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1. EDITORIAL

For indigenous peoples, the year 2004 holds many important deadlines at the United Nations. First, the mandates of the members of the Permanent Forum on Indigenous Issues expire at the end of the year and the indigenous organisations are currently proposing their candidates for the period of January 2005 – December 2007. Second, in July, the ECOSOC will receive the preliminary report on the evaluation of the International Decade of the World’s Indigenous People produced by the Office of the High Commissioner for Human Rights (OHCHR), and which the General Assembly will have to adopt between September and December. In 2005 a new report will be produced by the OHCHR. These reports being based on the experiences of governments, intergovernmental organisations and indigenous peoples (IPs), it is important that IPs send their written position papers to the OHCHR. Furthermore, the ECOSOC has asked for a second review of all UN mechanisms and procedures dealing with IPs, in order to determine the future of the WGIP during its July substantive session. Finally, in September the Draft Declaration should be adopted, but considering that consensus has only been reached on two articles, it is quite unlikely that this will happen.

This publication is specifically dedicated to the 9th Session of the Working Group on the Draft Declaration (WGCD). A dynamic debate was held among 25 governmental delegations and 47 indigenous organisations, and no article was adopted. However, several states attempted to facilitate, to the highest degree possible, the consensus on the 24 articles discussed; the Indigenous Caucus announced at the beginning of the session its acceptance of new proposals as long as they reinforce the original draft adopted by the Sub-Commission on the Promotion and Protection of Human Rights. Guatemala and Mexico stated their support for the original text. The Nordic states presented a preambular paragraph regarding the right to self-determination and the territorial integrity of the states as well as a working plan, which was accepted, to enable the approval of nine articles, some of which had practically been approved during previous sessions. Indigenous organisations presented proposals with sound juridical support. Some countries declared that they were willing to accept certain articles with the original text, notably, Finland (9 articles), Venezuela and Brazil (7 articles), New Zealand, Sweden and Switzerland (5 articles), whereas China defended collective rights.

This was not enough. Fundamental principles of the DD were put into question, such as collective rights (present in the domestic law of several states); the right of self-determination as being established in international law; the principle of equality of IPs by the substitution of the term “equal” by “on the same basis” (article 17 regarding media); as well as the expression “have the right” by “shall enjoy fully all rights”, which would diminish the responsibility and obligations of the states (article 18 regarding the international labour law). Two days before the end of the session, the plenary debate was suspended and replaced by informal consultations. For the indigenous delegations, as well as for several states, this manner of proceeding lacked transparency.

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2. WORKING GROUP ON THE DRAFT DECLARATION

9th session, Geneva, 15 to 26 September 2003

Two preamble paragraphs and 24 articles were discussed during this session, which focused first on articles that might reach consensus for provisional adoption, and then on issues of self-determination and land, territories and resources. In spite of high expectations, no article was adopted and many IPs’ delegations, as well as some States, raised their concerns that informal consultations among States did not involve equally all participants.

Report on the WGCD:

Opening session and organization of work

Mr. Chávez (Peru) was re-elected Chairperson-Rapporteur for this session, he urged the participants to show flexibility and good will in order to reach consensus, this session and the next will be crucial to complete the mandate of the WGCD, which is to approve the DD before the end of the Decade. Mr. Chávez said he would do all that is possible to obtain the approval of some articles by the end of this session. The following work plan was agreed upon: the first week would be dedicated to the less controversial articles (1, 2, 8, 10, 13-18, 35 and 45) followed by an in-depth discussion of articles on self-determination. The second week of session would be aimed at achieving concrete progress on the text, taking into consideration the progress made during the first week. Regarding the report of the working group, Mr. Chávez expressed his concern that the report adequately reflect all the proposals presented. Before opening the discussion on the articles Mr. Chávez asked for a moment of silence to honour Mr. Sergio Vieira de Mello, who was very much involved with the work of the WGCD, and to honour Ana Lindh, who’s death affects all those involved in human rights.

The Indigenous Caucus reminds the participants that new proposals should strengthen the current text and respect the principle of non-discrimination, recalling the General Assembly resolution 41/120 of December 1986 on standard setting in the field of human rights, which emphasises that the established international legal framework should be considered when developing new international human rights standards.

IMTA urge Mr. Chávez to give equal consideration to proposals presented by indigenous peoples’ (IPs) organisations and by states.

GUATEMALA and MEXICO express their support for the draft declaration (DD) in its original text, Guatemala wishes to withdraw its prior proposals regarding the right to self-determination, lands and territories.

CHILE describes the improvements of its legislation for the promotion of IPs’ rights. Regarding self-determination Chile will accept all formulations included in the ILO Convention 169.

Mr. Magga, President of the Permanent Forum on Indigenous Issues (PF), declares that the PF has not touched upon the content and formulation of the DD, the WGCD is the most competent body to deal with this issue, this is why delegates do not express their opinion as Forum members. There needs to be an acceptance that not everyone will have a declaration formulated exactly to their liking. Unfortunately, there are still accreditation problems as in other meetings, which will hopefully be resolved.

Chief Edward Gray of the Haudenosaunee delegation opens the session with a traditional greeting for all the participants.

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1 This report is based on written and oral statements, as well as on the draft reports E/CN.4/2003/WG.15/CRP.1, CRP.2, CRP.3 and CRP.4. Given the informal nature of the debate, the present report cannot be exhaustive, but aims to provide an overview of the progress made. The official report’s registration mark is E/CN.4/2004/81.
Sub-Commission text of the Draft Declaration on the Rights of IPs

More than 25 articles and preamble paragraphs were discussed during this ninth session of the WGCD. Unfortunately, due to lack of space, we cannot include them all here in their original Sub-Commission text. The whole text of the Draft Declaration, as approved by the Sub-Commission on the Promotion and Protection of Human Rights, is available at doCip or on the web at:

http://www.unhchr.ch/indigenous/main.html

Discussion of articles

DENMARK begins the informal session by presenting a proposal on behalf of the Nordic countries (E/CN.4/2003/WG.15/WP.2). The first part suggests to focus on articles 1, 2, 8, 10, 13, 14, 15-18, 35 and 45 for provisional adoption. The second part of the proposal consists on discussing separately articles pertaining to self-determination (proposal available at doCip).

