

NON-PAPER

United Nations Declaration on the Rights of Indigenous Peoples

Summary of Key Areas of Concern

The General Assembly agreed to further consultations on the Draft Declaration to give the international community the opportunity to try to adopt a Declaration that all countries could support as a genuine standard of achievement to live up to. The President of the General Assembly has recently appointed the Permanent Representative of the Philippines, H.E. Mr. Hilario G. Davide, Jr., to facilitate an open and inclusive process of consultations to reach the broadest possible agreement on the Declaration, taking into account the views of all parties.

In this context, this non-paper is the result of informal and on-going consultations between a significant number of States with indigenous populations, and summarizes their key areas of concern with a view to supporting the objective of reaching agreement within the 61st Session of the General Assembly. These areas of concern are not necessarily shared by all States with concerns about the text. Amendments to the current text of the Draft Declaration will be required in order to secure support for adoption.

Self-determination, self-government and indigenous institutions:

The current text could be misconstrued so as to threaten the political unity, territorial integrity and stability of States, and confer a right of secession upon indigenous peoples. Provisions dealing with the need to achieve harmony with other levels of government are insufficiently developed.

Lands, Territories and Resources:

The text on lands, territories and resources is broad, imprecise, and not capable of being implemented, and asserts rights of ownership to all lands, territories and resources, whether owned currently or previously occupied - wherever there is a traditional connection. For many States, this might encompass all of the lands, territories and resources of the State, including those considered a national common good.

Redress and Restitution:

The text on redress and restitution is broad, and asserts that States should provide redress for property taken without free, prior and informed consent. The text could be interpreted as promoting the re-opening of settlements already reached between States and indigenous peoples and does not take adequate account of the different situations facing indigenous peoples and States.

Free, prior and informed consent or a veto power:

The text currently includes an unqualified right of free, prior and informed consent for indigenous peoples on all matters that may affect them, which implies that indigenous peoples may exercise a right of veto over all matters of the State including the laws and reasonable administrative measures democratically enacted by the State.

Lack of clarity as to who are "indigenous peoples":

There is uncertainty as to the text's application or non-application with respect to tribal groups, ethnic groups, minority groups, and indigenous peoples.

Military Defence Issues:

The text could be misconstrued so as to be inconsistent with existing legal obligations and to restrict the ability of the State to protect its population and territory, including efforts for civil defence and emergency preparedness.

Protections for the Rights of Others:

The text suggests that indigenous rights prevail over the rights of others, without sufficiently taking into account the rights of other individuals and groups, and the welfare of society as a whole.

Intellectual Property Rights:

In stating that indigenous peoples have a right to maintain, control, protect and develop their cultural heritage, cultural expressions and traditional knowledge, as well as rights to human and genetic resources, the text goes well beyond current and evolving intellectual property rights regimes and could undermine complex negotiations in other fora.

Education

The current text could be interpreted in a manner inconsistent with national and sub-national educational systems. The text does not take into account the diversity of culture and language within many States, or the need to meet applicable educational standards.