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EDITORIAL

If, on the one hand, it is true that the theme *Indigenous Peoples* continues to increase its foothold within the United Nations framework, it nonetheless appears very difficult to make concrete progress with respect to the processes that have been engaged. Such is the case for both the Working Group of the Commission on the Draft Declaration (WGCD) and the Working Group on the Permanent Forum (WGPF), whose two sessions are reported below pending the Commission on Human Rights' decision on which follow-up to implement.

In fact, during the fourth session of the WGCD, none of the articles from the Draft Declaration were adopted and the Indigenous Peoples' delegates - once again - needed to remember that patience is one of their cardinal virtues. On the one side, the States proposed numerous amendments, including to articles 15, 16, 17 and 18. On the other side, the Indigenous Peoples continued to support the position that the Draft Declaration should be adopted as it is, including the concept of self-determination which links all the articles together. In the opinion of these delegates, the articles cannot be modified without taking the overall Declaration into account. Additionally, it was felt that the justification for such proposed amendments ought to be specified.



Several observers expressed their opinion that the number of places for informal dialogue should be increased in order to overcome this deadlock. They are correct, because, when such places exist, compromise increases. Thus, France provided an excellent surprise by proposing the expression "the Indigenous peoples or individuals", while the Asian Group temporarily renounced their demand a definition of the notion *Indigenous Peoples* in order to permit the debate to progress.

Despite the Chairman of the WGPF's expressed desire to make progress with respect to the Permanent Forum process, despite the efforts of several governments - particularly Denmark - and despite affirmation by all the States, favouring the principle of establishing a Permanent Forum, objections from a few governments persisted at the end of the WGPF. Thus a sense of frustration prevailed due to the feeling that a minority could cause the failure of that towards which the majority aspired. Finally, it should be noted that no African government was represented in the WGPF.

Despite all these obstacles, the Indigenous Peoples' delegates expressed their "sympathy" for the Kurdish militants who, for two days, occupied the WGPB's meeting room. In a press release, Kenneth Deer underlined "that the situation of the Kurdish people was similar to that of the Indigenous Peoples" and he requested that a "peaceful" solution be found, affirming that he "did not wish to return to room XVII if this return should serve as an argument for evacuating the Kurds".

Working Group on the Draft Declaration on the Rights of Indigenous Peoples

Fourth session, Geneva, 30 November to 11 December 1998

Document: Report E/CN.4/1999/82

Organization of work

47 indigenous organizations participated in this fourth session of the Working Group (WG). **Mr José Urrutia** (Peru) was unanimously re-elected as **Chairman-Rapporteur**. Many Indigenous Peoples (IPs) asked governments to express their concerns and give reasons for the changes they proposed. Due to the interactive nature of the underlying principles and rights contained in the DD, it would be counterproductive to consider each article separately (**ILRC**). The **Asian Caucus** (supported by **ICC** and **AN**), was concerned that governments would have their own meetings, a procedure which was against the purpose of this WG. They proposed to hold a regional meeting with Asian indigenous representatives and governments (approved by **Bangladesh**, on behalf of the Asian Group). **Brazil** supported the proposal of holding regional meetings to discuss language. The **Indigenous Caucus** stressed that governments' meeting should not take place during the time allowed for plenary meetings. **IPs from Siberia** thought that they were not here to make statements but to negotiate. **Canada, New Zealand, Australia** and **Norway** stated that discussion should focus on Articles 15 to 18 with a view to adoption in the current session. **Australia** further stated that the issues of scope and self-determination should continue to be discussed.

General debate

Mary Robinson, High Commissioner for Human Rights (HCRH), stated that the target of this session was to adopt Articles 15 to 18 and pass the DD during the Decade. Addressing the HCRH, the **Indigenous Caucus** expressed concern that governments opposed immediate adoption of the DD, which is considered a minimum action for the protection of IPs. They called on her to call on the Secretary-General to assist in its immediate adoption. The lack of political will shown by some States and the absence of CHR members were an obstacle for progress.

ILO found it essential that the Declaration, once adopted, did not fall below the standards set in ILO Convention 169.

The indigenous delegations reiterated their support to the DD as adopted by the Sub-Commission (E/CN.4/Sub.2/1994/56) and called for its immediate approval in its present form (i.a. **IOIRD, IITC, NN, CAPAJ, ATSIC, TF, ACFOD, JOHAR, CPA, AAS, HD, ICC, African IPs/IWGIA, FZLN, IAITPTF, ICHRDD, COPMAGUA, CTT, CISA**). The Declaration was regarded as containing minimum standards for the promotion and protection of IPs' rights and the right to self-determination as its fundamental underlying principle. Recalling the mandate of this WG, **NAILSS** called upon governments to present only interventions which have the effect of improving upon, not diminishing the DD (also **ATSIC, ILRC, JOHAR**). The rejection of the use of the term "shall" by some governments was unacceptable (**ICHRDD, GCC**). **IOIRD** thanked the HCHR for visiting the Four Cree Nations of Hobbema and called for adoption of Article 36 as Alfonso Martinez' final report on treaty study had been previously acknowledged by their Chiefs.

The principles of equality, non-discrimination and absolute prohibition of racial discrimination must be taken into account (**ATSIC, NSWALC, IAITPTF**). Collective rights are important as existing international human rights instruments do not reflect adequately IPs' needs and rights (**IWGIA**). Governments should not insist on a definition of "indigenous peoples" so that the DD could keep its universal character (**ACFOD**). The DD is consistent with the domestic legislation of many countries of the Andean region (**CAPAJ**). The adoption of the DD is a matter of urgency, as IPs are on the verge of extinction in Russia due to the absence of legal protection (**ASP**). Comments and suggestions by **IMTA** and **IWA** are contained in E/CN.4/1998/NGO/31.

Many indigenous organizations strongly reacted to the statement delivered by the USA: IPs are not minorities, they have the right to self-determination and there should not be two standards, -"more rights" and "lesser rights for IPs". The Declaration on Minorities was passed without defining the term "minorities" (**IOIRD, NN**). The attempt to redefine the scope of the DD by questioning the term "indigenous peoples" was considered unacceptable (**IITC, GCC**). **ILRC** were surprised at the USA wish to limit the rights affirmed by the DD to those already existing under international law, thus hindering the work of this WG.

USA declared that aspirations were not rights. For the sake of universality, it was necessary to address the scope of application of the DD and to define the term "indigenous peoples". A provision stating that local realities might be taken into account by different governments when applying the DD should be included. The right to self-determination, interpreted as including the right to separate or secede from the rest of the society, was clearly rejected. Since international law protects the rights of individuals, it would be confusing to accord collective rights to "indigenous peoples". For these reasons, the delegation urged the WG to follow the approach taken by the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities.

Argentina opposed collective rights as detrimental to the enjoyment of individual rights, but nevertheless recognized the collective stake-holding of land rights. **Russian Federation** stressed the need to keep working on the text of the DD and said that the WG was not the place to discuss the elaboration of complex definitions. **China** considered the DD as a good basis for discussion, but insisted on a well-defined scope.

Denmark stated that every effort should be made to break new ground taking into account the many different interests involved and that the process could not be completed without the full participation of IPs.



Articles 1 and 2

Nordic countries, Brazil, Peru, Ecuador and **Switzerland** could adopt both articles in their current form. The issue of collective rights vs. individual rights and the use of the term "peoples" was once again questioned. **France, UK and Japan** insisted on the fact that rights apply to individuals. **Netherlands** stated that the articles should focus on individual rights and that the exercise of rights could be collective. **Argentina** considers that rights are indivisible. For **Denmark** the term "peoples" includes a recognition of collective rights. **Guatemala** supports the principles contained in both articles.

Canada, China, Russian Federation, New Zealand and Colombia proposed some amendments to Article 1. **Canada** mentioned the need to review the use of the term "peoples" and "individuals" on an article-by-article basis. For **New Zealand**, rights are individual as well as collective. **Australia** supported the principle but pointed out the issue of consistency with existing international human rights instruments. **Mexico** said that Article 4 of their constitution recognizes collective rights.

Article 2 could also be adopted as such by **Russian Federation, Australia, Venezuela and Ecuador**. **Canada** proposed to include a reference to special measures States may have to take. **El Salvador**, supported by **Argentina**, rejected positive discrimination. **France**, approved by **Japan**, proposed to reword the article in order to account for individual rights. **New Zealand** supports the recognition of collective rights. The issue of discrimination should not prevent positive measures to advance the position of IPs.

