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Concluding observations – Item 4

John Henriksen

Thank you Mr. Chairman,

as we are far behind our schedule, I will try to be as brief as possible.  
views and ~~pro~~ recommendations.

~~Firstly~~, I would like to thank delegations for their statements. ~~I believe the interventions~~ As they greatly assist the Mechanism in identifying challenges and achievements pertaining to the implementation of the Declaration; ~~unfortunately, at this stage in the process, there seems to be more challenges and achievements – but I still remain hopeful that the ends of the Declaration eventually will be achieved on the ground.~~

The debate has also provided us with some concrete ideas about ways and means of promoting the provisions of the Declaration, and ways and means of facilitating the implementation of these important ~~standards~~ provisions.

I would also like to thank observers for sharing their thoughts about how the Mechanism, through its work, best can assist and contribute towards the realization of the Declaration, including by contributing to the ongoing debate about the status of the instruments and scope of its provisions.

I believe the various interventions under this agenda item demonstrate that we still have a long way to go before one can say that the ends of the Declaration have been achieved. This calls for continued focus on the implementation of the Declaration, in line with article 42 of the Declaration.

As correctly pointed out by the representative of the Indian Treaty Council, the realization of the provisions of the Declaration, includes State endorsement of the Declaration as a first step, followed by measures aimed at implementing the standards on the ground.

I agree with the views of the Special-Rapporteur, expressed earlier today, that the Declaration in many ways <sup>1</sup> reflects how far we still have <sup>to</sup> travel to bring about justice to IP. Nevertheless, it provides us ~~with~~ with <sup>a</sup> path, which I hope eventually will bring us there.

I am very encouraged by the fact that more States have endorsed the Declaration, or are in the process of reviewing their national position in relation to the Declaration. ~~I would certainly encourage these States to continue this process; and I believe the Human Rights Council should encourage States that have voted against or abstained from taking a position - to endorse the Declaration.~~

There appears to be many challenges also in countries that have endorsed the Declaration, because State reservations in relation to individual articles or principles, and because most States and indigenous peoples do not yet appear to have been able to establish processes, *strategies* or mechanisms for <sup>the</sup> purpose of discussing measures to achieve the ends of the Declaration.

Unless this happens ~~at the national level~~, it is very hard to achieve progress at the national level. *I fully agree with those who have called for the development and adoption of national implementation strategies for the Declaration.*

I believe the guidance given by article 38 of the Declaration is key in this regard, as it encourages that States, in consultation and cooperation with indigenous peoples, take appropriate measures, including legislative measures, to achieve the ends of this Declaration. As pointed out, in some instances, it may be necessary to undertake legal reforms, in order to make national legislation compatible with the Declaration.

Such cooperation would facilitate a national dialogue on the status of the Declaration, and it would be helpful to our common efforts aimed at identifying the scope of the various provisions of the Declaration. I believe that this in many ways is a prerequisite for a successful implementation of the standards enshrined in the Declaration.

For instance, some delegations have referred to the need for making the content of the Declaration more accessible for people at the national and local level. <sup>I</sup> fully support the suggestion which was made by the European Union, that the Declaration should be translated to various national, local and indigenous languages. Ignorance and lack of knowledge about the content of the Declaration is clearly a basic obstacle for the implementation of the provisions. It is not only indigenous peoples which have problems <sup>in</sup> accessing the content of the Declaration, due to language problems, as this problem in many

countries equally apply to State and local officials dealing with issues related to indigenous peoples. I believe this, combined with capacity building activities would greatly contribute towards the implementation of the Declaration. Some delegations reported ~~about~~ that they have already initiated such activities, and I would like to applaud all such initiatives.

Mr. Chairman,

The debate under this agenda item also makes it very clear that lack of national recognition of the existence of indigenous peoples also creates a huge obstacle and challenge for the realization of the Declaration. This seems to be a particular problem in the Asian and African region.

The Declaration itself does not provide a clear definition of the concept of indigenous peoples, although the preambular part of the instrument refers to elements and ~~characteristics~~ that are normally found in working definitions of <sup>the</sup> concept of indigenous peoples. When the instrument was developed and negotiated, the statement of coverage of the ILO Convention No. 169 and the so-called Martinez Cobo-criteria were used as. I believe that these definitions and criteria still provide us with a sufficient basis for identifying indigenous peoples.

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working definitions.