Article 8

DENMARK can accept article 8 as it stands, and proposes to add “and individuals” after “IPs” for the sake of consensus. GUATEMALA can approve the article with its original text (also ARGENTINA, BRAZIL, NEW ZEALAND, SWITZERLAND), and proposes to present it for approval since Denmark also accepts it. CHINA can accept the text as is but adding “and individuals” is not acceptable. IPs as individuals are entitled to all rights guaranteed under human rights law. The purpose of the DD is that IPs’ special rights are acknowledged, including collective rights (also CHILE). CANADA declares that adding “and individuals” would achieve the Canadian objective in the spirit of compromise.

The USA proposes: “IPs are free to maintain and develop their distinct identities. Indigenous individuals are free to identify themselves as indigenous.”

UK declares that their concerns are not addressed by adding the term “individual”. The question in the whole DD is to define who is entitled to these rights. More consideration should be given to the USA proposal.

Mr. Chávez states that addressing the issues from the perspective of freedoms is important, however the mandate of the WGCD is to achieve a Declaration that defends the rights of IPs and therefore it is more natural to speak in terms of rights.

With respect to adding “individual” to article 8, IITC state their concern since individual rights are already protected; there is a necessity to recognize that there are collective rights (also IMTA). Even though individuals have the right to consider themselves as part of a group, ultimately the group is the one that determines who these members are (also COCEI-FDD, TIPRDC, CTT, Yatama). SC point out that though they agree with IITC, it will be very difficult to completely avoid mentioning individual rights in the DD, but this should not undermine collective rights.

AFN remind Canada that all its supreme courts recognize collective rights.

ICSA wish to see article 8 remain in its original form and ask Denmark to remove its amendment, which causes confusion.

Article 10

“IPs shall not be forcibly removed from their lands or territories. [Forced removal or relocation shall only take place in accordance with the principles of due process and compensation] [No relocation shall take place without the free and informed consent of the IPs concerned and after agreement on just and fair compensation] and, where possible, with the option of return.” (AUSTRALIAN proposal, addressing the issue of emergency situations)

CANADA supports the Australian proposal (also USA), the reference to “due process” may hopefully be seen to incorporate IPs’ concerns.

MEXICO appreciates Australia’s inclusion of “due process” but this is not a fair replacement of free prior and informed consent, the original text is preferred (also GUATEMALA, NORWAY, FINLAND).
SC disagree with the way Australia claims to address the issue of emergency situations, their proposal transforms the whole article. SC want the article to keep its original text (also ICSA, ICC). NKIKLH add that the amendments presented have no basis and are simply a barrier to prevent consensus. The concept of “due process of law” is a Western concept, which refers to a juridical procedure alien to most indigenous processes.

TIPRDC disagree with replacing “free, prior and informed consent” by “due process” and replacing “agreement” with “fair compensation”, these changes weaken the text and to not ensure the protection of IPs' rights (also Yatama).

The particular nature of the relation that IPs have with their land needs to be reflected in the declaration and due compensation needs to be given for when IPs lose their land (CAPAJ).

AILPN ask how people can be removed from their land without employing the “due process of law”? ILRC state that the concerns raised by Australia are already addressed in article 4 of ICCPR where the rights and obligations of states are very clearly stated. If reference to emergency situations is to be included, then it should be in line with article 4 of International Covenant on Civil and Political Rights (ICCPR) (also AFN, BRAZIL, FINLAND, NEW ZEALAND). CTT add that these changes would affect other articles relating to territories.

Article 44

“Nothing in this Declaration may be construed as diminishing or extinguishing the rights indigenous peoples [and individuals] have now or may acquire [in the future].” (USA proposal)

AUSTRALIA supports the inclusion of “individual” in article 44 (also UK, GERMANY, FRANCE).

SOUTH AFRICA considers that the wording “indigenous peoples” already includes the individuals, thus it is unnecessary to change the article.

NORWAY agrees with the proposal to remove either “now” or “future” rights (also UK, NEW ZEALAND for grammatical reasons). CANADA considers that this proposal is more in line with the French version of the article.

MEXICO urges the delegates to reduce the time spent on technical details.

IITC declare that the fear that collective rights might impinge on individual rights is totally unfounded. TIPRDC voice their concern that the USA will want to put the word individual in every article, transforming the declaration into one for indigenous individuals and not IPs (also IPACC).

ICC state that “existing and future rights” are different and therefore both need to be kept in the text, they do not understand USA's proposal with regard to this part (also AFN).

Article 45

“Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act [aimed at the destruction of any of the rights of freedoms recognised in the Charter of the United Nations and in applicable international human rights law, or at their limitations to a greater extent than is provided for therein].” (FRENCH proposal)

The FRENCH proposal has two objective: 1) avoid that the declaration be used as a pretext to violate pre-existing engagements; 2) in order to have a better respect of human rights, this declaration needs to address those that implement them, that is the states.

SWITZERLAND declares that this article is very close to article 30 from the Universal Declaration, therefore there is no reason to change it (also MEXICO, GUATEMALA).

NORWAY, USA, UK and CANADA are open to discuss and reflect upon the French proposal. Canada is willing to adopt this article as it stands (also SWEDEN, UK).

CHINA states that this article has a general scope, thus impeding that a state, group or individual uses this declaration for evil purposes. There is no need to revise the article as France has proposed (also BOLIVIA), and if this would happen, this would be problematic for many Asian countries.

Tamaynut and IPACC declare that the aim of this article is to protect the rights of all IPs, it has been extensively discussed, and therefore should be ready for approval.

IMTA state that the human rights inscribed in the Universal Declaration need to evolve with time, they support the French amendment.
ICSA declare that the states are monopolising the DD, however there are bodies that are above states and to whom this declaration is also addressed. ICSA could accept the reference to human rights instruments at the end of the article (also Russian Federation, Finland, FOAG).

IPNC ask France how they define their third parties’ rights are, IPs are also third parties whose rights must still be defined at an international level. The French proposal would reduce the scope of peoples and IPs rights.