The DD is not a final document, as the process expects a Convention on the Rights of IPs to be issued on the basis of the DD. Therefore, the list of international instruments does not have to be defined in Article 1 (**MCTP**). **IWA** and **IOIRD** opposed any amendments and the qualification of the word "peoples". **ILRC** said that no compelling argument for amendments was put forth. **IMTA** proposed a redrafting. **CECIP** expressed surprise at France's statement on individual rights, as revolution is the genuine exercise of collective rights. **AAS** pointed out that Japan applies a double-standard regarding the use of the terms "indigenous" and "peoples". For **SC** the fact that Article 2 refers to both individual and collective rights is not controversial as other international instruments also do. In that respect, **NN** mentioned the Convention on the Elimination of All Forms of Racial Discrimination. **ALSWA** called for the recognition of collective rights. **ANIPA** stated that IPs will never give up their struggle for the recognition of their collective rights. **AAJ** called on IPs to keep struggling for self-determination, collective rights and IPs' rights. According to **DM**, to respect the way of thinking and the existence of individuals or groups is part of human rights.



Article 12

Finland could adopt this article as currently drafted. All governments supported the principle underlying the article. Most of them found the second part -dealing with restitution of cultural property- too vague (**USA, Japan, Australia, New Zealand, France, UK, Norway**). **Brazil** and **El Salvador** pointed out that archaeological sites belong to the State. **Japan** asked whether restitution means compensation. **Australia** asked what was meant by the term "intellectual property" and related it to Article 29 on intellectual property rights. **New Zealand** stated that it actively protected the *taonga*, or valued possession of Maori. **Angola**, supported by **Bangladesh** on behalf of the Asian group and **Switzerland**, referred to the UNESCO Convention. **Russian Federation** proposed that the second part be a separate article.

This article is a good example of collective rights as ceremonial practices and objects are not owned by individuals (**IITC**). It is necessary to the protection of IPs' collective rights (**AN, COJPITA**). Cultural heritage is in jeopardy because of transnational corporations expropriating IPs' technology (**COPMAGUA**). **CAPAJ** asked whether economic restitution alone could replace the values of their properties. **African IPs** welcomed the statement by Angola. **STP** referred to the construction of a telescope on Mount Graham in Arizona, USA, on an Apache sacred site. **CTT** mentioned the need for the protection against intellectual piracy. **CECIP** cited the example of MSF who produced a laser disk of their songs without any copyrights. **IMTA** requested moral and financial rehabilitation, along with restitution. Restitution is necessary to the protection and revitalization of their cultures (**CISA**). Intellectual property rights belong to the community (**MDA**). Existing international instruments are not sufficient for the protection of IPs' legitimate rights (**ATSIC, IMTA**). **JOHAR** called on States to understand the importance of indigenous culture and spirituality. **NAILSS** referred to WIPO subprogram dealing with consideration of the DD and suggested that WIPO provide expert assistance and consider the DD as a future possibility for protection of intellectual rights of IPs. **DM** believes Article 12 is a vital element for preserving IPs' knowledge such as medical knowledge. Restitution of spiritual, cultural and intellectual property includes restitution of lands and territories (**IHRAAM**). Recognition of restitution rights would restore historical justice (**RAIPON**). IPs merely want to live their own way within the State (**CIDPIS**).

WIPO presented a new programme of protection of intellectual property to engage directly with IPs.

Article 13

Finland, El Salvador, Argentina, Bolivia, Guatemala and **China** could adopt the article as it stands. **Brazil, Chile, New Zealand, USA** and **Venezuela** support its principles. So do **Australia** and **Canada** who referred to the technical review, pointing out that international law allows certain limitations which should be reflected in this article (also **Switzerland**). **Mexico** referred to its Constitution and ILO Convention 169. **Russian Federation** and

Ecuador want the text to be more accurate. **Japan** urged that the separation of state and religion be reflected in the text.

NN stressed that indigenous customs and ceremonies need special protection, as shown by the relocation of people and sacred sites. **ASP** highlighted the importance of this article, as most territories where IPs live have been subject to industrial exploitation. Both **IMTA** and **COJPITA** related this article to Article 18 of the Covenant on Civil and Political Rights. According to **IMTA**, particular aspects of religious freedom, such as freedom of thought and conscience, should be included. **IWA** stressed that international standards must protect indigenous sacred sites from exploitation by national governments and cited the case of the Acoma people whose pilgrimage trail and shrine are threatened with a mine project. Replying to Japan, **AAS** believes that the second paragraph does not violate the separation of state and religion. **IWTO** called for the immediate adoption of Article 13.

Article 14

El Salvador, Guatemala, Denmark, Norway and **Ecuador** could adopt the article as currently drafted. **Chile, Brazil, Argentina, Venezuela, Bolivia, USA** support its principles. **Chile**, supported by **Argentina, Colombia** and **Guatemala**, proposed to replace "whenever any right of IPs may be threatened" by "at any time". **Brazil**, supported by **Bolivia**, asked how the State could ensure interpretation into indigenous languages in countries such as Brazil where over 300 languages are spoken, and proposed a separate article on financial resources. Language problems could be solved taking ILO Convention 169 as a basis. **Russian Federation** approved the first paragraph as such but proposed a separate article for paragraph two, requesting a more realistic wording. **Canada** proposed to move the second paragraph of the article to Part V (civil rights). According to **Australia**, the spirit and intention of this paragraph could be better stated. **New Zealand** informed that a Maori Language Commission has been established and asked for clarification of paragraph two. **Finland** considered the present formulation too weak and proposed to include the phrase "use his/her own language". **Mexico** suggested that the article be adjusted to Article 12 of ILO Convention 169.

CAPAJ welcomed consensus among Latin American States. **AN** agrees with Finland that the article is rather weak and stressed that IPs should be able to participate in all issues of national importance and that States should be responsible for translation services. IPs should have a genuine guarantee of the right to use their language (**DM**). The articles should not be too specific so that they can be adapted to any of the world's IPs (**COPMAGUA**). Article 14 is very important for the exercise of other human rights contained in the DD (**KLC**). It is the legal duty of States to protect IPs (**MOSOP**) and guarantee proper protection of IPs' cultural ceremonies (**IMTA**). The scope of Paragraph 2 is limited (**African IPs**). Protection in Article 14 should be recognized as a collective right essential to the survival and identity of IPs (**IITC**). IPs are still prevented from conveying their ideas and opinions because of language problems (**CISA**). Plurality of languages in a country cannot justify the privileging of a particular language over others (**ANCAP**). Exclusion of language can be used to take over



territories as in Alaska (**IHRAAM**). Financial issues should not block the text under discussion (**ACFOD**).

Articles 44 and 45

Following a consultation with governments, the **Chairman** reported that, as for Article 44, some States want a special reference to individual rights and have some difficulty with the use of the term "peoples". The drafting of Article 45 is acceptable but, due to its general character, its adoption depends on the other articles.

Malaysia, Finland, El Salvador and Switzerland could adopt both articles as currently drafted. **Denmark** and **New Zealand** respectively approved Article 44 and Article 45. **Canada** supports the principles of Articles 44 and 45. **France**, supported by **Australia**, reiterated its proposal to specify "indigenous peoples or individuals" in order to reflect both individual and collective rights. **USA** suggested a revision of Article 45 based on Article 8 of the Declaration on Minorities and Article 26 of the Draft OAS Declaration on IPs' Rights.

These two articles are supplementary clauses pointing out that the DD is not overly restrictive (**CAPAJ**). As there is consensus on the criterion of self-identification and on the universal scope of the Declaration, indigenous rights cannot be restricted (**AN**). Agreement could be reached on these two articles (**COPMAGUA, DM**). **IITC** an **MN** called for immediate consensus on Article 45. The DD applies equally to peoples and individuals, given that Article 44 protects existing rights and the concept of universality (**ATSIC**). Article 44 should be seen in a historical context, leaving space for future progress on human rights. Article 45 mentions recognized standards of human rights protection (**MCTP**). **IITC** voiced opposition to the amendment proposed by **USA**, who continues qualifying IPs' rights. **Canada's** reference to the UN Charter and Declaration on Friendly Relations in the context of Article 45 should allay concerns of the **USA** as to territorial integrity (**ILRC**).

Articles 15 to 18

Governments' proposals for amendments were annexed to the Chairman's draft report (E/CN.4/1998/WG.15/CRP.3), after indigenous representatives' refusal to have this document as part of the official record. The **Indigenous Caucus** stressed that the document presented was an unofficial and non-consensual document, recalling that the process agreed upon was to discuss the DD and not redraft it. They said that governments were negotiating to the exclusion of IPs, who were merely consulted, participating as invisible peoples. The

Chairman replied that the document was only a means of reflecting governments' exchanges of views in order to clarify their positions.

