



**Statement by James Anaya,
SPECIAL RAPPORTEUR ON THE RIGHTS OF INDIGENOUS PEOPLES**

65th session of the General Assembly
Third Committee

18 October 2010
New York



Mr. Chairperson,
Distinguished delegates,
Ladies and gentlemen,

I am honored to present today my second report to the General Assembly. I would like to begin by first thanking the many indigenous peoples, Governments, United Nations bodies, non-governmental organizations and others who have cooperated with me and provided support for my mandate.

In my written report I describe the range of activities I have carried out since my first report to the General Assembly, and I refer to efforts to coordinate my work with other United Nations mechanisms. The report also discusses three key issues I have addressed during the past year. These are: the right of indigenous peoples to development with culture and identity, the right of indigenous peoples to participation, and the obligation of States to implement the United Nations Declaration on the Rights of Indigenous Peoples.

A. Areas of work

In conjunction with my efforts to cooperate with other United Nations mechanisms, I have continued to carry out work in four principal areas to fulfill my mandate. These are: promoting good practices; communications relating to alleged human rights violations; country reports; and thematic studies.

Promoting good practices

My efforts to promote good practices have involved advocating for endorsement of the Declaration on the Rights of Indigenous Peoples by those States that did not vote in favor of it in the General Assembly two years ago. We can indeed celebrate that there is ever-greater support among states for the human rights principles enshrined in the Declaration. But as I have reiterated in my report and will elaborate in a moment, that support will only be meaningful if the standards expressed in the Declaration are effectively implemented. In the past year, I have sought to promote good practices of implementation by providing technical assistance for domestic legal reforms in Ecuador and Colombia.

In December, I visited Ecuador to provide observations on an initiative being facilitated by the Office of the High Commissioner for Human Rights to prepare new legislation aimed at harmonizing the indigenous customary legal system with the State judicial system. In Colombia, I began work with an ongoing joint project of the field Office of the High Commissioner for Human Rights and the Ministry of Interior and Justice to develop necessary legislation and administrative rules for adequate procedures of consultation with indigenous peoples.

Communications

Mr. President,

The Human Rights Council has directed me, in addition to promoting good practices, to receive and exchange information on cases of alleged violations of the human rights of indigenous peoples, and it has authorized me to formulate appropriate recommendations to address those situations. As before, a great deal of the time and resources available to me as Special Rapporteur have been devoted to this area of work.

On a daily basis I have received letters, emails, and phone calls from representatives of indigenous peoples or their supporters calling attention to situations of human hardship and threats to cultural survival throughout the world. Similar to before, this year I have learned about cases in which indigenous peoples have seen their lands invaded by resource-hungry enterprises or have been forcibly removed from the lands; cases in which indigenous peoples experience decisions made by others but with profound effects on them, without adequately being consulted; cases in which violence has taken the lives of indigenous people, including children, and threatened the lives of others; and many other troubling situations. These cases attest to the widespread and systemic human rights problems indigenous peoples continue to face around the globe and the ongoing need for systemic and coordinated action to address these problems.

I have communicated directly with governments through the appropriate procedure on many of these cases, and I am pleased that in most instances governments have responded and that a number of those responses have indicated steps toward addressing the problems identified. As can be seen from my report to the Council, in some of the cases examined I have submitted detailed observations and recommendations regarding the actions I believe should be taken to address the situations, within the framework of the relevant international norms.

On occasion, my examination of specific cases has involved on site visits. Last June I visited Guatemala to investigate the situation of indigenous peoples affected by the Marlin gold mine in the Sipacapa and San Miguel Ixtahuacán municipalities. I would like to again express my gratitude to the Government of Guatemala and to the Maya peoples of that country for the outstanding reception and cooperation I received during the visit. I issued a preliminary note on my findings and am currently completing my full report.

Country reports

In addition to examining specific cases, I have continued to report more comprehensively on the overall situations of indigenous peoples in various countries. This year I completed country reports on Botswana, Australia, and the Russian Federation following visits to these countries. I also completed a report on Colombia to follow-up on the recommendations of my predecessor, and a report on the status of the implementation of constitutional norms in Ecuador, likewise following visits to those countries. I have issued preliminary notes but am still in the process of completing my reports following visits to New Zealand and to the Sapmi region of Finland, Norway and Sweden.