JOHAR declare that they accept the article 45 as it is (also RAIPON, ICC), but the French proposal has some merit, if the intention is to put the responsibility of controlling human rights’ violation on states.

ICC draw the attention to the fact that article 44 embodies already the issue of the destruction of rights.

Article 1

“Indigenous peoples have the right to the full and effective enjoyment of all human rights and fundamental freedoms recognised in the Charter of the United Nations [and applicable international human rights law, or at their limitations to a greater extent than is provided for therein.]” (NORDIC proposal)

“Indigenous [individuals] [peoples] have the right to the full and effective enjoyment of all human rights and fundamental freedoms [and indigenous peoples have the right to the full and effective enjoyment of the rights set forth in this Declaration.] [recognised in the Charter of the United Nations, the Universal Declaration of Human Rights and international human rights law.]” (USA proposal)

Regarding self-determination, GUATEMALA strongly believes that it is not a right that should be left to the internal regulations of each state, the guarantee of this right needs to be expressed in the text of the Declaration. There is no secessionist risk in self-determination, unless it be provoked by the states themselves through legislation and administrative procedures (also CHILE). In all cases of land confiscation and expropriation, Guatemala agrees that IPs’ rights to compensation and restitution are absolute and inalienable.

CANADA supports the reference to “individual” in article 1 since it would clarify and strengthen the text, and is open to the ILRC proposal (see below). Canada proposes to add “applicable” before “international law” (also UK, NORWAY, SWITZERLAND, NEW ZEALAND).

The UK suggests to add “collective and individual” after enjoyment as a means to respond to both those who want to include “individual” and those who do not (also IMTA, FRANCE).

NEW ZEALAND further proposes to add “collectively and individually” after “IPs have the right”, in this way neither collective or individual rights have supremacy (also FRANCE, SWEDEN, GUATEMALA, ECUADOR, MEXICO are open to discuss the proposal).

CHILE declares that the WGCD is not the place to resolve internal matters which remain pendant, but rather a place to establish basic definitions that will assist in the resolution of conflicts. Chile describes the progress made and the challenges it still faces regarding the protection of indigenous rights. It agrees to the elements of ILO Convention 169 regarding self-determination (though it is yet to be ratified in Chile) and agrees to the rights stated in preamble paragraphs (pp.) 1, 6, 7.

NORWAY supports the inclusion of “individuals” in this case because it does not weaken the collective right (also FINLAND, SWITZERLAND).

USA considers article 1 too broad, even with the Nordic proposal. Certain aspects of the DD need to be revised since not all rights mentioned are collective human rights, some apply to individuals and others are not really human rights, but a different kind of right (also FRANCE, UK).

The Nordic proposal is not ideal for FRANCE but it is willing to accept it.

IITC declare that adding the word “individual” would be confusing and wrong, it would emphasize individual rights above and against the collective rights (also CEALP). Individual rights are paramount in the UN Charter and other international instruments, whereas there is a lack of understanding of the collective under human rights law, which needs to be addressed in this Declaration (also FAIRA, COCEI-FDD, IMTA, CEALP, AIRT, CAPA).

IMTA state that individuals are always part of a collective, IPs have always constructed their societies on the basis of the collective.

CEALP declare that individual property has led to the loss of IPs’ language, culture and lands. They are not against the mentioning of individual rights in a separate article.
IOIRD declare that past and present experiences in the USA and Canada demonstrate that when governments have given supremacy to “individual” land rights, it has resulted in the dismantling of Indigenous Nations and Tribes, and loss of their collective entitlement to the land. Very similar wording to article 1 exists in the ILO Convention Article 3(1) and has had no impact that can be of concern to states.

AIRT inform that as an IPs’ representative they are bound to uphold the minimum standards set out in this Declaration for all IPs. They are disappointed that amendments to this date have failed to improve the text.

For SC, including the word “individual” together with “collective” does not necessarily set them up against each other (also ILRC, AITPN). SC do not see the need for the addition in the second part of the sentence since the declaration is about IPs (also COCEI-FDD, CEALP, IOIRD).

ILRC respect the objections presented by others, and propose to consider article 2 for the defence of individual rights and leave article 1 untouched.

CAPAJ state that the principle spelled out in article 1, is one that IPs have had to fight for long and hard. The declaration is really about obtaining the respect that IPs deserve, considering also their contribution to the human heritage. This can be achieved without putting in jeopardy individual rights. For these reasons article 1 needs to remain unchanged. The Declaration is to serve as an inspirational text for laws and constitutional reforms for the protection of the Inka Nation which has a collectivist structure.

IPACC/Tamaynut declare that to recognize collective rights, is to recognize that IPs can no longer be forced to be assimilated. Also, international standards cannot be based on national legislations, as many states are promoting, since the DD was created to defend rights that are not included in national legislation.

**Article 2**

NEW ZEALAND, CANADA, FINLAND, RUSSIA, SWEDEN, CHILE, MEXICO can accept the wording of article 2 as it stands.

The USA states that they cannot approve article 2 without prior discussion on article 3 and self-determination (also UK), they agree to the removal of “adverse”. For GUATEMALA it is injudicious to connect article 2 to self-determination, as that would make it difficult to advance in the approval of less controversial articles.

BRAZIL states that they can accept the article with or without the word “adverse”, and reminds that article 22 deals with the issue of positive discrimination (also MEXICO).

AITPN question the redundancy of the word “adverse” in article 2 considering that discrimination is inherently negative (also SC, CANADA, NEW ZEALAND). They encourage delegations to be more flexible and to agree to articles if they can live with them (also Yatama).

JOHAR declare that to keep the word “adverse” would not be detrimental. IITC declare that removing the word “adverse” would have undesirable effects for IPs in the USA, since there are racist movements who would like to do away with forms of positive discrimination existing in national and international law. Without the word adverse, this article could be misconstrued at the detriment of IPs (also Tamaynut, NORWAY).

Tamaynut state that article 2 refers to basic principles of human rights and discrimination, thus there should be no need to discuss article 3 prior to its approval as proposed by the USA.

**Article 13**

NEW ZEALAND proposes to add “their” before “ceremonial objects […]” and to add “reasonable” or “to the fullest extent possible” before “access in privacy […]”. These changes are to address the practical difficulties of giving access to private land.