USA accepted the term "peoples" provided that its use did not imply the right to self-determination, as in the OAS Declaration and in ILO Convention 169. **France** reiterated its proposal, that is the inclusion of "indigenous peoples or individuals". **Argentina** supported the principles. **Ecuador** could support adoption with minor language changes.

Nordic Countries and **Peru** could adopt Article 15 as it stands. **Canada**, supported by **Peru** and **Bolivia**, suggested to add the principle of non-discrimination and, like **Japan**, **Chile**, **Brazil** and **Peru**, raised the issue of financial resources. In order to expand their scope, the term "indigenous individuals" should be added (also **USA**, **Japan**). The articles should be more reflective of indigenous education. **Chile** proposed a more flexible wording to account for the resources allocated to education in indigenous languages. **Australia** and **New Zealand** proposed a separate article on measures States should take. **USA**, **Canada**, **Australia**, **New Zealand**, **France**, **Russian Federation**, **Argentina**, **El Salvador** and **Philippines** insisted on a "reasonable access" to indigenous education taking the instance of children living outside their communities. **Brazil** stated that the implementation of this article was not realistic (also **Argentina**) due to financial reasons. **Ecuador** and **Colombia** emphasized that education should be available to all. **Peru** pointed out that a vehicular language was also necessary in order to avoid marginalization and that IPs should be integrated into the national educational system as well (also **Argentina**), as far as higher education is concerned. **Russian Federation** was of the opinion that the WG should start the drafting process.

France, **New Zealand**, **Venezuela**, **Australia**, **Canada**, **Norway**, **Denmark**, **Finland**, **Mexico**, **Peru**, **Bolivia**, **Ecuador**, **El Salvador** and **Guatemala** could adopt Article 16 as it stands. **Colombia**, **Chile**, **UK** and **Philippines** support the principles. **USA** pointed out that aspirations and goals were not rights.

Peru, **Finland**, **Denmark**, **Norway** and **Switzerland** could approve Articles 17 and 18 as currently drafted. **El Salvador**, **Russian Federation**, **Australia** and **New Zealand** could adopt Article 17 as such and **Ecuador** Article 18 as it stands.

Canada (also **Australia**, **Malaysia**, **Bolivia**, **Philippines**, **Chile**) support the principles contained in both articles. The principle of non-discrimination should be included in Article 17. Labour rights, contained in Article 18, should be moved to Part V and a provision for the protection of children should be added. **El Salvador** and **New Zealand** proposed an amendment for Article 18. **USA** insisted on a non-discriminatory access for Article 17 and reiterated the wording "indigenous groups" for both articles (also **Japan**). **Malaysia** believes that the scope of Article 18 should be confined to national labour legislation. **Japan** asks for clarification of "international labour law". **Russian Federation** objects to the idea that international law establishes certain rights for IPs in Article 18.

IMTA wondered why some governments reversed their previous position on the vital question of education and suggested that the development burden should be borne by States (also **IWA**, **DM**). Emphasized the right of IPs to control their own educational freedom in their own language (also **DM**). No substantive proposals for changes were made, therefore the text should be left as it stands (**AN**). Some of the suggestions expressed with a view to making the article more specific would limit its scope (**COPMAGUA**). The reference to "indigenous children" is not discriminatory as is meant to strengthen a specificity of universal



rights of all peoples (**CTU**). IPs cannot teach their values on an equal footing with official educational programmes (**CAPAJ**). Article 15 is important to Africa, where only 10% of the population is literate (**IWGIA**). **CTT** referred to Art. 26 of the Universal Declaration on H. R. and to ILO Convention 169. **IITC** and **NN** objected to a statement by USA, echoed by Japan, that IPs should be referred to as "persons belonging to indigenous groups" (also **AN**) and recalled that education was recognized as a treaty right for IPs. Education has been used as a tool against IPs for assimilation purposes (**MN**, **RAIPON**). Canada's position is an attempt to undermine and violate their aboriginal and treaty rights to education (**ECN/IOIRD**). **HD** opposed USA and Canada's proposals.

Finno Ugric People called for the immediate adoption of the DD as IPs are disappearing. **NSWALC** pointed out that cultural distinctiveness must be ensured. **IOIRD** referred to the Universal Declaration on H. R. **STP** emphasized the right to cultural diversity, which is not recognized in US universities. **AAS** stated that Japan's refusal to recognize human rights as collective rights is a form of racism.

As USA keeps referring to ILO Convention 169, **IOIRD** asked whether they were prepared to ratify it. For **African IPs**, Article 17 is of special importance in order to prevent a restricted access to media. Referring to the lack of access of African IPs to employment, **MOSOP** stated that Article 18 is a minimum requirement. **IMTA** referred to the Convention on the Rights of the Child. **IWA** supports the current language of Articles 17 and 18.

The **Chairman** concluded that there was consensus on the principles underlying Articles 1, 2, 12, 13, 14, 44 and 45 but the drafting should be more specific in order to broaden the scope of the DD for the benefit of IPs. These articles could be adopted next year. No article were adopted at this session.

Self-determination and related items

The present summary is based on the written statements presented at the informal meetings on the principle underlying art.3, self-determination (SD) and on the question of the scope of the Declaration and definition of the term "Indigenous Peoples". These issues were also raised in the general debate (see Report of the Working Group E/CN.4/1999/82). The exchange of views on the right of SD as enshrined in art. 3 must be understood as a continuation of the discussions launched at last year's session of the Working Group (WGCD 1997). To get an exhaustive overview of the positions of all delegations, we therefore recommend to consider the reports of the two sessions of the WGCD jointly (see [UPDATE no. 21/22, nov.97/feb.98](#)).

The debate was marked by three events: The regrettable and hopefully transitory shift in position accused by **Australia**, which had been one of the first governments to support the principle of SD and now proposed another wording for art.3, withdrawing any reference to SD. The notable evolution of **French** government, which no more opposed the reference to SD and to collective rights. The acceptance, by the States of the **Asian Group**, to open the way for substantial achievements in the discussion of the draft declaration by renouncing to

require -at least for the moment- a prior definition of the term "Indigenous Peoples". The two last mentioned changes were important steps towards mutual understanding.

There was a broad consensus among all delegations, governmental and indigenous, in reaffirming the principle that all peoples had the right to self-determination under contemporary international law, as enshrined in the UN Charter and in art. 1 of the two International Covenants on Human Rights. As **Canada** stated: "The question raised by the Draft Declaration is whether the right also exists to peoples, including indigenous peoples, living within an existing democratic state, and if so, what that right consists of." This question shaped the lines of diverging opinions among government representatives, out of which three groups of governmental positions emerged. Most governments which took the floor recognized the fundamental importance of SD for the protection of IPs rights and for their very survival. Unconditional support to the recognition of IPs right to SD as worded in art.3 was given explicitly by **Pakistan and Cuba (Fiji 1997). Bolivia, Guatemala, Finland, Norway and Denmark** accepted the current wording of art.3, provided it was understood that SD would be exercised within existing sovereign States. **Guatemala** proposed to add further qualification of this right in order to reach a broader consensus. **Norway** referred to the distinction contained in the General Comments on SD adopted 1996 by CERD between the "internal" and "external" aspect of SD. **Canada, Mexico, New Zealand, Russian Federation, United Kingdom and Switzerland** pleaded for the recognition of IPs right to SD, associated with a qualification as worded in 1970 GA Declaration on Friendly Relations ensuring an explicit protection for territorial integrity and national unity of democratic sovereign States. In doing so, **Canada** introduced a crucial shade of meaning in the wording usually adopted by recognizing the plurality of peoples living within a State: "A state whose government represents the will of the people *or the peoples* resident within its territory, on a basis of equality and without discrimination, *and respects the principle of SD in its own internal arrangements*, is entitled to the protection, under international law, of its territorial integrity." **New Zealand** reported that the extensive consideration of the principle of SD was consistent with an emerging usage in international law which sees the right to SD applying to groups within existing States. So did **Canada** and **Norway**, which both referred to the evolving nature of SD. **France** gave its support to the recognition of IPs right to SD on condition that it will be implemented in accordance with the rights of the entire population of the territories concerned. Arguing that the concept of SD was subject to a wide range of interpretations, **Sweden** suggested to have the right to SD clearly defined within the declaration itself. Other concrete proposals in order to enhance the chances of reaching a consensus were submitted: **Norway** suggested to group art.3 together with related articles (31, 19, 20, 21 and 30), **Switzerland** referred to the principle of subsidiarity (see also [UPDATE no. 21/22](#)), as did **Peru** as a possible means to apply SD, many governments (ref. Constitution: **Argentina, Brazil, Bolivia, Mexico, Guatemala, Canada, Denmark**- ref. Greenland 1997; **New Zealand**- Treaty of Waitangi- rel. Maori; **France**- ref. Agreement on Noumea 1998 rel. Kanak, Caldoche & gvt.) reported on the achievements in their own country, mainly by recognizing the multicultural and pluriethnic character of the State population. Some states either stuck to an interpretation limiting SD to its external expression (**Colombia**), with the corresponding concerns for their territorial integrity or put the emphasis on individual rights as being opposed to collective rights (**Brazil, Argentina, Peru**; to a lesser extent also **Sweden**).

