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Held at the Palais des Nations, Geneva,
on Thursday, 29 June 2006, at 3 p.m.

President: Mr. DE ALBA (Mexico)

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The meeting was called to order at 3.20 p.m.

IMPLEMENTATION OF GENERAL ASSEMBLY RESOLUTION 60/251 OF
15 MARCH 2006 ENTITLED "HUMAN RIGHTS COUNCIL" (agenda item 4) (continued)
(A/HRC/1/L.2, L.3 and L.4/Rev.1)

Draft resolution on the International Convention for the Protection of All Persons from Enforced
Disappearance (A/HRC/1/L.2)

1. Mr. RIPERT (France), introducing the draft resolution on behalf of the sponsors, said that the lengthy negotiations on the draft convention had resulted first in the creation of a "special procedure", then in the adoption of a declaration and finally in the drafting of a binding legal instrument by an intergovernmental working group that had been assisted throughout by non-governmental organizations (NGOs) and independent experts. In September 2005, the working group had decided to transmit the draft text to the Commission on Human Rights, which had been unable to take a decision. It was up to the Human Rights Council at its first session to decide on the future of the draft convention.
2. The support expressed for the draft convention by the United Nations Secretary-General, the President of the International Committee of the Red Cross and hundreds of prominent figures throughout the world had been greatly appreciated.
3. A convergence of views on the draft convention was already discernible in the Council, as reflected by the fact that 58 countries representing all regions had decided to sponsor the draft resolution. The Council had a duty to carry forward and strengthen the Commission's legacy in the area of human rights standard-setting, and he called on the Council to adopt the draft convention by consensus. He invited States to the diplomatic conference and formal signing ceremony that would be held as soon as possible in Paris.
4. Mr. TAIANA (Argentina) said that the draft convention had been negotiated by States with the assistance of NGOs and with associations of victims and relatives of victims of violations. The draft convention, which he hoped would be adopted by consensus, was a very useful instrument for the prevention of human rights violations.
5. He paid tribute to the human rights activists present, particularly the human rights organizations from Argentina, since it was largely thanks to their personal efforts and sacrifices that the momentous occasion they were witnessing had been made possible. He welcomed in particular the indefatigable fighter against impunity Marta Vázquez, one of the Mothers of the Plaza de Mayo.
6. Ms. RODRÍGUEZ MANCIA (Guatemala) said that Guatemala had consistently supported the draft convention, in keeping with its commitment to fight impunity in accordance with the peace agreements that had ended three decades of internal conflict in her country. It had also consistently promoted action by the international community to characterize enforced disappearance as a crime against humanity. Guatemala strongly supported the adoption of the draft convention by acclamation at the current session and hoped that the General Assembly would endorse it at its sixty-first session.

7. Mr. HIMANEN (Finland), speaking on behalf of the European Union, the acceding countries Bulgaria and Romania, the candidate countries Croatia, The former Yugoslav Republic of Macedonia and Turkey, the countries of the stabilization and association process and potential candidates Albania, Bosnia and Herzegovina and Serbia and, in addition, Iceland, Liechtenstein, the Republic of Moldova and Ukraine, said that the European Union called on the Council, which had the duty to make recommendations to the General Assembly concerning the further development of international human rights, to demonstrate its commitment to enhancing the promotion and protection of human rights by adopting the draft convention by consensus.

8. Mr. RODRÍGUEZ CUADROS (Peru) said that enforced disappearance was one of the most odious violations of human rights. It was defined in legal terms as a multiple crime because it was accompanied in most cases by violations of the right to liberty and personal integrity, torture and violations of the right to life. It would therefore be wise for the Council at its first session to adopt an instrument that met the pressing need to protect and compensate victims of that crime. He urged States to adopt the draft convention by consensus and to sign it at the diplomatic conference to be held in Paris.

9. Mr. MINAMI (Japan) said that his delegation supported the adoption of the draft convention. His Government interpreted the definition in article 2 as consisting of four elements: arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person. Furthermore, the disappeared person must have been placed outside the protection of the law.

10. Japan interpreted article 4 of the draft convention as meaning that enforced disappearance should be covered under criminal law but that the legal system was not required to enact a law establishing enforced disappearance as an autonomous offence.