FINLAND can accept both the original text or the additions proposed by New Zealand.

GUATEMALA stresses the importance of this article for IPs, if this article is changed, it would allow governments to limit access to IPs’ sacred sites.

VENUEZUELA declares that it can accept the original text of all the articles that have been discussed until now, but are happy to accept changes as long as the spirit of the DD is not affected.

CANADA sees the DD more as a binding document than as a political declaration. Canada proposes to have another clause regarding third parties’ rights or to determine what is “reasonable access”. 

IPACC state that adding the word “reasonable” is not necessary, that is something that can be resolved internally and not in the Declaration. ICC add that the word “reasonable” is subjective and vague (also BRDN, CAPAJ). IPNC declare that it would force IPs to justify themselves, when in fact the sacred sites and lands belong to them, and object to the inclusion of “their”.

IITC support the above comments and refer to the general recommendations by the Committee on the Elimination of Racial Discrimination (CERD) regarding which requires states to return traditional sites and lands that were taken from IPs without their free, prior and informed consent. Trying to cover every possible scenario for each article is not feasible. IITC would like more clarification on the addition of “their” and its impact on ownership. JOHAR can accept the inclusion of “their”, but this means that IPs cannot have what is owned by the state, which in many cases actually belongs to IPs.

COICA inform that the French and Spanish versions of the text include “their”.

Article 14
NEW ZEALAND can live with this article as it stands. Society should not wait until their culture is under threat before they take action, thus it proposes for the first phrase of the second paragraph: “when any of the indigenous rights are threatened” and to add in the next line “actively protected”. After discussion, and due to opposition by IPs’ organisations (COCEI-FDD, Yatama, CAPAJ, IITC) and acceptance of many states of the original text (SWEDEN, FINLAND, NORWAY, SWITZERLAND, VENEZUELA, GUATEMALA, CANADA, CHINA, BOLIVIA, AUSTRALIA), New Zealand withdraws the proposal, which is immediately re-instated by the USA.

CANADA has other considerations such as how these rights are to be implemented by governments.

UK states that the language of articles 13 and 14 goes beyond what is stated in other declarations and what the UK understands as the right to practice culture. All rights that are not universal and equal to all, are not human rights (also FRANCE).

TKM declare that if states want to be zealous, then they cannot object to adding the word “actively”, and urge other states to support it (also SC, CEALP).

IITC’s assumption has been that the states are expected to take active and effective measures, throughout the Declaration. By adding the term “actively”, does that not diminish the implication of states having to take effective measures in other articles?

NKIKLH state that the proposal misses the point as to why the article was drafted in this way. Paragraphs one and two are different, one is a general statement about culture. The second paragraph is about getting the necessary interpretation and translation for IPs to be given fair and equal treatment, for example when they are arrested.

Article 15
NEW ZEALAND proposes at first to add “indigenous individuals, particularly children” in both first and second paragraph of article 15, arguing that education is important for children but is not limited to them. After discussion and arguments from IPs’ organisations, New Zealand changes the proposal to “IPs, particularly children”. It also proposes to add “which meet agreed educational standards” at the end of the second phrase of article 15.

NORWAY accepts the text as it currently stands (also CHINA, GUATEMALA), but agrees that New Zealand’s proposal is an improvement and are willing to support it (also CANADA). However, the right of IPs to have their own educational system is already recognized in existing declarations such as ILO Convention 169.

MEXICO proposes to add “all IPs” at the beginning of the article, since this declaration is to benefit all IPs.

CHINA considers that the first sentence of article 15 puts the emphasis on the right of indigenous children to education and the second sentence deals with the right to education of other indigenous peoples. The insertion of “agreed standards” attaches conditions to the right of IPs to determine their educational system and demonstrates a level of distrust towards IPs and their capacity to set up their own educational systems (also GUATEMALA, CEALP, ICC, RAIPON, COCEI-FDD).

FRANCE expresses some concern on the last sentence of article 15, the states’ responsibility vis-à-vis this issue needs to be clarified.
CAPAJ see the New Zealand proposal to add “particularly children” as problematic, since this article is as such aimed at indigenous children, stating it in the article itself would dilute its purpose (also CEALP, AN, FPCI, COCEI-FDD, IITC).

IITC are concerned that the states will attempt to introduce the word “individual” in each article. IITC would like states to not only respect the rights of IPs but also to view the Declaration from the perspective of IPs.

JOHAR state that by adding “particularly children”, indigenous youth who go to university will not benefit from this right. The second paragraph speaks of establishing schools, which is different from the right to an education.

RAIPON consider that this amendment would ensure that the state pay for tertiary education of indigenous youth.

NARF support the New Zealand proposal on “particularly children” and does not think that it weakens the article in terms of how children are treated (also IMTA).

IITC question New Zealand as to which standards they are referring to, the proposal creates confusion.

CAPAJ state that the Aymara government is planning on opening an Aymara university, this will not be possible if the second sentence of this article is amended according to New Zealand’s proposal.

NN inform that the state and IPs have different standards regarding educational systems, which are often incompatible, as states often drive towards assimilation.

**Article 16**

“[Indigenous peoples have the right to have] the dignity and diversity of [IPs’] [their] cultures, traditions, histories and aspirations [should be] appropriately reflected in all forms of education and public information.” (NORWAY proposal)

“States [shall] [should] take effective measures, in consultation with indigenous peoples concerned, to [eliminate/combat] prejudice and discrimination and to promote tolerance, understanding and good relations among IPs and all [other] segments of society.” (USA proposal)

FINLAND declares that it is willing to accept the article in its original version (also SWEDEN, RUSSIA, SWITZERLAND, NEW ZEALAND).

FRANCE states that some articles in the DD are fundamental for personal development but cannot be considered a human right, as is the case with article 16. The UK also has outstanding issues with this article and asks for more time for reflection (also CANADA, AUSTRALIA). The USA declares that they do not believe that there is an inherent right to have something included in a curriculum.

BRAZIL declares that reflecting the culture and history of IPs in states’ educational system, cannot be harmful to states, it demands more flexibility on behalf of the states.

