particular, we provided financial support to the International Decade of the World's Indigenous People.

The Declaration on the Rights of Indigenous Peoples supplements the framework of norms enshrined in United Nations instruments regarding the promotion and protection of human rights, without calling into question individual rights and fundamental freedoms previously guaranteed.

For France, by virtue of the principle of the indivisibility of the Republic and in keeping with the basic principle of equality regarding its corollary, the principle of non-discrimination, collective rights cannot take precedence over individual rights. Nevertheless, special treatment may be accorded to indigenous populations on a territorial basis. The right to self-determination and to consultations and local referendums, as referred to in articles 3, 4, 19, 20 and 30 of the Declaration, is to be exercised in accordance with national constitutional norms, as provided in

article 46 of the Declaration. Finally, article 36, concerning the right of indigenous peoples to maintain international relations, is understood within the framework of constitutional norms in that area.

We would like to take this opportunity to reaffirm our commitment to international human rights norms and the democratic values that this Declaration aims to supplement and strengthen.

The Acting President: We have heard that last speaker in explanation of vote. I should like to express my sincere thanks, on behalf of the President, to Ambassador Hilario Davide of the Philippines who, on her behalf, so ably and patiently conducted the discussions and complex negotiations in the informal consultations on draft resolution A/61/L.67. I am sure that members of the Assembly join me in extending our sincere appreciation to him.

I shall now read out a statement on behalf of the President of the General Assembly, Sheikha Haya Rashed Al-Khalifa.

“I would like to congratulate all the members of the General Assembly for their work on this historic Declaration. In particular, I would like to commend the professionalism that His Excellency Mr. Hilario G. Davide, Jr., Permanent Representative of the Philippines, has demonstrated while facilitating the process leading up to the adoption of this resolution.

“The General Assembly has come a long way on this issue. We first opened our doors to indigenous peoples at a ceremony to launch the International Year of the World’s Indigenous People, in December 1992. Then, in 1993, the United Nations marked the first International Decade of the World’s Indigenous People; and, last year the beginning of the Second International Decade of the World’s Indigenous People.

“That partnership and cooperation demonstrate the General Assembly’s continuing commitment to the world’s indigenous peoples.

However, even with this progress, indigenous peoples still face marginalization, extreme poverty and other human rights violations. They are often dragged into conflicts and land disputes that threaten their way of life and their very survival. They also suffer from a lack of access to health care and education.

“We should not, however, cast indigenous peoples as victims, but rather as critical assets to the diversity of our global humanity. Today, by adopting the Declaration on the Rights of Indigenous Peoples, we are making further progress to improve the situation of indigenous peoples around the world.

“The General Assembly has also realized another important mandate that our heads of State and Government agreed at the World Summit in 2005.

“I am acutely aware that this Declaration is the product of over two decades of negotiations. The importance of this document for indigenous peoples and, more broadly, for the human rights agenda cannot be underestimated. By adopting the Declaration we are also taking another major step forward towards the promotion and protection of human rights and fundamental freedoms for all. We are also actively demonstrating the General Assembly’s important role in the field of international standards-setting.”

I should like to remind members that, immediately following the adjournment of this meeting, there will be an informal segment to hear statements by two representatives of the indigenous community. Members are invited to remain for that segment.

May I take it that it is the wish of the General Assembly to conclude its consideration of agenda item 68?

It was so decided.

The meeting rose at 4.15 p.m.