11. Japan had actively participated in the working group from the outset. The key elements of the resulting draft convention were that enforced disappearance was a crime and that States parties were required to take the necessary measures to hold perpetrators criminally responsible, to cooperate with each other and to take all appropriate measures to search for, locate and release disappeared persons.

12. The families of disappeared persons suffered from not knowing what had happened to their loved ones. As stipulated by article 24, paragraph 2, victims had the right to know the truth, the progress and results of any investigation, and the fate of the disappeared person. The adoption of the draft convention should be the starting point for a vigorous struggle against enforced disappearance in order to ensure the return of all disappeared persons to their families.

13. Mr. JAZAIRY (Algeria) said that Algeria had turned its back on the sombre events of the 1990s and was on the path of democracy and the rule of law in a process of national reconciliation and universal application of all human rights. The Algerian people were committed to ensuring that nothing comparable ever happened again. The same principle should apply to the odious crime of enforced disappearance, and Algeria therefore hoped that the draft convention would be adopted by consensus.

14. Mr. THORNE (United Kingdom) said that his delegation associated itself with the statement made on behalf of the European Union. In adopting the draft convention and transmitting it to the General Assembly, the Council would pave the way for the conclusion of an important process. He paid tribute to the NGOs and the representatives of victims from all regions who had provided a constant reminder of the need to develop a tool to combat the atrocious practice of enforced disappearance.

15. With regard to article 2, he noted that the placing of a person “outside the protection of the law” was an important element in the definition of an enforced disappearance. His delegation considered that the definition comprised an arrest, detention, abduction or any other form of deprivation of liberty committed by agents of the State or by persons or groups acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, and that the disappeared person was placed outside the protection of the law. The United Kingdom understood the term “outside the protection of the law” to mean that the person’s deprivation of liberty or detention was not within the scope of relevant domestic legal rules governing deprivations of liberty or detention, or that those rules were not compatible with applicable international law.

16. The United Kingdom understood article 20 as applying to all situations where a person was not outside the protection of the law, in other words where the person was within the State’s domestic legal rules governing deprivation of liberty or detention, consistent with applicable international law.

17. The United Kingdom understood article 43 as confirming that a State party’s obligations under international humanitarian law remained the *lex specialis* in situations of armed conflict and other situations to which international humanitarian law applied. The article operated as a savings clause in order to ensure that, where applicable, the relevant provisions of international humanitarian law took precedence over any other provisions of the draft convention.

18. The PRESIDENT announced that the draft resolution had programme budget implications, which had been set out in a paper that had been circulated among the members of the Council.

19. Draft resolution A/HRC/1/L.2 was adopted.

20. Mr. VON KAUFMANN (Canada), speaking in explanation of his delegation’s position, said that, although Canada would have preferred to assign effective monitoring functions to the Human Rights Committee, which it considered the best forum for providing comprehensive remedies for victims, it had joined the consensus on the creation of a new body for that purpose.

21. The definition in article 2 and all references to crimes or offences in the draft convention must be interpreted in light of the element of criminal intent required under domestic law for any criminal offence. Articles 5 and 6 must be interpreted in a manner consistent with international law, including the Rome Statute of the International Criminal Court. The provision in article 7 allowing for the consideration of mitigating circumstances in sentencing must not be interpreted in a manner that would result in an effective amnesty that would allow impunity for the perpetrators, who must be punished with appropriate penalties. Article 8 on statutes of

limitations must be interpreted as being subject to international law and should never be used to condone impunity for perpetrators. No statutes of limitations were permitted under international law for any enforced disappearance that constituted a crime against humanity. Article 12, paragraph 3, must be interpreted as permitting States to ensure access by investigating authorities to relevant documentation and other information not in the control of the State, on the basis of prior authorization by a judicial authority where necessary. The provisions in article 24 relating to reparation must be interpreted in a manner consistent with international law, including the law of sovereign immunity.