SWEDEN consider that the Norwegian 1999 proposal is a good basis for discussion and clarifies the article (also RUSSIA, SWITZERLAND, NEW ZEALAND, JAPAN, CANADA, FRANCE, AUSTRALIA)

CAPAJ state that article 16 is very straight forward. It is aimed to redress the complete absence of IPs’ history and culture within the curriculum, ignoring IPs’ history is ignoring them (also IPACC). The article is clear and succinct, it should be approved as it stands.

COCEI-FDD remind that two years ago this article was practically approved, there only remained some discussion on the word “peoples”, which has been resolved (also Yatama).

IITC declare that an educational system that does not reflect the reality, truth and history of a country, is not accessible to all, thus it becomes a question of human rights since education should be accessible to all. They express their concern for the replacement of “should” with “shall”, this would dramatically change the responsibility of the states. The USA needs to clarify what reasons lie behind their proposal and whether they propose to apply this change to the whole Declaration (also IPNC).

IPNC add that “shall” does not guarantee a protection of rights in domestic legislation and is therefore unacceptable.

IMTA ask France which part of article 16 they think is not in line with the international human rights instruments.

CEALP believe that diversity of cultures and traditions is a human right. The second paragraph of article 16 foments the citizens’ participation and responsibility not only in favour of IPs but for society as a whole.
Article 17

Mr. Chávez summarises the proposals presented for this article: 1) putting the two phrases together into one; 2) in paragraph 1 replacing “equal” with “on the same basis as the other members of the society”; 3) replacing “shall” by “should” at the beginning of the second paragraph; 4) paragraph 2, adding “states, without prejudice to ensuring full freedom of expression, should encourage privately owned media to adequately reflect indigenous cultural diversity”. Proposal one, two and three are from E/CN.3/2002/98, and the fourth from the USA.

FINLAND and SWEDEN consider the proposals as a good basis for discussion but can also accept the text in its original wording. CANADA prefers “shall” instead of “should” (also NORWAY, AUSTRALIA, SWITZERLAND, FINLAND, SC, JOHAR, ICC, IPACC). MEXICO agrees to the original text of the article (also NEW ZEALAND, AUSTRALIA).

IITC declare that replacing the term “equal” seems to be lowering the standard for those societies without good access to media communication. CEALP state equal access means that states have to establish measures so that IPs may access communication means, there are no conditions attached to the word “equal”. If “equal” is presented as being synonymous to “same basis”, then there is no necessity to change equal and thus states and IPs alike should be able to provisionally adopt this article (JOHAR). ICC declare that “equal” is not the same as “on the same basis” and therefore the governmental delegations need to clearly explain the reasoning for this change (also COCEI-FDD, TIPRDC, ECUADOR).

IPACC stress the importance of having a right to establish indigenous media networks, this article could serve as a basis for such a right, thus the text should remain unchanged.

Article 18

“Indigenous peoples [have the right to] [shall] enjoy fully all rights established under [applicable] international labour law and national labour [law] [legislation].

Adding:
[States should take specific measures to protect indigenous children from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development, taking into account their special vulnerability and the importance of education and empowerment.]” (NORDIC proposal)

[States should take immediate and effective measures to comply with international standards regulating child labour.]” (FINISH proposal)

GUATEMALA declares that the expression “have the right” generates responsibility and obligations on behalf of the state, this is a right that all states should guarantee to all of the population.

NEW ZEALAND is very comfortable with the existing language (also MEXICO), and can support the change in the first and second sentence for “have the right” (also ARGENTINA, SWITZERLAND, NORWAY).

MEXICO can also support the inclusion of a reference to child labour.

SWITZERLAND is concerned that a too strong determination to keep the original text might block proposals that strengthen the text, it supports the child labour proposal.

IITC state that to consider only what is applicable within a state would undermine and limit the articles, thus it is unnecessary to include the word “applicable” in the proposed additional phrase (also CEALP, IPNC, Tamaynut, IMTA).

IPNC argue that the word “legislation” should be kept since it sets a standard whereas domestic laws are often difficult to put into practice. The additional text on child labour does not necessarily strengthen the text since it only mentions the worst forms of child labour but not other forms of discrimination (also ASP).

ASP are in favour of maintaining the original text (also CAPAJ, IPACC, ICSA). They know from experience that changing “have the right” to “shall” leaves the article open to interpretation, leaving IPs unprotected (also Tamaynut, CAPAJ, ICC). ASP can accept the replacement of “legislation”.

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CAPAJ stress the importance of the labour capacity and strength of IPs for their development and survival.

COCEI-FDD state that if most states agree to the original text, then the Working Group should go ahead and approve it (also IITC). It would be interesting to consider adding a sentence on child labour.

ICC recall the language in article 1 which includes “have the right to effective […]”, there needs to be consistency through out the text.

IOIRD ask why are states that want to protect children from labour not signing ILO Convention 182? If the declaration adds a sentence on child labour, it will automatically weaken the legally binding ILO instrument.

Preambular Paragraph 15

“Bearing in mind that nothing in this Declaration may be used to deny any peoples their right of self-determination, [and further emphasising that nothing in this Declaration shall be construed as authorising or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the principle of equal rights and self-determination of peoples and thus possessed of a government representing the peoples belonging to the territory without distinction of any kind.]” (NORDIC proposal - DENMARK, FINLAND, ICELAND, NORWAY and SWEDEN)

“Bearing in mind that nothing in this Declaration may be used to deny any peoples their right of self-determination [exercised in conformity with applicable principles of international law.]” (AILA and ICC proposal) OR “[to be exercised in conformity with the principles of international law, including the principles contained in this Declaration.]” (GUATEMALA proposal)

CANADA’s position is that all peoples have the right to self-determination, and is encouraged by AILA proposal. The problem is to balance the rights of parts of the population with the rights of the whole population (also NEW ZEALAND).

PERU thinks that pp. 15 is a fundamental aspect of the DD and therefore the original text should not be changed. CHINA recognises the importance of self-determination for IPs and is willing to reach a consensus on this matter. The Nordic proposal is hard to understand and may cause unnecessary confusion.

