



**International Convention on  
the Elimination  
of all Forms of  
Racial Discrimination**

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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Seventy-second session

SUMMARY RECORD OF THE SECOND PART (PUBLIC)\* OF THE 1848th MEETING

Held at the Palais Wilson, Geneva,  
on Tuesday, 19 February 2008, at 12.35 p.m.

Chairperson: Ms. DAH

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\* The summary record of the first part (closed) of the meeting appears as document CERD/C/SR.1848.

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The public part of the meeting was called to order at 12.35 p.m.

## BRIEFING ON THE UNITED NATIONS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES

1. Mr. BURGER (Coordinator, Indigenous Peoples and Minorities Unit, Office of the High Commissioner for Human Rights) recalled that the United Nations Declaration on the Rights of Indigenous Peoples had been adopted on 13 September 2007 by vote, with 144 States in favour, 4 against (Australia, Canada, New Zealand and United States of America) and 11 abstentions (including Colombia, the Russian Federation and some African States). It had been the result of 23 years of negotiations, and had included nine modifications in response to concerns raised by African States during the General Assembly's review of the draft declaration adopted by the Human Rights Council in June 2006.
2. The Declaration would provide a useful framework for negotiation between equals and a way of reconciling Governments and indigenous peoples. It was based on two underlying principles, self-determination and non-discrimination, which were crucial, since many of the problems faced by indigenous peoples during their history had involved the denial of identity and their assimilation into the mainstream. The Declaration made a number of strong suggestions to Member States on how to rectify the situation in the light of those two principles and sought to establish the right of indigenous peoples to maintain their identity.
3. The Declaration recognized indigenous peoples' right to self-determination and therefore their right to autonomy or self-government. It also introduced the relatively new concept of indigenous peoples' free, prior and informed consent on such issues as displacement of indigenous peoples from their lands, use of their cultural property and development priorities. That concept went further than that of consultation, which was reflected in ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries.
4. Regarding the issue of land, territories and resources, the Declaration covered the following: recognition of indigenous peoples' spiritual and historical relationship to the land, on which claims to the land had often been based; recognition of their right to lands that they traditionally occupied and owned, as well as important issues concerning lands forming part of their traditional territory that they did not occupy but did use, for example for ceremonial or hunting purposes; recognition of their right to an impartial process of determining peoples' lands; recognition of their right to conservation; restrictions on the use of their land for military purposes; issues relating to determining development priorities on their lands; and issues concerning indigenous peoples' specific forms of land tenure, which were not necessarily in written form. Although article 32 did refer to mineral resources, the Declaration did not specifically mention sub-surface resources, whereas ILO Convention No. 169 (art. 15 (2)) referred to both. However, the reference to "resources" in the Declaration was understood to refer to those on indigenous peoples' lands.
5. The Declaration did not cover definitions of indigenous peoples, and there was no recognition of indigenous peoples' self-identification. However, articles 9 and 33 did establish the right of indigenous peoples to determine members of their own communities. The

Declaration urged third parties such as Governments to ensure that any consultation with indigenous peoples was through their appropriate decision-making institutions. In the past, conflicts had often occurred when Governments believed they were consulting with representatives of indigenous peoples who were not in fact authentic.

6. The phenomenon of urbanization of indigenous peoples, with over 50 per cent of the indigenous peoples in most countries currently living in an urban environment, raised different issues relating to the use of land and resources, as did the situation of recognized, voluntarily isolated indigenous peoples, particularly in Latin America, on whom the impact of outsiders could be and had been devastating. The Human Rights Council, in December 2007, had decided to establish an advisory body on indigenous peoples' rights, which would meet in October 2008.

7. Mr. AVTONOMOV said that, although the autonomy of many indigenous peoples in the Russian Federation had been recognized some 80 years previously, new problems had arisen, and the independent development, culture and languages of some indigenous peoples were under threat. It was therefore vital to continue examining ways in which to harmonize approaches to issues affecting indigenous peoples. A specific problem affecting the Russian Federation and other countries was that of the economic activities of major corporations, especially mining activities. They tended to lead to the destruction of indigenous peoples' lands, and could be a subject for the Committee's discussions on sub-surface resources.