The global indigenous caucus made a statement related to treaties, agreements and other constructive arrangements between States and indigenous peoples. In the past, when this study was developed within the framework of the former Working Group on Indigenous Populations, <sup>and the work after resulted in</sup> there were heated debates about the concept of indigenous peoples - originating from the approach taken by the Special-Rapporteur that conducted the study.

As the final report of treaty study for a long time will remain an important reference document for issues related to indigenous peoples' rights, I feel obliged to express my strong disagreement with the views expressed in the final study - as far as the concept of indigenous peoples is concerned (E/CN.4/Sub.2/1999/20).

The study limits the use of the term "indigenous" to groups/peoples that "are parties" to treaties and agreements either with the colonial powers, or with States that succeeded those powers after decolonization and independence. This results in an attempt to establish a

I welcome that the  
(1) As the final study on treaties, agreements and other constructive arrangements has been brought to the attention of EMRIP, through the treaty seminar report, contained in Doc No. 5 of this Seminar.  
clear-cut minorities/indigenous di-chotomy, based on the actual existence of treaties, agreements and other arrangements. In doing so, the study fails to recognize the existence of indigenous peoples in Asia and Africa.

As mentioned in the global IP caucus statement,

(2) For instance, it is stated in the final study that the situation of groups in African and Asian States claiming to be indigenous should be analyzed in other UN forums than those that are concerned with the problems of indigenous peoples.

I join the global I.P. caucus, in

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I profoundly disagree with this view. There are of course a large number of indigenous peoples in Africa and Asia, and many of the State's concerned do indeed recognize the existence of indigenous peoples within their own territories. Now, I am not suggesting that every group/people claiming to be indigenous are to be regarded as such, I am however advising against general statements, or conclusions, of this nature, suggesting that there are no indigenous peoples in certain parts of the world. Each case has to be considered on its merits, according to accepted criteria for identification of I.P. (as)

Mr. Chairman,

I think we have received a number good ideas about possible working methods - which could - improve EMRIP's capacity to contribute towards a better understanding of the scope of the Declaration and to promote its implementation.

For instance, the Arctic Indigenous Caucus made a very concrete proposal. It suggested that the EMRIP should consider compiling and drawing general conclusions from the continuing growing bulk of jurisprudence and other legal sources within and beyond the UN, and thereby contributing to an implementation and greater understanding of the Declaration. It was also suggested that the EMRIP consider - on an annual basis - to present a report on the use of the Declaration. I believe these proposals, and other similar proposals, are very useful and constructive, and the members should look into these in greater details.

Mr. Chairman,

(2) This study is an extremely important study, developed through a number years, within the framework of the former sub-commission. As the final treaty study for a long time will remain an important reference document for issues related to IP rights; I feel it is required for me to make comment on the concept of IP, which has been applied in the final study. As it is relevant to issues (4)

*Certain*  
I believe that that we are all aware of the fact that the ~~UNDRIP~~ <sup>Mechanism</sup> mandate of the EMRIP establishes limitations for our possibility to effectively contribute towards the implementation of the Declaration.

I am of the opinion that the Mechanism should engage in a dialogue with its parent body, in particular since the Council currently is in the process of reviewing its own methods of work, ~~in order~~ to explore possible ways of improving EMRIP's possibility to assist the Council in promoting indigenous peoples' rights.

For instance, I think it would be very useful if the Mechanism were to be specifically asked *requested* to **review developments** pertaining to the promotion and protection of indigenous peoples rights pursuant to the provisions of the UNDRIP. If this were to be approved, the EMRIP would be in a better position to make recommendations to States and indigenous peoples, through its parent body, on possible steps to take to achieve the ends of the Declaration; as this would give the EMRIP the possibility to review developments on an annual basis.

Mr. Chairman,

I was very encouraged by the information which the New Zealand Human Rights Commission provided, concerning the way in which the Declaration is being used to support, clarify and promote the understanding of the Treaty of Waitangi. We were informed that the articles in Declaration intersect with the principles of the Treaty of Waitangi, and that the Declaration therefore also has a particular significance for the work of the Maori Land Court.

I think this demonstrates that the Declaration is an important tool for a better understanding of standards beyond the instrument itself, and that it goes far beyond being an aspirational document.

*I am pleased with the fact that the information we we are receiving from observers - as far as the implementation of the Declaration is concerned - is not any longer about problems and challenges, but that we also receive information about positive achievements.*

~~Thank you, Mr. Chairman~~

*Thank you,*