According to GUATEMALA the Nordic proposal implies using different parameters for IPs, and thus limiting their rights. This preoccupation of secession is a reflection of the prejudice and fear towards IPs and is in any case already dealt with in article 6 of the UN Charter. ECUADOR supports the Guatemalan proposal.

Norway’s proposal is acceptable to AUSTRALIA, pp. 15 could be made into an operative paragraph. Australia also supports the clustering of articles on self-determination, however, it has concerns about the content of the articles.

NEW ZEALAND welcomes the Nordic proposal because it has brought a new focus in addressing this issue, it will help the discussion on article 3. Definitions of self-determination vary widely and are still hotly debated in international law. This Declaration is the first document where self-determination is applied to a specific peoples, for this reason states require safeguards to preserve their territorial integrity (also FRANCE).

VENezUELA declares that the controversial issue of self-determination has already been addressed within its Constitution, this demonstrates that states can apply the principle of self-determination and internally solve the problems that may arise.

For NORWAY self-determination is a corner stone of the DD. There are those looking for problems in all solutions, Norway is trying to find solutions to all problems and to bridge the gaps. Regarding the clustering of articles on self-determination, there is no objection to keeping article 36 in the cluster which also includes: 3, 31, 4, 19, 20, 21, 23, 30 and 33.

ITALY, on behalf of the EUROPEAN UNION, states that the method of re-clustering of the Nordic states has its merits.

AILA and ICC describe the potentially far-reaching adverse effects of the proposed Nordic amendment to pp. 15, starting with the fact the proposed text derogates in significant ways from the wording of the 1970 UN Declaration on Friendly Relations, from which the proposal was inspired. This amendment subjects the whole DD - including potentially every human right of IPs - to the
principle of territorial integrity\(^2\). They object to the Nordic proposal for a cluster of articles on self-determination. They argue that the clustering is arbitrary, inapplicable and futile. A section with clustered articles in the DD would be inconsistent with Article 1 in the International Human Rights Covenants. The linking of the proposed cluster with an amended pp. 15 allows for potential discriminatory limitation of key issues regarding IPs, using territorial integrity as an excuse. After a clarification by Mr. Chávez, IITC are satisfied that this clustering is for discussion only. But NORWAY states that their proposal aims at reorganizing the articles in the DD.

JOHAR state there are IPs that might qualify as peoples under some national laws and not under others. The Nordic proposal overcomes that problem, and in that way ameliorates the text. JOHAR does not believe that the Nordic proposal is discriminatory.

KYM and FPCI declare that the Nordic proposal restricts the application of the right to self-determination (also IPACC). The Nordic proposal is unreasonable and discriminatory.

IPACC worry that the proposal of the Nordic states will make the WGCD regress to a stage that was long surpassed with the implementation of the UN Charter, they consider it a form of obstruction (also CEALP).

CAPAJ state that IPs have never had any thought or intention to use self-determination to threaten territorial integrity, even though IPs are the first victims of the destruction of their territorial integrity. To add a text that already exists in another declaration is to try and impose even further the fear of the states on IPs. The IPs are not the ones who will control whether territorial integrity is affected, it is the responsibility of the state. In Latin America multi-cultural regions are being created, moving away from the fear of self-determination. The Preamble is the place where principles are spelt out but not for impositions (also RAIPON, ICSA, CPA, IMTA, NKIKLH, CTT, FPCI, AN, IPNC, SC, Yatama, JOHAR). MCTP add that when states were created they did not ask permission from the IPs, the owners of the land, whether they could apply their right to self-determination, why should IPs have to fight for this right?

IITC would like to hear from states whether the addition to pp. 15 will allow them to accept article 3 without change (also CPA). The AILA/ICC proposal might be a way forward. Regarding the Nordic proposal, what would be the implications for article 36 and what would be the impact on Treaties signed between IPs and states? (also NN/Nations of Hobbeina).

FEINE declare that if they cannot bridge the gap between the widely accepted occidental law and IPs’ rights, then IPs will continue to live on the margin of occidental law (also Yatama).

Yatama see the proposal from Guatemala as a way forward since it addresses both the concerns of IPs and states.

NKIKLH withdraw their previous support to the Nordic proposal, and support the AILA/ICC proposal, which reaffirms the fact that this document is a standard-setting instrument under international law.

Mrs. Lam presents herself in her personal capacity as professor of law, and states that the 1966 Covenants, fundamental to international rights, put no limitations to self-determination nor do they mention territorial integrity. AILA/ICC are in fact making a concession, since there should be no conditions, but they are trying to show good will and help states agree with the articles.

CTT/FPCI/AN support the original text but also AILA’s proposal if it allows to reach a consensus (also TKM, COCEI-FDD).

IPACC find that they have no option other than to accept the Nordic proposal if the discussion is to advance, though they prefer the original text.

ILRC think that the Nordic proposal is very helpful and could be the key to reaching consensus on self-determination (also NARF). However, adding “with international applicable law”, is quite dangerous as it is very unclear with regard to IPs. International law does not provide self-determination to IPs in particular. Is there anything about territorial integrity that could have adverse effects on IPs and access to their territories?

SC are prepared to accept either of the proposals.

AIRT invoke New Zealand to address the issue of self-determination and mentions many ways in which the New Zealand government rejects the right to self-determination.

\(^2\) The AILA and ICC document "An Indigenous Proposed Alternative to the Nordic States' Proposal on Self-Determination" is available at doCip.
Article 4

The debate on articles 4, 19, 20, 21, 23, 33 and 36 aims at inventorying further proposals and comments on these articles.

GUATEMALA, MEXICO and FINLAND support article 4 as is.

NEW ZEALAND acknowledges that IPs’ systems are sometimes established in a unitary legal system, but proposes to delete “as well as their legal system” and replace it by “legal” in the enumeration of characteristics (supported by the RUSSIAN FEDERATION and FINLAND, possibly by CANADA and UK).

For CANADA the issue of legal system should be included in article 31. There should be no separate legal system in one state (also UK). Canada proposes to cut article 4 in two sentences and delete the reference to legal systems (also AUSTRALIA, FRANCE).