8. Mr. MURILLO MARTÍNEZ requested clarification of the point about sub-surface resources and asked what was the basis of the view that, although they were not mentioned in the Declaration, those resources were understood to belong to indigenous peoples.

9. Mr. CALI TZAY, recalling that five months had passed since the Declaration had been adopted, asked what plans OHCHR had to monitor its implementation and to raise awareness.

10. Mr. THORNBERRY enquired about the Declaration's relationship with other human rights instruments. He wondered whether previous discussions on "hard law" and "soft law" had not underestimated the effect that the Declaration would have as a guide to the interpretation of the "hard-law" instruments.

11. Mr. PETER said that the lack of definition in the Declaration constituted a major weakness. He asked whether Mr. Burger perceived the adoption of the Declaration as a step towards a convention on the rights of indigenous peoples.

12. Mr. KJAERUM asked to what extent OHCHR's Indigenous Peoples and Minorities Unit had the capacity to follow up the Committee's recommendations on indigenous peoples and what impact the recommendations had on the Unit's work.

13. Mr. BURGER (Coordinator, Indigenous Peoples and Minorities Unit) said that the Unit was increasing its work in the Russian Federation, for example in training indigenous peoples.

He and the Minister for Foreign Affairs had discussed the prospect of holding a workshop on the issue of private-sector natural-resource companies and indigenous peoples' lands, where many of the world's natural resources were located.

14. In response to the question on sub-surface resources, he pointed out that ILO Convention No. 169 used the term because it recognized that the constitutions of some countries provided that sub-surface resources belonged to the State. He was simply pointing out to Committee members that the Declaration did not enter into that controversial area, rather than offering an interpretation. There were, however, many references to obtaining indigenous peoples' consent in order to develop economic activities on their lands. There was therefore potential for successful arrangements between the State and indigenous peoples concerning mineral exploitation.

15. As to plans to follow up adoption of the Declaration, the Unit intended to brief all the treaty bodies on the Declaration and had arranged to meet the Inter-Agency Support Group on Indigenous Issues in order to discuss how to integrate the Declaration into the work of the United Nations system. A communications strategy on the Declaration had been developed, in connection with the sixtieth anniversary of the Universal Declaration of Human Rights. Many OHCHR field offices had already held meetings on the Declaration and some had begun to translate it into languages other than the official United Nations languages. There was still much work to be done, and suggestions and ideas would be welcome.

16. The Declaration was indeed an example of the potential for "soft law" to be used as a tool for interpreting "hard law". The reason for briefing the Committee was precisely that it could draw on the Declaration in making recommendations to States. A recent judgement by the Supreme Court of Belize had referred to the Declaration in determining the land rights of Mayan indigenous peoples.

17. There was no specific self-determination process for indigenous peoples, since self-determination was the same for everyone. However, most indigenous peoples had asserted that they were not looking to create new States since they were already living on their traditional lands. The Declaration did allow exploration of the difficult issue of self-determination, and enabled parties to come together as equal partners to find solutions.

18. The fact that there was no definition of indigenous peoples in the Declaration reflected indigenous peoples' wish not to be defined by others, as had been done throughout their history, and to put the emphasis on self-identification. Any issues that might arise in the future regarding the implementation of the Declaration would be addressed by indigenous peoples and States on an ad hoc basis.

19. Discussions had taken place about a convention on the rights of indigenous people. Any further opportunities to meet with the Committee to discuss promotion of the Declaration would be welcomed. The Committee's recommendations were important and influential in the Unit's work, and had been used extensively by indigenous peoples in arguing their case internationally. They were also useful for the purposes of technical cooperation and determining

the Unit's activities at the national level. He would welcome further exchanges of views so that OHCHR could more effectively encourage States to implement the Committee's recommendations.

20. Mr. AMIR asked whether the Declaration had legal status even though it was not the product of a convention.

21. Mr. BURGER (Coordinator, Indigenous Peoples and Minorities Unit) explained that the Declaration constituted a framework for action but was not binding on States. However, as the example of the Supreme Court of Belize demonstrated, the Declaration was being used as a tool for making decisions on the difficult issues involved.

The meeting rose at 1.15 p.m.