Only two States opposed explicitly the recognition of the right to SD for IPs: **USA** placed the principle of SD as formulated in the UN Charter and in Art.1 of the Covenants on human rights in the context of decolonization and limited the expression of this principle to the right

of independence. Reiterated their conviction that no international instrument or practice recognized "sub-national groups" as having a legal right to SD. Arguing along the same line, **Australia** proposed to withdraw the concept of self-determination and to replace it by "self-management" or self-empowerment", two terms of no legal nor political significance. It appears that concerns relating to the threat to territorial integrity can only be understood in the light of this static and reductionist interpretation of the content of SD.

"No government or forum or proclamation may either grant or take away our right of self-determination." With these words, **HD** expressed clearly a deep conviction commonly shared by all IPs around the world that the very basis and legitimacy for their claim lied in the inherent nature (**MKG, AIPP**) of the right of SD and in the historically consolidated fact that they exercised that right long before colonization (see also: **IMTA, CAPAJ, IWA, FAIRA, KLC**). The circumstance that the expression of this right was curtailed under colonial rule did not mean that IPs did at any time abandon this right. Therefore, the issue at stake dealt with restitution of an original right, which was confirmed by adding the treaty perspective (**CTM, LBCN, TSN**).

All the indigenous representatives who took the floor underscored the fundamental importance of SD for the draft declaration (**SCN, AMICOP**) as a whole and for the protection of IPs rights in particular. These rights represented a minimum standard to ensure a life in dignity with no marginalization nor discrimination, in other words to guarantee their very survival (**ICN, ICC, IITC, AFN**). As the principle of SD had been recognized to "all peoples" of the world by international law (UN Charter, art.1 of the International Covenants on Human rights), the IPs representatives were unanimous in calling for the recognition of their right to SD as worded in art.3 of the Draft- with no qualification, limitation or restriction (**ANCAP**), in accordance to the principles of equality and non-discrimination (**GCC 1997, ATSIC, IWA, IITC, MCTP, NN, CISA**). **GCC** said that the States had the burden of the proof as to the necessity to introduce changes in the wording of art.3. **Ms Daes**, Chairperson of the WGIP, said that the most deep-seated problem for the IPs in contemporary international law was unjustified discrimination in particular with respect to the enjoyment of the right of SD.

In response to the concerns still expressed by some States with regards to secession- in other words with regards to their sovereignty and their right to be protected against dismemberment- the overwhelming majority of IPs informed that they were not primarily seeking to secede, but that their objective was to gain control over their lives and destiny within existing states, inter alia by a formal recognition of IPs and of pluricultural nature of the country (**THA**). **IITC** and **IMTA** underscored that SD was an evolving process which was not exhausted with the accession to independence (**IMTA**). The position consisting in identifying SD with a threat to territorial integrity - directly linked with the static interpretation of the meaning of SD to be the sole right to independence - was countered by legal reasoning (**ATSIC, ILRC, Daes**), for there was "no legitimate reason" (**IWGIA**) to do so, and qualified as "historically false" (**CAPAJ/Abyayala**), if not "absolutely wrong" (**MOSOP**) or "intellectually dishonest" (**ILRC**). **CAPAJ** called the attention to the fact that dismemberment in the so-called process of "decolonization" in South America was not due to IPs, which were not consulted, but to "caudillos" (dictators). In the same way, borders were drawn without the consent of the IPs violation of their SD through the territory they traditionally occupied (**HD**). The national borders of modern African States were drawn under the colonial rule at the Berlin Conference of 1875, dismembering entire territories which formerly constituted an entity and dividing up IPs across the border of few States (**MDA**,

CSYM, IWGIA). Some indigenous delegates reported that nowadays, in the context of globalization, the real threat to sovereignty came from somewhere else: from Western military and economic powers (**IMTA**), from transnational corporations (**CSYM**) and international financial bodies (**MDA**), from economic and political alliances (**AN**). To illustrate the different possibilities of expression of SD, many IPs delegates (**MCN**) referred to the conclusions of the Barcelona UNESCO Expert Meeting (Nov.98), according to which SD was an on-going process of choice with a broad scope of possible expressions suited to different historical situations, aspirations and needs: "These can include, but are not limited to, guarantees for cultural security, forms of self-governance and autonomy, economic self-reliance, effective participation at the international level, land rights and the ability to care for the natural environment, spiritual freedom and the various forms that ensure the free expression and protection of collective identity in dignity." (see also **NSWALC, IITC**) The aspiration to establish new relationships with the government on a basis of equality and non-discrimination (**ONPZ**) revealed the close link existing between SD and democracy: SD being the very basis for the establishment of a true democracy, its implementation had to be viewed as a factor which strengthened national unity (**IMTA, DM, COPMAGUA, MKG, MCTP**). This opinion was explicitly shared by **Guatemala**, which referred to the Peace Agreements and to the crucial role of SD in the state- or nation-building process. **COJPITA** said that sovereignty could not be opposed to SD. In the same line, **AIPP** declared that to give precedence to sovereignty and territorial integrity over SD was opposed to the doctrine of popular sovereignty, the basis of legitimacy of modern nation-States. Finally, the position defended by the US delegation to consider SD in the framework of decolonization opened unexpectedly a new perspective in the discussion. **NN** declared to be "puzzled" by the USA and Australian attempts to distinguish between SD in the decolonization context and SD in art.3. Their view appeared to be that decolonization had ended and that IPs either had not been or no longer were colonized peoples. However in their view, the forcible domination and exploitation of IPs that had existed and continued to exist in the world indeed constituted "colonialism". In the same sense, **FAIRA** referred to the so-called decolonization of the former British colonies, the nations of the Commonwealth and the USA, which was realized in the name of the SD of the British citizens overseas, without consulting the IPs, the really colonized peoples. **HNAHNU** used the concept of "internal colonization" for describing the situation of marginalization suffered by IPs. The position consisting in defining IPs as colonial peoples in the true sense of the word was defended last year by **Cuba** (see [UPDATE no. 21/22](#)).

The discussion on the acceptance of IPs right to SD can hardly be dissociated from the issues relating to the content, including the question of collective vs. individual rights, or to the definition of the subject of this right -"indigenous peoples"-, for all these questions are closely linked one with the other.

The governments showing most concerns about their territorial integrity opted for the most restrictive definition of IPs, some going as far as enumerating a list of "races" which differed from majority (**Malaysia**). Others advocated in favour of a most restrictive definition of IPs close to the one generally accepted in the framework of the 19th century European nation-building process (**USA**), with no reference to prior settlement, to a situation of domination to an alien rule or to a culturally defined identity. A certain number of governments pleaded in favour of the adoption of criteria which would permit to clearly distinguish IPs from other groups such as minorities (**USA, China Bangladesh, Norway**). The **Asian Group** (joint statement, incl. **India**, presented by **Korea**), although most of them remained in favour of a definition, accepted to renounce in the meanwhile to this claim, not to stall the progress in

substantial discussion. This shift in attitude, "a real progress", was welcomed namely by **ATSIC** and the **Asian Indigenous Peoples** (joint statement). **UK** and **Sweden** also declared to accept the concept of IPs as it stood. The majority of governments basically opposed the idea of including a precise definition in the draft, for it bore the risk of excluding some IPs from the application of the declaration (**Canada, New Zealand**) and stated that if any definition had to be adopted, it should be broad and inclusive (**New Zealand**). **Norway** referred to the Working Paper entitled "The concept of Indigenous Peoples" submitted in 1996 by **Ms Daes**, Chairperson of the WGIP, and stressed that the broad principles could also be drawn from the Martinez Cobo working definition and from ILO Convention 169. In the eyes of all IPs and of the governments of **Ecuador, New Zealand** and **Switzerland**, self-identification (art.8 draft: IPs individual and collective right to claim their quality as indigenous and to be recognized as such) was the essential, if not the only criteria that might be used in this context. **Switzerland** went further by saying that the Declaration applied to all IPs of the world, notwithstanding the fact that they were recognized or not as such at the national level. The reluctance of certain governments to accept the concept of IPs was accurately analyzed by **Guatemala**, which drew the attention to the fact that in many "nation-states", there was a confusion between the term "nation", covering the entire population of a state, and the term "peoples": They could therefore not accept the existence of other peoples within their national borders. Arguing along the same line, **FAIRA** pointed out that there should not be a confusion between sovereignty, which belongs to the States and SD, which belongs to the peoples. Sharp critique was addressed by **CECIP** to the use of the term "sub-national groups" for IPs (see US statement).