22. Mr. AMEER AJWAD (Sri Lanka), speaking in explanation of his delegation's position, said that, while Sri Lanka had joined the consensus on the draft resolution, he wished to point out a lacuna in the text, insofar as non-State actors who were responsible for massive human rights violations involving enforced disappearances had been excluded from the definition contained in the draft convention. Such actors represented a contemporary threat to international peace and security, which was a reality that no Member State could ignore.

23. Mr. LARENAS SERRANO (Ecuador), speaking in explanation of his delegation's position said that, while Ecuador would have liked to have been a sponsor of the draft resolution, it had been unable to do so for technical reasons. With regard to article 7, paragraph 2 (a), of the draft convention, he said that the admission of mitigating circumstances must not allow for a situation of impunity or full absolution for a crime of such gravity.

Draft resolution on the working group of the Commission on Human Rights to elaborate a draft declaration in accordance with paragraph 5 of General Assembly resolution 49/214 of 23 December 1994 (A/HRC/1/L.3)

24. Mr. RODRÍGUEZ CUADROS (Peru), introducing the draft resolution on behalf of the sponsors, said that for five centuries the indigenous populations had lost their autonomy and had been victims of human rights violations, exclusion, exploitation, marginalization and, all too often, extermination. Unfortunately, despite the enormous progress that had been made in respect of their legal status, there were still glaring violations of their rights, and they were still the victims of exclusion.

25. The draft resolution had 45 sponsors and was supported by hundreds of organizations, representing an overwhelming majority of the world's 350 million indigenous people. Its wording reflected the will of all the sponsors and also of indigenous peoples and NGOs. The draft represented a compromise that sought to strike a balance between the recognition of the human rights of indigenous peoples and the prerogatives of States. While the declaration would not be binding, it would become part of soft law, which gradually gave rise to customary law. Owing to the exceptional importance of the draft declaration, his delegation urged the Council to adopt the resolution by consensus.

26. Ms. RODRÍGUEZ MANCIA (Guatemala) said that the text submitted by the Chairperson-Rapporteur of the Working Group on Indigenous Populations reflected a majority consensus and struck a balance between the aspirations of the indigenous peoples and the prerogatives of States. In the view of her delegation, any postponement of the adoption of the draft declaration would be detrimental to the rights of indigenous peoples.

27. Mr. VIGNY (Switzerland) said that Switzerland was a sponsor of the draft resolution on the draft declaration, which was a compromise text supported by a large majority of States and all the indigenous peoples represented in the Working Group. His delegation called on the Council to adopt the draft resolution by consensus. If a vote was requested, his delegation would vote in favour of the draft resolution.

28. Ms. GÁLVEZ (Mexico) said that the adoption of the draft declaration would be a watershed in the history of the United Nations, States and indigenous peoples. If a vote was requested, her delegation would vote in favour of the draft resolution. She called on all members of the Council not to let pass a historic opportunity and to take a stand for justice and against discrimination, marginalization and exclusion.

29. The PRESIDENT announced that the draft resolution before the Council had no programme budget implications.

30. Mr. MEYER (Canada), speaking in explanation of vote before the voting, said that Canada could not accept the text of the draft declaration as it stood. His delegation had proposed that the Council should authorize further consultations in order to clarify substantive issues and develop proposals on ways of achieving the broadest possible agreement. Further improvements were both possible and necessary. Regrettably, Canada's proposal had not received the necessary support.

31. The draft declaration did not set out expectations for the States in which indigenous peoples actually lived. The current provisions on lands, territories and resources were broad, unclear and capable of a wide variety of interpretations. Those provisions could hinder land claims processes in Canada, which were premised on balancing the rights of Aboriginal peoples with those of other Canadians. The concept of free, prior and informed consent to which the text of the draft declaration referred could be interpreted as giving a veto to indigenous peoples over many administrative matters, legislation, development proposals and defence activities. The text did not provide effective guidance on how indigenous governments might work with other levels of government. Regrettably, his delegation would vote against adoption of the draft resolution, and it stressed that the declaration would have no legal effect in Canada and did not represent customary international law.

