

Declaration on the Rights of Indigenous Peoples

Explanation of Vote by HE Rosemary Banks, New Zealand Permanent Representative to the United Nations, 13 September 2007^[*]

Madam President,

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

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, and the Treaty of Waitangi has acquired great significance in New Zealand's constitutional arrangements, law and government activity.

Madam President, the place of Maori in society, their grievances and the disparities affecting them, are central and enduring features of domestic debate and of government action. Furthermore, New Zealand has an unparalleled system for redress accepted by both indigenous and non-indigenous citizens alike. Nearly 40% 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 these 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 this 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, in particular, of our role in improving the text over the past three years with the objective of turning the draft declaration text 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, and we appreciate the efforts made by others, not least the Africa Group.

It is therefore a matter of deep regret that we find ourselves unable to support the text before us today. Unfortunately, we have difficulties with a number of provisions in the text. In particular, four provisions in the Declaration are fundamentally incompatible with New Zealand's constitutional and legal arrangements, the Treaty of Waitangi, and 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.

Madame President, the provision on lands and resources 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, this 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 and 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 implies that indigenous peoples have a right of veto over a democratic legislature and national resource management, in particular Articles 19 and 32(2). We strongly support the full and active engagement of indigenous peoples in democratic decision-making processes - 17% of our Parliament identifies as Maori, compared to 15% 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 imply different classes of citizenship, where indigenous have a right of veto that other groups or individuals do not have.

Unfortunately, these 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.

Madame President, New Zealand takes international human rights and our international human rights obligations 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 most of those voting in favour of its adoption today.

This 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 and for that reason 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 it 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.

Madam President, in our experience, the promotion and protection of indigenous rights requires a partnership between the State and indigenous peoples that is constructive and harmonious. This 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 disassociate itself from this text.

<http://www.mfat.govt.nz/Media-and-publications/Media/MFAT-speeches/2007/0-13-September-2007.php>

[*] Explanation of vote in the UN General Assembly - 143 UN member states voted in favour of the adoption of the UN Declaration on the Rights of Indigenous Peoples, only New Zealand, Australia, Canada and the US voted against it.