The debate on the issue related to collective rights, already raised at other occasions revealed some misunderstandings whose origin was of a more philosophical than legal nature (**ATSIC**), was more between an individualistic and a community-based, collective approach to life (**CIDSA**). For some governments of Western tradition, collective rights were presented as if they were antagonistic to individual rights, which they emphasized to the detriment of the former (**Argentina, USA**). IPs saw no contradiction between both: collective and individual rights addressed conceptually different concerns and were complementary, as collective rights gave substance even to their identity as individuals (**ATSIC**). **AAH, CECIP, CSYM, MKG** explicitly pleaded in favour of the recognition of collective rights, as did the overwhelming majority of governments. **IMTA** reiterated that it was generally accepted that collective rights as SD were a prerequisite for the enjoyment of individual human rights. **CSYM** pleaded in favour of collective rights, as already recognized in ILO Convention 169 and in the African Charter on Human and Peoples' Rights. Declared that the question however was not whether collective rights precedents could be drawn from existing international instruments or not, but their legitimacy was based on the collective practice in which IPs lived, as shown i.e. by their collective property of lands. **Ms Daes** reported that most international instruments consisted of a synthesis of individual and collective rights.

As to the scope, all delegations, governments and IPs, were unanimous in accepting that the declaration was universal and applied to all IPs of the world. Consensus was also reached on the principle of SD as such (see above). **IOIRD**, followed by **COPMAGUA** and **IMTA**, therefore proposed to convoke a formal meeting in order to adopt the principle underlying art.3; a proposal which was not retained by the Chairman, **Mr Urrutia**.

According to **New Zealand**, the discussion of this issue may prove controversial, but it could lead to ground-breaking understandings of the nature of the relationship between IPs and the States they live in. As **Ms Daes** observed, IPs in general were opposing separatism or



disintegration of the States in which they lived and did not wish to see their lands divided: "Everyone of us should keep in mind the special and unique relationship of Indigenous Peoples with their lands." Advocating in favour of the adoption of the declaration which reflected also the positions of the governments which had participated at the elaboration of the draft in the WGIP, she said that it was legitimate to expect more substantive progress to be achieved in this Working Group.

Sources : oral and written statements, UNPO Monitor

Report on the Working Group on the Permanent Forum for Indigenous Peoples

Geneva, 15 - 19 February 1999

General statements

The indigenous delegates (**IOIRD, AN**) requested an indigenous co-chair for this working group and a legal advice on this issue. Their request was rejected as the Rules of Procedure of the Functional Commissions of ECOSOC (Rule 15) states that the bureau must be elected from among the members of the Commission. The indigenous delegates also questioned the political will of States, asking why the term "possible" was still used when referring to the establishment of the Permanent Forum (PF) (**IOIRD, GCC, AN, ICC, AIPP**). All indigenous representatives emphasized the need for IPs' participation within the UN system on an equal footing with States (i.a. **ICN, AN, Russian IPs, Chirapaq, CTT**). **MN** further stated that equal partnership would be an act of justice for IPs whose treaties with European nations have been violated since colonial times. **IMTA** considers the establishment of a permanent advisory body as a historical necessity. **ANCAP** called on governments to establish the PF as the contrary would be discriminatory. All indigenous delegates called for the establishment of the PF before the end of the Decade.

Denmark stated that the time was ripe for the establishment of the PF in order to secure regular dialogue between IPs and States and the effective involvement of IPs. On behalf of the **Asian group**, Sri Lanka stated that their final position would depend on the mandate and membership. Raised the issue of representativeness and legitimacy that they linked to the definition of IPs. IPs cannot not be on an equal footing with governments.

Mandate

The Chairman summarized the following points (CRP.1): 1) No government expressed formal opposition to the establishment of the PF; 2) In order to avoid duplication of work within the UN, the mandate of the WGIP should be broadened to become the new forum (governments); 3) UN declarations, resolutions and recommendations, such as the Vienna Declaration and Programme of Action, GA, CHR and Sub-Commission resolutions, are 'building blocks' for the mandate of the PF (Chairman); 4) Broad mandate covering all issues affecting IPs, all human rights, including the right to development, along the lines of ECOSOC; 5) Scope of action: advisory role and recommendations to UN bodies, regional organizations and governments; 6) Promotional role, including coordination and initiation to facilitate cooperation between governments and the UN, definition of strategies for development policies and programmes, promotion and protection of IPs' interests and rights. 7) Conflict prevention and solution (IPs), opposed by a number of governments; 8) Policy-making role (IPs), opposed by governments. 9) System of cooperation and consultation between the PF and relevant UN bodies under ECOSOC, such as all functional commissions, the five regional commissions and the three existing standing committees, to be established (Chairman); 10) Cooperation and consultation with specialized agencies: they have their own governing bodies, which prevents the PF from having a policy-defining role (Chairman).

All indigenous representatives called for a broad and flexible mandate to address IPs' concerns and complaints related to political and civil rights, ESC rights, health, women, children, environment, education, human rights (**CPA, CCFUP, AIPP, ANIPA, IMTA, DM, COJPITA, FOAG, MDA, ANCAP, IMTA, FICI, CAPAJ, CTT, NSWALC, Chirapaq, ALSWA, SC-ICC, NEFEN**) as a moral imperative (**TF**). Political will is needed to establish the PF above the CHR level (**ACFOD**). The mandate must be innovative (**CTT**), should support and consolidate IPs, be like an indigenous GA (**ANCAP**) or a security council for IPs (**RAIPON**). The PF should also focus on issues such as climate change, biodiversity and toxic waste (**IITC**).

The PF should monitor and report on the human rights situation (**COPMAGUA, NEFEN**), provide formal mechanisms for the lodging of grievances and complaints (**IMTA**) with special reference to the extinguishment of ancestral land rights (**ICN**), monitor international instruments (**FICI, CTT, NEFEN**), and promote human rights of IPs (**LM, CTT**). It should also foster self-development (**CAPAJ**), address issues related to sustainable and equitable development, elaborate strategies for alternative development for the survival of communities (**IMTA**). It ought to focus on environmental destruction as its most important task (**AAS**). It should be based on the principles of non-discrimination, equality and justice (**JOHAR**), design policies to eradicate discrimination (**ANCAP, COPMAGUA**), consider social phenomena such as racism, exclusion, extreme poverty and infant mortality (**IMTA**), as well as globalization of national economies and technology transfer (**TKM**).

The PF should be a political decision-making body (**ICC, FICI, SC, ICN, DM, RAIPON, TKM, PIDP, WPPF, NPMHR, CISA, COPMAGUA**). Conflict resolution and prevention should be included in the mandate (i.a. **COPMAGUA, FICI, SC, TF, NSWALC, IMTA, ALSWA, NEFEN, PIDP, AN**). The PF should work in coordination with the Security

Council (**ANCAP**). It should have the capacity to prevent cultural genocide (**CAPAJ, CISA**). **IMTA** and **ICN** insisted on the demilitarization of indigenous territories. The ability for legal sanction was mentioned (**IOIRD, COPMAGUA, SC, TKM, NIPDISC**). The PF should be able to take action on behalf of IPs of the world (**CPA, DM, NEFEN, HD, COJPITA**) and should not be bureaucratic (**CTT**). The PF should also make recommendations to governments (**FICI, NEFEN**) on IPs' traditional knowledge about teaching, health, use of natural resources (**RAIPON**), provide guidance and advice to States (**NSWALC, TKM**), specialized agencies (**COICA**), and UN bodies (**IMTA**). Many indigenous representatives recalled that the overall goal of the PF was promotion of peace and prosperity of IPs (**AN, COJPITA, JOHAR, CTT**).

As for standard-setting activities, the PF should draw up, coordinate and follow up UN programmes, policies and activities (**FICI, COPMAGUA, COICA, NSWALC, COJPITA, ALSWA, FOAG, NEFEN**), conventions and guidelines (**CTT**), standards for transnational corporations' activities (**IMTA**) and adapt national legislation to international law (**FOAG, MDA**). The development of coherent international standard-setting instruments to deal with criminal justice issues and improve upon the Draft Declaration after its approval should be included in the mandate (**NAILSS**).

The PF could receive case studies (**COICA**), conduct expert studies (**NSWALC, IMTA**) and organize workshops and an international conference on self-determination and natural resources (**IMTA**). The PF should also disseminate information on the conditions of IPs (**NSWALC, TKM, ALSWA, NEFEN**). Another proposal included the ability to look at World Bank and Asian Development Bank policies (**TF**).