32. Mr. MALHOTRA (India) said that, while the draft declaration did not define who constituted "indigenous peoples", his Government considered that the issue of indigenous rights pertained to peoples described as such in International Labour Organization (ILO) Convention No. 169 concerning Indigenous and Tribal Peoples. In the understanding of his Government, the right to self-determination in the draft declaration applied only to peoples under foreign domination and did not apply to sovereign independent States or to a section of people or a nation, which was the essence of national integrity. The draft declaration clarified that the right to self-determination would be exercised by indigenous peoples in terms of their right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions. On that understanding, his delegation would vote in favour of the draft resolution.

33. Mr. PUJA (Indonesia) said that his delegation would vote in favour of the draft resolution. His delegation wished to make clear that the principle of self-determination set out in the draft declaration should not be construed as authorizing or encouraging any action that might dismember or impair totally or in part the territorial integrity or political unity of sovereign, independent States.

34. Mr. ALI (Bangladesh) said that the Working Group itself had stated that a declaration that did not enjoy consensus would not be of real and practical benefit to indigenous peoples. His delegation was of the view that there were elements of the text that needed attention, and a clear procedure should be adopted for settling outstanding issues and bringing the draft declaration back to the Council for unanimous adoption, either at its next session or immediately thereafter. In the circumstances, the delegation of Bangladesh would abstain in the vote on the draft resolution.

35. Mr. AKZHIGITOV (Russian Federation) said that, while the Russian Federation supported many of the provisions of the draft declaration, in order to be effective such an instrument would have to be functional and authoritative. Unfortunately, the text as it stood did not meet those requirements. There had been no genuine consensus on the draft declaration, and the proposed procedure for its adoption would set a bad precedent for the work of the Council and for all standard-setting activities of the United Nations. His delegation could not support the draft declaration and would therefore vote against the draft resolution. The Russian Federation would continue its efforts to promote international cooperation with a view to protecting the rights of indigenous peoples.

36. Mr. SHA Zukang (China) said that his delegation would vote in favour of the draft resolution. He regretted that a roll-call vote had to be taken at the very beginning of the Council's work, and he hoped that, in future, all countries would do everything possible to seek common ground, overcome their differences and promote and protect human rights in a spirit of cooperation.

37. Mr. MANALO (Philippines) said that his Government had demonstrated its commitment to safeguarding, upholding and promoting the rights of its own indigenous peoples and empathized with the representatives of indigenous peoples who hoped that the Human Rights Council at its current session would submit the draft declaration to the General Assembly.

38. It was regrettable that the draft resolution had to be put to a vote. The Philippines intended to abstain in the voting because it believed that the text of the draft declaration as it stood merited further study. His delegation would have liked time to ascertain that the draft was fully compatible with the Constitution and legislation of the Philippines and to enable national implementing agencies to discuss its legal and policy implications.

39. At the request of the representative of Canada, a vote was taken by roll-call on the draft resolution.

40. Cuba, having been drawn by lot by the President, was called upon to vote first.

In favour: Azerbaijan, Brazil, Cameroon, China, Cuba, Czech Republic, Ecuador, Finland, France, Germany, Guatemala, India, Indonesia, Japan, Malaysia, Mauritius, Mexico, Netherlands, Pakistan, Peru, Poland, Republic of Korea, Romania, Saudi Arabia, South Africa, Sri Lanka, Switzerland, United Kingdom of Great Britain and Northern Ireland, Uruguay, Zambia.

Against: Canada, Russian Federation.

Abstaining: Algeria, Argentina, Bahrain, Bangladesh, Ghana, Jordan, Morocco, Nigeria, Philippines, Senegal, Tunisia, Ukraine.

41. The draft resolution was adopted by 30 votes to 2, with 12 abstentions.*

42. Mr. ABREU E LIMA FLORENCIO (Brazil) said that his delegation had voted in favour of the draft resolution and believed that its adoption augured well for the Council's work. The understanding permeating the whole declaration was that the exercise of the rights that it acknowledged was consistent with respect for the political unity and territorial integrity of the sovereign and independent States in which indigenous peoples lived and would contribute to democracy, good governance, stability, social and economic equity and greater justice in those countries. Brazil was confident that the declaration would always be invoked in good faith by States and by indigenous peoples.

