Statement by James Anaya, Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people

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Mr. Chairperson,
Distinguished delegates,
Ladies and gentlemen,

I have the honour to present today my first report to the General Assembly. I would like to start by expressing my gratitude to the numerous States, indigenous peoples, and others for the support they have provided as I have carried out my mandate accorded to me by the Human Rights Council.

In my report I describe the scope of my mandate as Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, and the range of activities I have engaged in since taking up this mandate in May of last year. In this regard I highlight my efforts to coordinate my work with other United Nations mechanisms and with relevant regional institutions. Additionally, I devote a part of my report to the United Nations Declaration on the Rights of Indigenous Peoples, adopted by the General Assembly two years ago.

Coordination with other mechanisms

Mr. Chairman,

In accordance with my mandate by the Human Rights Council, I endeavor to work in cooperation with the Permanent Forum on Indigenous Issues and the Council’s Expert Mechanism on the Rights of Indigenous Peoples to maximize the effectiveness of my mandate and avoid duplication. To that end, last February I participated in a seminar in Madrid with members of the Expert Mechanism and Permanent Forum, along with other experts from various regions, to discuss methods of coordination among the three mechanisms. I am eager to continue to cooperate with these institutions to share work agendas, identify the strengths and limitations of our respective mandates, and to channel our work in the way that it will be most effective.

As detailed in my report, I have also sought to cooperate with agencies of the United Nations Secretariat, specialized agencies and regional human rights institutions.

Areas of work

Mr. Chairman,

I have engaged in a range of activities within the terms of my mandate to monitor the human rights conditions of indigenous peoples worldwide and to promote steps to improve those conditions. The various activities I have carried out can be described as falling within four, interrelated areas of work. These are promoting good practices; thematic studies; country reports; and responding to cases of alleged human rights violations.

Promoting good practices

An important area of my work follows from the directive given me by the Council to identify and promote best practices. In this connection I have worked to advance legal, administrative,
and programmatic reforms at the domestic level to implement the standards of the United Nations Declaration on the Rights of Indigenous Peoples and other relevant international instruments, on occasion in response to specific requests made by Governments for technical and advisory assistance. Reform of this kind is no small task, as it is necessarily full of all kinds of complexities and requires a strong commitment, both financial and political, on the part of Governments.

In my future work, I will continue to promote positive developments and indentify models of reform that can be applied in various contexts. I foresee detailing these models, where they exist and have been successful, in subsequent reports and in other public statements.

Thematic studies

Another area of my work, which is intended to contribute to the development of good practices in specific country situations, involves conducting or participating in studies on issues or themes that are of interest to indigenous peoples across borders and regions of the world. Since assuming my mandate, I participated in several thematic seminars organized by United Nations agencies, and civil society including indigenous organizations, and other stakeholders, on specific thematic issues.

In addition, I devoted part of my first annual report to the Human Rights Council and to the General Assembly on the significance of the Declaration on the Rights of Indigenous Peoples, and part of my second annual report to the Human Rights Council on the duty of States to consult with indigenous peoples on matters affecting them. In a moment I will offer some comments on the significance and practical implications of the Declaration.

With respect to my thematic study on the right of consultation, my aim is to offer practical insight on the nature of this duty and how it may be implemented. The duty of States to consult, through special arrangements, with indigenous peoples on legislative or administrative decisions affecting them, such as decisions on the extraction of natural resources on their territories, has strong normative and legal foundations. It corresponds with general principles of democracy coupled with the widespread recognition of the special concerns of indigenous peoples and their typically disadvantaged conditions. It is grounded in the right of indigenous peoples to self-determination and related human rights. The failure of States to adequately comply with the duty to consult with indigenous peoples is one of the main issues I have been confronting in relation to situations in countries throughout the world. Concerted efforts are needed to reverse this pattern of inadequate compliance or non-compliance.

Country reports

Mr. Chairman,

A third area of my work involves investigating and reporting on the overall human rights situation of indigenous peoples in selected countries. The country reports include conclusions and recommendations aimed at strengthening good practices, identifying areas of concern, and improving the human rights situations of indigenous peoples. The reporting process typically
involves on site visits to the countries under review, during which I interact with government representatives, indigenous communities from different regions, and a cross section of civil society actors that work on issues relevant to indigenous peoples.

Since taking up my mandate, I have completed reports with recommendations on Brazil and Nepal after missions to those countries, and a report after a visit to Chile to follow-up on the report by my predecessor, Rodolfo Stavenhagen. I also conducted missions to assess indigenous peoples’ conditions in Australia, Botswana, the Russian Federation, and a follow-up visit to Colombia. I am still in the process of developing my reports on those visits. I would like to express my gratitude to the Governments and indigenous peoples of all of the countries visited for their cooperation and support.