For **Denmark, Norway, Finland**, the mandate should include all issues affecting IPs and strengthen international cooperation in human rights, environment, health, culture, education and development issues. **Australia** also agreed on a mandate as broad as possible (supported i.a. by **Mexico, France, Peru, Malaysia**). **France** pointed out that the mandate should cover both Covenants on Civil and Political, and ESC rights (also **Switzerland, Paraguay**). **Netherlands** emphasized education, children and gender issues. For **Spain**, the PF should focus on the definition of development strategies and follow-up, as well as on Decade's activities. The establishment of a legal and political framework is an essential aspect of the establishment of the PF. **Ecuador** and **Switzerland** insisted on a broad but specific mandate. **Malaysia** stated that effectiveness and participation of IPs must be increased.

Brazil declared that the establishment of the PF should be considered in the light of UN reforms, taking into account the available resources, and within UN rules. **UK** had no settled position on many issues, but the main focus of the mandate should be on human rights and related issues (also **India**). For other matters such as country situation, **India** recalled that other bodies such as the CHR and the Sub-Commission are available to IPs. For **China**, the PF should deal with the protection and promotion of IPs' rights, and be established after the Declaration is adopted. They will be flexible on the issue of definition.

Duplication of UN efforts must be avoided (**Mexico, Switzerland, Peru, Argentina, UK, Malaysia, Russian Federation**). **New Zealand** pointed out the need to discuss if a new body should be created or if a revised WGIP would be sufficient. The new body should replace the WGIP (also **Bangladesh**) or the mandate of the WGIP should be changed (**USA**).



Coordination and advice are key words (also **New Zealand, Netherlands, Sweden, Paraguay**), as well as dissemination, promotion and recommendations (**Denmark, Spain, Norway, Finland, Russian Federation**). Coordination role of the PF: within the UN (**Spain, Canada, Mexico, Switzerland, China**), coordination and advice between governments, IPs and UN with consultative character (**Ecuador**). For **Australia**, cooperation, mobilization of resources, advice to UN and specialized agencies, dissemination of information (also **Chile**), exchange of information (also **Mexico, Ecuador**) among indigenous experts are major points. **India** proposed the High Commissioner for Human Rights as the coordinator of the PF. **Canada** emphasized the advisory capacity of the PF to the Secretary-General, indigenous input, expertise and technical support, organization of seminars and working groups on specific themes. The PF should assist the Secretary-General and the High Commissioner for Human Rights. The PF could propose studies (**Chile**).

Russian Federation, Peru, Chile, Argentina, USA, Bangladesh, India voiced opposition against conflict resolution or jurisdictional capacity. **India** and **Malaysia** opposed the idea of advisory capacity. **Cuba** suggested that the PF address disputes which are not solved at the national level. **China** and **USA** stated that the PF should not be a standard-setting body.

Denmark and **Australia** (supported by **Canada** and **France**) insisted on including a review clause, as the PF will have to adjust its mandate according to changing circumstances. **Switzerland** suggested that the PF include the Declaration in its mandate once it is adopted.

Composition, membership and participation

The Chairman emphasized the following points (CRP.2): 1) a "core group" consisting of an equal and limited membership of governments and IPs, with the right to make decisions on matters within the mandate of the PF as well as on procedural matters; 2) work on the basis of consensus; 3) open to all governments, IPs' representatives, intergovernmental, regional and non-governmental organizations, as observers with the right to intervene and submit proposals. 4) experts may be called upon for technical and/or legal advice; 5) members of the 'core group' selected on the basis of nominations made by governments and IPs' representatives respectively, reflecting an equitable distribution and in accordance with their own practices and procedures; 6) The Rules of Procedure of the PF could be drawn up by the PF itself (Chairman); 7) Members of the 'core group' will serve for a limited period of time on a rotating basis, either in an official or in a personal capacity; 8) ILO model (no consensus); 9) Composition of PF is without prejudice to the status of the participants in any other international or national context.

The optimal number of members ranges from ten to 24, with an equal number of IPs and States, although there is no precedent for IPs members (Chairman).

All IPs' representatives requested parity with States, stressing that IPs should have full participation rights. In order for participation to have some meaning, the PF should be placed at the highest level of the UN. The PF would be a unique body (also Denmark and Canada)

and its composition would have to reflect historical, political and institutional concerns of IPs, such as colonialism and assimilation, and protection and promotion of their rights. For **IOIRD**, the PF should be an independent tribunal with legal ability, as treaties are international. The PF should be an assembly of IPs (**ABCP-CHTPC**), a general assembly with open-ended participation (**GCC**), a consultative and resolute general assembly (**Central-South American IPs**). The PF should consist of a political wing, a coordination wing and a secretarial wing (**MDA**). There should be a general assembly in which political decisions would be made and a technical political commission for standard-setting (**DM**). An annual general assembly for IPs and specialized agencies would discuss the executive committee's annual report (**FIPI**). Governments would be observers and final decisions would fall under the competence of the GA, ECOSOC or the Security Council. An executive body would immediately react to specific situations and a congress of IPs like this working group would work with the PF (**MCTP**).

The idea of a 'core group' was supported by many indigenous delegates who emphasized that it should be composed of an equal number of States and IPs' representatives (i.a. **FIPI, CPA, LMPF, ACFOD, COJPITA, ICC-SC, AIPP, NPMHR**), with indigenous members' right to vote on an equal footing with governments (**IMTA, RAIPON, ABCP-CHTPC, NEFEN, ICN, TKM**). In that respect, **ICC-SC** supported the ILO model. The PF should consist of 20 members with an executive committee consisting of four members (**GCC**). An executive committee, made of 20 members, would elaborate standards resulting from the general assembly (**Central-South American IPs**). Elders would contribute with their experience and wisdom as advisors (**ICN**). Specialized agencies should have representatives as members (**CTT**). A three to four-year membership was proposed (**Central-South American IPs, TKM, NEFEN, ALSWA, ICC-SC, NEFEN**). **ALSWA** suggested two delegates from each geo-political region representative of both IPs and States with five experts. **IOIRD** and **NSWALC** suggested a body of five State representatives (selected regionally), five IPs' representatives and five independent experts.

Indigenous members should be appointed or elected by IPs themselves on a regional basis (**FIPI, NIPDISC, ABCP-CHTPC, ACFOD, CCFUP, Central-South American IPs, NEFEN, TF, AIPP**), by the Secretary-General or ECOSOC (**CTT**). Governmental members should be appointed by ECOSOC (**IMTA**). Indigenous members of the general assembly should be selected by their organizations' national assembly (**Central-South American IPs**). Many indigenous delegates considered that the current UN geographical distribution was inadequate for the representation of IPs (**TF, NEFEN**). **RAIPON** stated that the 100 Russian IPs should have a permanent regional representation and called for a linguistic distribution. **TKM, Sabah IPs, ALSWA** emphasized that Asia and the Pacific should be two distinct regions. The specificity of IPs from regions such as Oceania, the Caribbean and Amazonia should be taken into account (**ITC**).

The PF should be open to all interested observers, such as IPs, NGOs, experts, scholars, specialized agencies, regardless of ECOSOC status (**IMTA, ICC-SC, CCFUP, DM, FICI, IOIRD, NIPDISC, ASS, GCC, Central-South American IPs, NEFEN, TKM, FIPI, RAIPON, JOHAR, NSWALC**). The body under which the PF will be placed will influence participation (**TF**).

Denmark suggested that the PF be composed of a 'core group' of States, IPs and specialized agencies, including financial institutions, with parity in their level of participation. **Spain** proposed that the PF follow the ILO model, which has a tripartite membership of workers,



employers and government representatives (also **Argentina, Peru, Ecuador, Chile**). The PF would consist of a decisive executive committee composed of States and IPs with parity (also **Peru, Ecuador, Chile, Mexico, Netherlands**) with regards to their participation and geographical distribution, and of an assembly including States, IPs, NGOs, experts and specialized agencies. **Norway, Canada, Sweden, Finland** and **New Zealand** supported the idea of indigenous and State membership. **Australia, New Zealand** and **France** opposed the inclusion of specialized agencies as members. **Chile, UK, Australia** and **Norway** pointed out that members of the core group should act in a personal and independent capacity. According to **Australia, New Zealand, Canada** and **Chile**, the PF should work on the basis of consensus.