FRANCE considers the right to participate in the political life of the state as an individual right. AUSTRALIA underlines that recognizing customary legal systems does not obligatorily mean separate systems. The RUSSIAN FEDERATION proposes to delete “if they so choose” (also IMTA), as this seems obvious. The USA agrees with the mention of legal systems, but proposes to refer to freedom instead of right (also UK).

GUATEMALA claims that there is no reason to worry that IPs will establish separate legal systems and refers to its very positive experience in reforming its domestic juridical law in order to include Maya customary law. Guatemala call for the adoption of a Declaration useful for IPs (also GRULAC). MEXICO does not see much merit in the proposed amendments. There seems to be confusion between juridical system and justice administration, which will be cared about by domestic legislations.

Articles 33 and 35 prevent from inconsistencies with international law.

IPACC support article 4 as is (also IMTA) and stress that proposals based on domestic situations cannot improve IPs’ situation. Getting rid of customary law aims at controlling IPs’ resources. The ultimate aim of this article must be clear, in order to avoid misinterpretations. IMTA claim that multinational states do have different juridical system. The proposed amendments aim at imposing the dominant juridical system on all nations. Customary law is also a basis of and consistent with international law.

Article 33

ECUADOR, MEXICO, BRAZIL and GUATEMALA support article 33 as is.

AUSTRALIA (supported by CANADA) considers that the basic issue is the compatibility of a separate legal system with another system operating in the same jurisdiction, and suggests the following wording: “States should take measures to take account of distinctive indigenous juridical customs, traditions, procedures and practices”. The current qualification about international human rights law in article 33 might not cover all possible inconsistencies and not every state accepts the jurisdiction of international human rights bodies.

For the sake of clarity and consistency with article 4, NEW ZEALAND proposes to delete “juridical”, and add “and juridical characteristics” after “and practices”. The collective process of law making in national parliament must articulate the different rights.

FRANCE and UK reserve their opinion on article 33. UK stresses that a failure of a legal system operating in one state, would be a responsibility of the state.

GUATEMALA considers article 33 consistent with ILO Convention 169. The cases referred to by Australia represent challenges, but jurists will solve them at a domestic level (also SC, IMTA, PDP, CEALP). The DD must establish principles (supported by ECUADOR, also AILA, TKM). Indigenous customary law is not well known but often offers better solutions (also IMTA). Many juridical systems are no longer adequate and cause problems to states, so it is necessary to renew them. MEXICO recalls article 37: having an integral vision of the DD will allow for progress in the debate (also TKM).

Indigenous juridical systems are recognized and there is no incompatibility in BRAZIL.

SC insist that indigenous legal systems do exist in states (also ATSIC, CEALP, CTT). Self-determination cannot exist without IPs’ legal systems (also PDP), which are of no lesser value than those of the states (also TKM). The safeguard in article 33 is the reference to the international human rights law. SC (also TKM, CTT) ask what is meant by New Zealand with juridical characteristics. TKM note that many states’ interventions mention separate systems. But IPs only claim for separate legal systems because the state legal system does not apply efficiently to them. The demand is the balancing of two existing systems (also CTT: several articles of ILO Convention 169 and existing
experiences can help in this matter). ATSIC claim that indigenous juridical systems promote and provide understanding and harmony. IPs do not want to be the same, they want to be equal. AILA recall that no legal system is stagnant, all of them are evolutive, particularly when two peoples learn to live together. PDP recall that in Canada the French-speaking minority has seen its juridical system recognized. If IPs’ juridical systems were not recognized, they would be discriminated. Juridical diversity is being addressed in many parts of the world and the states are making their legislations consistent with regional systems (also CEALP).

IMTA claim that dominant society must recognize IPs’ identity as victims of colonization. A way must be found for IPs and non-indigenous peoples to live together in this world (also PDP). States claim to be promoting diversity, but they actually deny within this context. CTT claim that juridical systems are the structure of IPs’ societies (also CEALP). The Australian proposal is confusing for IPs, whereas article 33 is quite clear about the states’ recognition of existing indigenous juridical systems. CEALP consider that the proposed changes weaken article 33.

**Articles 19 and 20**

AUSTRALIA supports the principle of IPs’ participation in the political process and control over matters affecting their lives (also CANADA) but article 19 is too broad and overlaps with article 20. Australia proposes to combine both articles in order to include third parties’ rights and states’ constitutional obligations: “IPs have the right to participate, through representatives chosen by them, in decision-making processes of the state in relation to matters which directly affect their rights, in a manner not incompatible with national legislation” (supported by CANADA).

In the USA, indigenous individuals have the same rights as others in political decision-making. The reference to the freedom of IPs to participate in the lives of their communities is missing in article 19. FRANCE insists that human rights are individual rights (also UK), and propose to replace “themselves” by “their members”. UK considers difficult the articulation of article 19 with 20 (also GUATEMALA), as participation is easier to accept in relation to the peoples themselves than to the whole national life. GUATEMALA underlines that all groups of citizens, including IPs, make decisions in matters affecting them and have their representatives in decision-making processes of the state, which is what article 19 is about. Article 20 is about the participation through existing mechanisms of the state, as for example representatives in parliament.

CAPAJ, IMTA, TIPRDC and IITC object to combining articles 19 and 20, given the different concepts they contain. ICC highlight the four crucial rights in articles 19 and 20, which some states’ proposals do not consider: 1) full, effective and meaningful participation on issue that concern IPs; 2) elaboration of their own decision-making institutions; 3) participation in the political life of the state; 4) free, prior and informed consent (also CAPAJ, IITC, IMTA). The Australian proposal would not guarantee IPs the ability to voice their concerns in a particular case. Article 19 can improve IPs’ participation, by articulating national and indigenous systems: the lack of established interlocution would lead to political vacuum and individuals trying to fill the gap without the legitimacy of the group (JOHAR). Free, prior and informed consent should also come from the community, through traditional leadership (also ICC).

IITC stress that freedoms are related to the ability of states to listen, whereas rights are a matter of obligation. The amendment proposed by France is again a way of denying that the DD is about collective rights (also IMTA).

IMTA argue that states claim democracy is valid throughout the world, but now they refuse IPs’ participation. The wording “if they so choose” should be deleted in articles 19 and 20. ILRC state that the normal interpretation of “participation” and “participate fully” in international and customary law context would be: “meaningful participation to government without discrimination” and “to the fullest extent permitted by law and without discrimination”. This interpretation makes article 19 acceptable.