43. Mr. JAZAIRY (Algeria) said that his delegation had made every effort to promote the adoption of the draft declaration by consensus. However, since several articles of the declaration concerning the collective rights and political status of ethnic groups were not compatible with the Algerian Constitution, his delegation had been obliged to abstain in the voting.

44. Mr. MINAMI (Japan) said that, while his delegation had voted in favour of the draft resolution, it regretted that the Working Group had not been able to reach a consensus on the draft declaration. His delegation was concerned that the Working Group had not discussed the latest text of the draft declaration, and Japan was not prepared to accept such a precedent for adopting legal documents in the future.

45. The Government of Japan did not interpret the right of self-determination as set forth in the declaration as giving indigenous peoples the right to be separate and independent from their country of residence. That right could not be invoked for the purpose of impairing the sovereignty of a State, its national and political unity or its territorial integrity.

46. With the exception of the right to self-determination, Japan did not accept the concept of collective human rights in international law. Rights could not be vested in a group of

* The delegations of Jordan and Bahrain subsequently informed the Council that they had intended not to participate in the vote.

people; the rights contained in the declaration were vested in indigenous individuals. However, certain rights could be exercised collectively with other individuals who had the same rights.

47. Property rights and other rights relating to land and territory were stipulated in the law of each State. The Government of Japan therefore interpreted the rights relating to land and territory contained in the declaration, as well as the exercise of those rights, as restricted within due reason in light of harmonization with third party rights.

48. Mr. CERDA (Argentina) said that, despite its support for the recognition of the rights of indigenous peoples, his delegation had been obliged to abstain in the voting on the draft resolution. Several articles of the declaration had serious implications for Argentina, and he regretted that further refinement had not been possible. In particular, the absence of discussion had prevented the insertion, in draft article 3 bis, of the need for the exercise of the right to self-determination to be compatible with the national unity, territorial integrity and organizational structure of each State; and, in article 45, paragraph 1, of a reference to compatibility with the purposes and principles of the Charter of the United Nations and with General Assembly resolution 1514 (XV) and other applicable Assembly resolutions. He hoped that that situation would be resolved in the General Assembly.

49. Mr. VASSYLENKO (Ukraine) said that his delegation supported the drafting of an international instrument that balanced the effective protection and promotion of the rights of indigenous peoples with the need to preserve the interests of sovereign States, and it regretted that Member States had not been given an opportunity to comment formally on the Chairperson-Rapporteur's proposal before the draft resolution was tabled for adoption. His delegation had abstained in the voting because the declaration, which was not legally binding and had no legal effect in Ukraine, established important political norms that could be used to justify claims inconsistent with modern international law and contrary to the legitimate interests of sovereign States.

50. Article 3, which recognized an unreserved and unqualified right to self-determination for indigenous peoples, was of particular concern to Ukraine in light of the fact that, despite repeated calls from States, the text of the declaration did not include universally agreed interpretative provisions on the need to preserve the territorial integrity and political unity of sovereign States.

51. Mr. NARSINGHEN (Mauritius) said that, while his delegation had voted in favour of the draft resolution, it understood the apprehensions of those who had hesitated to support the text of the draft declaration. For example, article 3 of the declaration was open to abuse by groups that were not really indigenous; even worse, the right to self-determination might be interpreted by some as a right to secession. There was also a danger that the absence of any definition of indigenous people might prompt non-qualifying groups to designate themselves as indigenous.

52. Mr. PFAFFERNOSCHKE (Germany) said that his delegation had supported the adoption of the draft declaration as a balanced compromise between diverging views and conflicting interests. It appreciated the clarifications in the text, particularly preambular paragraph 18 bis, that underlined the primary importance of protection of individual human rights and drew a clear distinction between individual human rights in international law and the collective enjoyment of certain rights at the national level.

53. His delegation understood the right to self-determination set forth in article 3 bis and the following articles as specific to indigenous peoples and different from the right to self-determination contained in common article 1 of the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, which constituted the sole collective right recognized in international law. It could not affect the sovereignty or territorial integrity of any State. Germany supported the idea of greater autonomy and self-government for indigenous peoples and communities within an existing nation State.