Australia supported an equal number of IPs and State members, but not on an equal footing, "Indigenous groups" cannot have a legal status equivalent to UN Member States. Participation should be open as in the WGIP (**USA, Japan**). The new body should be composed of experts (**Japan**). "Interested groups" could be included as experts (**Venezuela**). Financial issues would require a double vote from States and indigenous delegates should be included in the governmental delegation of their respective countries (**Argentina**). **Brazil** also suggested that indigenous representation be channelled through national governments. **Argentina, Peru** and **Chile** emphasized the criteria of IPs' legitimacy and representativeness. **Peru** pointed out that legitimacy could be guaranteed by national processes and **Chile** added that membership would have to follow UN rules, including current regional distribution.

IPs should be able to select their representatives according to their own procedures (**Spain, Canada Mexico**). Participatory mechanisms should come out of the national level (**Spain**). Membership should reflect the global geographical distribution of IPs (**Spain, New Zealand, Canada, Cuba, Mexico**). Regional distribution between States and IPs should be equal (**Ecuador**). Membership should be rotating (**Chile**), limited to four years (**Netherlands**), and on a regional basis to reflect diversity (**France**).

As for participation, **Australia, Norway, Spain, Mexico, Finland** and **Cuba** were in favour of an open access for all observers regardless of ECOSOC status. **Ecuador** requested transparency.

Level

The Chairman pointed out that the PF should be linked in one way or another to ECOSOC, but its exact placement would depend on the final outcome of the discussion on the mandate (CRP.3).

All IPs' representatives agreed that the PF should be placed at the highest level and set forth several proposals: ECOSOC level (**RAIPON, CGK, CISA**); same level as other ECOSOC commissions (**Central-South American IPs, CCFUP, COJPITA, CCFUP**); functional commission attached to the office of the Secretary-General (**GCC**); subsidiary body of ECOSOC (**NAILSS, ALSWA, COICA**), linked to the HCHR in Geneva (**IMTA**). It should

report directly to ECOSOC (**NEFEN, SC-ICC**). The PF must be an important body, with a level as high as possible to promote dialogue (**ASS**).

Other argued that the PF would be a new kind of body attached to ECOSOC (**TF**) or parallel to ECOSOC (**LMPF, ANCAP, MDA**) as its mandate should include conflict resolution (**JOHAR**). It should be directly linked to ECOSOC without any in-between commissions or subsidiary bodies (**IITC**). It should have the status of the International Court of Justice at the level of ECOSOC (**EMIROAF**). The PF should not be under the CHR (**FOAG-ICN, ACFOD**).

Other considered that ECOSOC was the lowest level for indigenous concerns (**IWGIA**), pointing out that GA and Secretary-General level were higher (**IOIRD**). **AFN** also stated that the PF should be at the GA level. It could be a subsidiary body of GA (**SAA, ALSWA**). Either GA or ECOSOC level would be appropriate (**CAPAJ**). For **NSWALC**, the PF could be an advisory body to the GA or the Secretary-General. It could be located within the structure of the present Trusteeship Council (**NAILSS**).

IWGIA suggested that a World Conference on IPs be organized in the process of establishing the PF in order to consider mechanisms to address global concerns.

The PF should be directly attached to ECOSOC (**Canada, Finland**), as its mandate will cover issues such as the environment, education and health (**Denmark**), cultural and social development (**Chile**). Its placement is linked to the mandate, but it should report directly to ECOSOC (**New Zealand, Peru**). It should be placed under ECOSOC, without being attached to CHR or any other functional commission (**Netherlands**). It should be an effective UN subsidiary body (**China**). A tenth functional commission should be created (**Switzerland, Spain, Mexico, Honduras**). It should be at the level of a functional commission as a different body following ECOSOC rules of procedure (**Norway**). It could be a subsidiary body of ECOSOC (**Sweden**).

Brazil opposed the creation of a tenth commission and proposed to enlarge WGIP mandate instead. The PF would have to go through CHR to address ECOSOC (**Argentina, UK, France**) because its mandate would mainly focus on human rights (**USA, Venezuela**).

Financial and secretariat implications, location and name of forum, relationship with the WGIP

All participants agreed that the costs should be borne by the UN regular budget (**RAIPON, ANCAP, AN, COJPITA, NSWALC, ICC-SC, ITC, CISA, FICI, ANIPA**) as well as voluntary contributions (**ABCP-CHTPC, IMTA, ALSWA-NAILSS-ATSIC, COICA, MDA, NPMHR**). **TF** pointed out that the Voluntary Fund had no financial certainty; it should therefore only be used for extra costs. Should the PF be linked to the HCHR, it could also be financed by the HCHR regular budget (**IMTA**). Extra resources should be made available for conferences and the secretariat and the VF should assist indigenous participants

and observers (**NSWALC**). Money constraints are unacceptable as IPs need all fora to address fundamental issues (**ANIPA, ICN**).

A full-scale secretariat should be established as part of the UN restructuring (**TF**). **IMTA** suggested an independent secretariat with advisory and operational capacity with four officers, among them two indigenous representatives. It should be strong and independent (**ANCAP**), run by an indigenous representative (**RAIPON**) and used for the dissemination of information in the countries (**COJPITA**).

Its headquarters should be in Geneva (**RAIPON, ANCAP, COJPITA, IMTA, ALSWA-NAILSS-ATSIC, ITC, CISA**). Meetings could be convened in territories where conflicts are taking place (**IMTA**). It should be placed in New York (**COICA**) and conferences should be organized in different locations around the world (**NSWALC**).

A "permanent forum for IPs" was considered an appropriate name (**IMTA, RAIPON, AN, NSWALC, COJPITA, FICI**). **ANCAP** stressed that the name should not have any folkloric connotation. It should be called "commission on indigenous peoples" (**NEFEN**).

As for the WGIP, all IPs concurred in stating that it should co-exist with the PF (i.a. **TF, RAIPON, AN, NAILSS, MDA-IPACC, CTU, COJPITA**). It should have a clear mandate complementary to that of the PF (**AN, MDA**). Its new functions should be conferred by the Sub-Commission. It could be a body for IPs' intellectual property (**IMTA**). Its mandate should be reviewed (**ANCAP**). It could be one of the PF assemblies (**CTU, ANIPA**), or an ongoing working group attached to the PF (**ALSWA-NAILSS-ATSIC**). **GCC** pointed out that the Vienna Declaration had no intention to make the WGIP and the PF mutually exclusive. The future mandate of the WGIP should be considered after the PF has been established (also **NEFEN**). The next task of the WGIP would be the elaboration of a Convention on IPs' rights (**CISA**).

TF further stated that the relationship with WTO, a key actor, and CBD should be explored. **AN** stated that the UN reform should be to the benefit of civil society's participation.

The PF should be financed by the UN regular budget (**Germany, Norway, Japan, Canada, Finland, Guatemala**) as well as voluntary contributions, (**Denmark Peru, Spain, Chile, Argentina, Switzerland, France, New Zealand, Bangladesh, Ecuador, Australia**). In view of the current budget, caution is required; as for the secretariat, duplication of work must be avoided (**Brazil**). The core group would be paid by the respective States and the Voluntary Fund for IPs (**New Zealand**).

The PF should not necessarily have its headquarters within the UN (**Denmark**). It should be located in Geneva (**Peru, Guatemala, Norway**) because of the presence of specialized agencies and NGOs, the Swiss financial contribution for indigenous issues, historical reasons, and in order to ensure continuity (**Switzerland** supported by **Germany, France**). Additional costs of meetings outside Geneva would be paid by the host country (**Switzerland, Canada**) or by voluntary contributions (**New Zealand**). There could be meetings on a rotational basis with headquarters in Geneva (**Spain, Australia, Cuba, Bangladesh**). Location, New York or Geneva, should be the most cost effective one (**New Zealand**).



The name of the PF depends on its relation with ECOSOC (**Peru**). The name "forum" is appropriate for discussion and dialogue (**Chile**) and for flexibility (**France**). **Switzerland** and **Venezuela** were in favour of the name "permanent forum".

It is still premature to decide on the future of the WGIP (**Denmark, Finland, Chile, Mexico, Peru**). This issue should be discussed at the CHR (**Norway, Ecuador**). Many States suggested that the WGIP disappear for financial reasons and to avoid duplication of work. **Switzerland** pointed out that its mandate would be part of the PF. The WGIP must be replaced by the PF after a transitional period (**Australia, India, Canada, Bangladesh**). **USA** suggested that the WGIP be restructured to include development and related issues (supported by **Argentina, Brazil, UK, Venezuela, Japan, New Zealand**).

Follow-up

All IPs requested another session to finalize the work on the establishment of the PF (i.a. **COPMAGUA, CPA, IMTA, ACFOD, IWA, ANCAP, CIM, JOHAR, COJPITA, Okinawa IPs, AN, NPMHR-IAITPTF, NEFEN, TF, CAPAJ, ICC, WPPF**). They called on governments to increase their contributions to the Voluntary Funds (**Okinawa IPs, AN, TF, Chirapaq**). **Chirapaq** called for a more equitable distribution of resources. Many IPs stated that financial implications should not be invoked to block the process.