**Cases of alleged human rights violations**

Mr. Chairman,

Apart from reporting generally on country situations, a fourth and perhaps the principal area of my work involves responding, on an ongoing basis, to alleged violations of the human rights of indigenous peoples in specific cases. Since assuming my mandate, I have received information about cases of alleged human rights violations in countries on every continent and, in response, sent numerous communications to Governments about these situations.

These cases involve infringements of the right to free, prior and informed consent, especially in relation to natural resource extraction and displacement or removal of indigenous communities; denial of the rights of indigenous peoples to lands and resources; the situation of indigenous peoples in voluntary isolation; incidents of threats or violence against indigenous peoples and individuals; and concerns about constitutional or legislative reforms in indigenous subject matter, among other situations.

I forward the information received to the Government concerned, along with a request that the government respond. In some cases, I have issued public statements calling attention to or expressing concern over the human rights violations alleged. As I have done in two cases this year, I may also issue in-depth observations with analyses and recommendations that I hope will be of use to the governments and indigenous peoples concerned in their efforts to address the situation.

In all my work as Special Rapporteur, I have endeavoured to be proactive in efforts to prevent human rights violations from arising or escalating. These efforts require active engagement with Governments, indigenous peoples and other actors closely to monitor and evaluate situations, identify underlying causes of immediate problems, promote specific action that builds on advances already made, and develop recommendations that are practical, well-founded in available knowledge, and in accordance with relevant human rights standards.

I am grateful to the numerous Governments that have responded to my communications regarding specific cases. I note, however, that during the period under review a number of
Governments did not respond to communications from me requesting information on alleged human rights violations, and I urge them to do so in the future.

**United Nations Declaration on the Rights of Indigenous Peoples**

Mr. Chairman,

With respect to my work in each of these areas, I am called upon by the Human Rights Council to promote, as appropriate, the Declaration on the Rights of Indigenous Peoples. Hence the Declaration provides my mandate with a clear normative framework of reference for contributing to the promotion and protection of the rights of indigenous peoples in close cooperation with Governments, indigenous peoples themselves, and other relevant actors.

The adoption of the Declaration by the General Assembly two years ago marks the culmination of three decades of a standard-setting process involving States and indigenous peoples. The Declaration provides broad recognition of indigenous peoples’ individual and collective rights under the overarching thrust of the rights to equality and self-determination. The Declaration affirms a number of rights in areas of special significance to indigenous peoples’ survival under conditions of respect and equality vis-à-vis others, including self-government and participation; cultural and spiritual heritage; lands, territories and natural resources; consultation and consent; and development and social services.

As I have underscored in my report, the Declaration does not establish new or special human rights for indigenous peoples. Indeed, the standards set forth in the Declaration connect to already existing legal obligations under human rights treaties of general applicability and other international instruments, and takes basic human rights principles that are applicable to all and elaborates upon them in the specific historical, cultural, political and social context of indigenous peoples.

From this perspective, the Declaration is fundamentally a remedial instrument, aimed at overcoming the marginalization and discrimination that indigenous peoples systematically have faced across the world as a result of historical processes of colonization, conquest and dispossession. The Declaration is also a reminder that these processes and their legacies persist and are reproduced today in various forms, and it calls upon States and the international community as a whole to put an end to these processes and take affirmative measures to implement the human rights that indigenous peoples have been denied.

Promoting respect for and full application of the provisions of the Declaration is a complex process that will require sustained efforts involving a myriad of State and other actors. In my report to the General Assembly, I have tried to identify the kind of measures that will be required for this task.

Mr. Chairman,

I would like to conclude by saying that, in my work I will continue to be duly attentive to the Declaration on the Rights of Indigenous Peoples and the broader universe of human rights
principles upon which it builds and forms part. The adoption of the Declaration signals the strong commitment of the international community to remedy the historical and ongoing denial or the rights of indigenous peoples. The Declaration provides a framework for mutual understanding and cooperation between indigenous peoples and States under the principles of equality, self-determination and respect for diversity, which are basic tenets of the modern human rights system.

Implementing indigenous peoples’ rights under the Declaration will not only bring historical justice to this too often ignored segment of humanity. It will help develop stronger democratic, multicultural societies that can profit from the extraordinary wealth of knowledge, culture and spirituality that indigenous communities have preserved, generation after generation, in the common benefit of humankind.

I would like to take this opportunity to reaffirm here my strong commitment to my role as Special Rapporteur, acknowledge with humility the responsibility it represents, and thank all those who have supported me and continue to support me as I try to contribute to moving toward reality the shared aspirations of a better future for the world’s indigenous peoples.

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