Thematic Studies

Within the fourth area of my work, which involves thematic studies, I have continued efforts to contribute to better understanding about cross-cutting issues that are of concern to indigenous peoples around the world. This year I included in my annual report the Human Rights Council a study on the responsibilities of private companies to respect the rights of indigenous peoples. I have also addressed a number of other issues in various aspects of my work, including the issues addressed my cooperative engagement with the Permanent Forum and Expert Mechanism and in my report this year to the General Assembly. I would like to turn to those issues now.

Development with identity and culture

Mr. Chairman,

During my annual presentation to the Permanent Forum this year, I offered observations on the theme of the Forum's ninth session, which was development with identity and culture I noted that the right to development is a right of all peoples including indigenous peoples. However, there are particular concerns relating to indigenous peoples that must be taken into account with regards to development activities that affect them. These concerns stem from the extreme disadvantages that indigenous peoples face across a range of social and economic indicators, the dispossession of lands and natural resources, their historical exclusion from State decision making, and their aspirations to maintain and transmit to future generations their distinct identities and cultures.

As described in my report, my observations on development addressed issues of concern dealing with economic and infrastructure development projects that affect indigenous peoples, development projects aimed specifically at benefitting indigenous peoples, and the need to enhance indigenous self-determination in the development process. In relation to self-determination, I emphasize the need for promoting capacity-building for indigenous peoples, the strengthening of indigenous peoples' own institutions and self-government structures, and the need to provide the opportunity for indigenous peoples to participate as equal partners in the development process.

The right to participation

As explained in my report, I provided observations during the most recent session of the Expert Mechanism to assist it in its study on the right of indigenous peoples to participation in decision-making. In these observations, I point out the general content and character of this right which is rooted in basic human rights principles of self-determination, equality, cultural integrity and property and is reflected in various international instruments including the United Nations Declaration on the Rights of Indigenous Peoples.

As discussed in my report, this right should to be understood in its external and internal dimensions. The external dimension consists of the rights of indigenous peoples and individuals to participate in the broader public life of the State; the right to participate in decision-making by State actors about measures that affect indigenous peoples' particular rights and interests,

through appropriate consultation procedures; and the right of participate in decision-making in the international arena. The internal dimension of the right to participation relates to indigenous peoples' exercise of autonomy and self-government. Finally, I offer observations on the practical implementation of this right in all its dimensions.

Further comments on the Declaration on the Rights of Indigenous Peoples

Finally, in my report, I expand upon some of the views that I previously expressed regarding the Declaration on the Rights of Indigenous Peoples, focusing on the need for decided and concerted action for implementation. As state earlier, a great deal remains to be done to see the rights and objectives of the Declaration become a reality in the lives of indigenous peoples throughout the world. Concerted attention by states and the United Nations system is needed for faithful implementation of the rights contained in the Declaration.

I highlight the need for a commitment to the rights and principles contained in the Declaration that is not obscured by discussion about whether or not it is a legally binding document. The Declaration has a significant normative weight grounded in its high degree of legitimacy as a product of decades of struggle and advocacy by indigenous peoples. Further, that normative weight is augmented by the Declaration's grounding in the human rights principles of the UN Charter and other international treaties, and by its contribution to the formation of customary international law in this field. Implementation of the Declaration should be regarded as political, moral and, yes, legal imperative without qualification.

In my observations, I also offer a few comments on minimum steps that are required to move forward with the implementation of the Declaration, beyond its endorsements by States. To varying degrees, these minimum steps are already being undertaken by some States, in some cases with the backing of United Nations or international cooperation programs. It is important that such initiatives take root more broadly, and that experiences are shared to strengthen these initiatives.

Mr. Chairman,

I would like to conclude by expressing my gratitude for this opportunity to address this body of the General Assembly. I reaffirm my strong commitment to my role as Special Rapporteur and the objectives of my mandate to promote respect for the rights of indigenous peoples. I draw inspiration from the perseverance of indigenous peoples in pursuit of their aspirations and the challenges they overcome. And, as always, I remain cautiously optimist optimistic for a better future for the world's indigenous peoples.

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