MN said that a lot of work still had to be done and hoped that Canada would consult with IPs as they stated. The Voluntary Funds could help make progress on projects related to the PF (secretariat, international consultative work, new distribution of regions). **AN** pointed out that the issues of composition and mandate should still be discussed. **DM** called on governments, such as the **USA**, to be more cooperative and propose alternatives. **PIDP** regretted the absence of African governments.

Denmark will request a longer session -seven to eight working days- to the CHR to finalize the work on the PF (also **Venezuela**) and stated that intersessional work is needed for consultations (also **Norway, Canada, Bangladesh, Spain, Chile, Finland, Sweden, Russian Federation, Cuba, France**). This resolution will be co-sponsored by **Mexico**. The other CANZUS States and **UK** either ignored the proposal or rejected it. **Switzerland, Spain** and **France** pointed out the need to finalize rapidly the work on the PF.

UK stressed the difficulty of having another ad hoc meeting without sacrificing another working group (opposed by **TF**). **USA** also expressed concern about the financial implications of another longer meeting and pointed out that this issue did not fall within the mandate of this working group. **Cuba** replied that financial constraints should not be used as an obstacle.

Adoption of the report



All IPs' representatives supported the Chairman's work and regretted that the process could be blocked for procedural matters by some States such as **India, Australia, USA, Brazil, Argentina** and **UK**, who argued that the Chairman's summaries did not reflect their views and should therefore not be included in the report. On behalf of the governmental caucus, **Peru** suggested that material from CRPs 1-3 only be included if a delegation felt that they reflected their ideas. **IWA** and **AN** expressed concern about the changes suggested by governments and pointed out that IPs' positions must also be taken into account in the report. The Chairman decided that his summaries would be annexed to the report. **CPA** emphasized the general feeling of frustration among IPs. **MN** asked if governments really wanted a PF. According to **FOAG**, to reject the PF is to reject part of humanity. **COPMAGUA** pointed out that UN rules are inadequate for consensus, as governments will make decisions at the CHR. **RAIPON** explained that IPs do not want supremacy, but want their knowledge about traditional resources to be taken into account.

The working group decided to recommend to the CHR that: 1) it request the High Commissioner to disseminate the report of the working group; 2) it request the High Commissioner to organize a further ad hoc working group with a view to finalizing its work; 3) it invite the Chairman-Rapporteur of the ad hoc working group to consult with governments and IPs and to prepare a working paper containing proposals.

Sources: oral and written statements, CRPs 1-5, summaries by Native Americas Magazine

List of abbreviations

AAH:	Ainu Association of Hokkaido (Japan)
AAJ:	American Association of Jurists
AAS:	Ainu Association of Sapporo (Japan)
ABCP-CHTPC:	Asian Buddhist Conference for Peace - Chittagong Hill Tracts Peace Campaign
ACFOD:	Asian Cultural Forum Development (India)
AFN:	Assembly of First Nations (Canada)
AIPP:	Asian Indigenous Peoples Pact
ALSWA:	Aboriginal Legal Service of Western Australia
AMICOP:	Associação Mulheres Sao Paulo (Brazil)
AN:	Asociación Napguana (Panama)
ANCAP:	Association nouvelle de la culture et des arts populaires (Marocco)
ANIPA:	Asamblea Nacional Indígena Plural para la Autonomía (Mexico)
AP:	Acoma Pueblo (USA)
ASP:	Association of the Shor People (Russia)
ATSIC:	Aboriginal and Torres Strait Islander Commission (Australia)
CAPAJ:	Legal Committee for the Self-Development of Peoples of Andean Origin (Peru)
CCFUP:	Consultative Committee of Finno-Ugric Peoples (Russia)

CECIP: L'auravetl'an, Council of Elders of Chukchi Indigenous Peoples (Russia)

Central-South American IPs: COPMAGUA, CIDOB, DM, ANIPA, FICI, AN, COICA, Taller de Historia Oral Andina

CIDPIS: Comisión Internacional de Derechos de Pueblos Indígenas de Sudamérica

CISA: Consejo Indio de Sud América

COICA: Coordinating Body for Indigenous Organizations of the Amazonian Basin

COJPITA: Comisión Jurídica de los Pueblos de Integración Tawantinsuyana (Peru)

COPMAGUA: Coordinación de Organizaciones del Pueblo Maya de Guatemala

CPA: Cordillera Peoples Alliance (Philippines)

CSYM: Christian Spiritual Youth Ministry (Tanzania)

CTT: Consejo de Todas las Tierras (Chile)

CTU: Consejo Tukum Umam (Guatemala)

DM: Defensoría Maya (Guatemala)

ECN: Ermineskin Cree Nation (Canada)

EMIROAF: Ethnic Minority and Indigenous Rights Organisation of Africa

FAIRA: Foundation for Aboriginal and Islander Research Action (Australia)

FICI: Federación Indígena y Campesina de Imbabura (Ecuador)

FIPI: Frente Independiente de Pueblos Indios (Mexico)

FOAG: Fédération des organisations amérindiennes de Guyane

FZLN: Frente Zapatista de Liberación Nacional (Mexico)

GCC: Grand Council of the Crees (Canada)

HD: Haudenosaunee Delegation

HNAHNU: Mexico

IAITPTF: International Alliance of the Indigenous and Tribal Peoples of the Tropical Forests

ICC: Inuit Circumpolar Conference

ICHRDD: International Centre for Human Rights and Democratic Development

ICN: Innu Council of Nitassinan (Canada)

IHRAAM: International Human Rights Association of American Minorities

IITC: International Indian Treaty Council

ILRC: Indian Law Resource Center (USA)

IMTA: Indian Movement "Tupaj Amaru" (Bolivia-Switzerland)

IOIRD: International Organization of Indigenous Resource Development

ITC: Comité Intertribal - Memoria e Ciencia Indígena (Brazil)

IWA: Indigenous World Association

IWGIA: International Work Group for Indigenous Affairs

IWTO: Ikce Wicasa Ta Omniciye (USA)

JOHAR: Jharkhandis Organisation for Human Rights (India)

KLC: Kimberley Land Council (Australia)

LBCN: Louis Bull Cree Nation (Canada)

LMPF: Lumad Mindanaw Peoples Federation (Philippines)

LN: Lakota Nation (USA)

MCN: Montana Cree Nation (Canada)

MCTP: Mejlis of Crimean Tatar People (Russia)

MDA: Maa Development Association (Kenya)

MKG: Maya K'iche de Guatemala

MN: Mohawk Nation (Canada)

MNC: Metis National Council (Canada)

MOSOP: Movement for the Survival of the Ogoni People (Nigeria/Denmark)

NAILSS: National Aboriginal and Islander Legal Services Secretariat (Australia)

NEFEN: Nepal Federation of Nationalities - AIPP - IAITPTF

NIPDISC: Nepal IPs Development and Information Service Centre


NN: Navajo Nation (USA)

NPMHR: Naga People Movement for Human Rights (India)



NWALC: New South Wales Aboriginal Land Council (Australia)
ONPZ: Organizaci3n Zapatista (Mexico)
PIDP: Programme d'intégration et de développement du peuple pygmée au Kivu (D.R. Congo)
RAIPON: Russian Association of Indigenous Peoples of the North (Russia)
SAA: Shri Arravalli Adivasi (India)
SC: Saami Council (Sweden)
SCN: Samson Cree Nation (Canada)
STP: Society for Threatened Peoples
TF: Tebtebba Foundation (Philippines)
THA: Talleres de Historia Andina
TKM: Te Kawau Maro (NZ)
TSN: Teton Sioux Nation (USA)
WPPF: West Papua Peoples' Front (Netherlands)

News

 **Workshop on the Benefits of Pastoralist Peoples' Practices**
to be held in Madrid from 5 to 9 June 1999.

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 **Committee against Torture**


Geneva, 22nd session, 26 April - 14 May 1999: Morocco, Venezuela ; 23rd session, 8 - 19 November 1999 : Finland, Peru.

 **Committee on Economic, Social and Cultural Rights**

Geneva, 20th session, 26 April - 14 May 1999: Denmark, Solomon Islands; 21st session, 15 November - 3 December 1999: Argentina, Cameroon, Mexico.

 **Committee on the Elimination of Racial Discrimination**

Geneva, 55th session, 2 -27 August 1999: Australia, Central African Republic, Chile, Colombia, D.R. of Congo, Uruguay, Zimbabwe.

 **Committee on the Rights of the Child**



Geneva, 22nd session, 20 September - 8 October 1999: India, Russian Federation.

Acknowledgments

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