54. While the declaration was an important instrument for enhancing the rights of indigenous peoples, it was not legally binding. Germany's own national minorities and other ethnic groups in its territory, all of which enjoyed full protection of their rights and fundamental freedoms in Germany, did not fall under the scope of the declaration.

55. Mr. THORNE (United Kingdom) said that his delegation regretted that it had not been possible to reach wider consensus on the text of the declaration, and that some States with large indigenous populations had felt the need to call a vote on it. Nevertheless, the United Kingdom recognized the efforts that had been made to advance the declaration to its final form, and was therefore pleased to support its adoption.

56. His delegation did not accept that some groups should benefit from human rights that were not available to others and, with the exception of the right to self-determination, it did not accept the concept of collective human rights in international law. That was without prejudice to the fact that the Governments of many States with indigenous populations had granted them various collective rights in their constitutions, national laws and agreements. His delegation strongly endorsed preambular paragraph 18 bis of the declaration, which it understood as distinguishing between individual human rights in international law and collective rights bestowed at the national level by Governments to indigenous peoples. His delegation understood all the provisions of the declaration in the light of that understanding of human and collective rights.

57. The United Kingdom understood article 3 of the declaration as promoting the development of a new and distinct right to self-determination specific to indigenous peoples, which was to be exercised in the territory of a State and was not intended to have any impact on the political unity or territorial integrity of existing States. His delegation understood the commitments in article 12 to provide redress as applying only to property or ceremonial objects and human remains that were in the ownership or possession of the State.

58. The declaration was not legally binding, and national minority groups and other ethnic groups in the territory of the United Kingdom and its overseas territories did not fall within the scope of the indigenous peoples to whom the declaration applied.

59. Mr. LOULICHKI (Morocco) said that his delegation had abstained in the voting because the text of the draft declaration contained certain ambiguities that could have been clarified if additional time had been allocated for negotiations. His delegation regretted that the text had not been adopted by consensus.

60. Ms. WILDSCHUT (Indigenous Peoples' Caucus) said that, since the establishment of the Working Group on Indigenous Populations, indigenous peoples had persisted in their efforts and remained vigilant against some of the most formidable State forces in the world. Indigenous peoples had relied on their ability to engage in substantive debate, and their positions remained consistent with international law. Indigenous peoples had succeeded in educating the international community about the status, rights and lives of indigenous peoples all over the world. The true legacy of the declaration would be the way in which the indigenous peoples of the world, in partnership with States, breathed life into those words. While the rights contained in the declaration were distinct and fundamental individual and collective human rights, it was their implementation at the community level that would give indigenous children hope for a future where their lives and identity would be respected globally.

Draft resolution on the open-ended Working Group on an optional protocol to the International Covenant on Economic, Social and Cultural Rights (A/HRC/1/L.4/Rev.1)

61. Mr. DA COSTA PEREIRA (Portugal), introducing the draft resolution on behalf of the sponsors, said that the purpose of the draft resolution was to extend the mandate of the Working Group for a period of two years in order to enable it to draft an optional protocol to the International Covenant on Economic, Social and Cultural Rights. He hoped that the resolution would be adopted by consensus.

62. Ms. CHÁVEZ (Guatemala) said that the discussions in the Working Group had been exhausted, and the group should begin drafting the text of the optional protocol. Her delegation hoped the draft resolution would be adopted by consensus.

63. Mr. ATTAR (Saudi Arabia) said that Saudi Arabia maintained its reservations on the draft resolution.

64. The PRESIDENT announced that the draft resolution had programme budget implications, which had been set out in a paper that had been circulated among the members of the Council.

65. Draft resolution A/HRC/1/L.4/Rev.1 was adopted.

66. Mr. NORMANDIN (Canada) said that his delegation was pleased that the resolution recognized that the first draft optional protocol should take into account all views expressed during the sessions of the Working Group. Canada continued to question the merits of a communications procedure for economic, social and cultural rights, since it could cause undue interference by an international body in social policy and resource allocation decisions made by democratic States. His delegation's decision to join consensus on the draft resolution was without prejudice to future decisions by Canada regarding its participation in negotiations and ratification of an optional protocol.

The meeting rose at 5.40 p.m.