In Alaska, several federal institutions, whose scope was not decided by IPs, manage natural resources, and their representatives can go to congress and participate without the collective’s consent (IPNC).
Article 21

AUSTRALIA argues that all provisions in article 21 occur elsewhere in the DD, whereas third parties’ rights and states’ international obligations are missing, and proposes to delete it, unless some of its elements prove to be unique (supported by CANADA).

NEW ZEALAND proposes to replace “just and fair compensation” by “just, fair and agreed redress”, as compensation tends to refer only to financial aspects.

CANADA considers that compensation and redress are difficult issues, and could accept article 21 with an alternative language.

BRAZIL supports article 21 as is, but for the sake of consensus, proposes to delete the part that is already in article 4 and to say: “[…]”. GUATEMALA argues that having so many proposals obstructs the process. The WGCD has no faculty to grant or deny an existing right. Article 21 must be kept as is. MEXICO objects to deleting article 21 and moving its parts to other articles.

IPNC ask Australia where else in the DD are IPs who have been deprived of their means of subsistence entitled to compensation? Article 21 has a closer relation to the second section of article 1 of both International Human Rights Covenants, than to article 4 of the DD (also FOAG, ICC). If IPs are to survive economically, culturally and socially, they need their own means and the political recognition to exercise this right. Delegations who propose amendments should justify their position (also ICSA). Compensation in other parts of the DD refer to future situations, or to forcible relocation, in article 21 it refers to the absolute prohibition of depriving someone of their own means of subsistence (FOAG, FAIRA, CEALP, COCEI-FDD, MEXICO). The political context of each article must be taken into account (ICSA).

STP claim that compensation cannot be accepted by IPs, when they are driven out of their lands: IPs must receive rental charges for their lands to ensure their survival.

ICC point out that the unique language in article 21 is “traditional economic activities”, which is not covered by articles 3 and 4. FAIRA express their concern about deleting rights that have not yet been approved in other parts.

NKIKILH assert that article 21 is the only one that merges in a coherent system the needs of IPs to pursue their own lives (also CEALP). The DD tries to express the cohesion of a culture, thus it has general language first and then specific parts regarding different contexts, where specific articles give the explanation of how cultural aspects can allow IPs to pursue their own way of life (also IMTA).

CEALP argue that indigenous law is reiterative by nature. Taking things apart does not help IPs in the least. IMTA claim that Australia’s position is unacceptable (also RAIPON), it gives way to deleting the whole DD, as well as dismantling the WGCD.

RAIPON add that the words “economic and social systems” do not appear anywhere else in the DD and could consider the New Zealand proposal (also AFN).

Article 23

BRAZIL, DENMARK, GUATEMALA, MEXICO, NORWAY, SPAIN, SWEDEN and SWITZERLAND support article 23 as is.

CANADA objects to the right to development (also AUSTRALIA) and proposes a new formulation that restates rights already existing in international law instead of creating new rights. NEW ZEALAND proposes to replace “determine and develop all” in the second sentence by “be involved in determining and developing” (supported by FINLAND). The USA proposes to talk in terms of freedom instead of rights (supported by the UK) and that this article should include the issue of programmes that affect IPs but which they do not administer. The UK considers that the right to determine is unclear.

GUATEMALA proposes to create a declaration for indigenous individuals, so that the DD could be adopted in its current form, and can accept New Zealand’s proposal, with “to participate” instead of “to be involved”. MEXICO proposes to deal with the issue of members by beginning the article with: “All IPs have the collective or individual right”.

The prescriptive wording of article 23 presents practical problems for AUSTRALIA.

SWITZERLAND underlines that to be consistent with the Vienna Declaration, individuals should be included in article 23.
All indigenous interventions support article 23 as is, in consistency with article 3. 

IITC claim that IPs have a greater right than to be merely “involved” (also CEALP). Canada’s proposal is about participation instead of determination, which would affect IPs’ right of self-determination and the pursuit of their cultural and economic development. IPs regard development that fail to consider their right of self-determination as extremely destructive of their way of life. The inclusion of “individuals” would diminish states’ obligations and the rights included in this article (especially when it comes to lands and resources, IPNC).

CPA are open to consider proposals, such as the addition of “and individuals” in specific articles, but not in all, as this would move the DD away from its central issue, the collective rights (also IPNC). IPs’ voices should prevail in the WGCD.

Many governments accept the right to development. Article 23 is important in connection with article 21 because it lays out a political right (IPNC).

Regarding New Zealand’s comment, it is important to note that the essence of article 23 is that IPs determine their own health, economic and housing programmes for their communities, whether this is with or without economic assistance (ICC).

COCEI-FDD underline that article 23 refers to public policies, which are established by institutions, so there is no reason for mentioning individuals.

IMTA are surprised that some states do not recognize the right to development as a human right, as it is in the declaration of Johannesburg, among others. Article 23 is in compliance with ILO Convention 169 (CEALP).

Development is very important to the Navajo Nation, who has severe unemployment and housing shortage. This article would allow NN to take care of these issues within their own institutions and with grants provided by the federal state.

Nomad IPs in Africa are forced to become sedentary if they wish to access basic health and education services (Tin Hinan).

**Article 36**

FINLAND supports article 36 as currently drafted.

NEW ZEALAND fully recognizes the need for states to uphold treaties (also CANADA), and proposes to modify the last sentence of article 36 as follows: “conflicts and disputes [...] should be submitted to competent national bodies or processes for negotiation and resolution or, where they do not exist, to international bodies agreed to by all parties concerned” (supported by FRANCE).

CANADA considers that disputes concerning treaties should be dealt with in domestic fora and proposes the deletion of the last sentence of article 36 (also USA, AUSTRALIA), and the following amendment to the first sentence: “according to the original spirit and intent of the parties”.

The USA proposes an alternative wording aiming at implementing IPs’ treaties under domestic laws and to resolve disputes in accordance with principles of equity and justice (supported by AUSTRALIA).

AUSTRALIA considers the article unclear and proposes to delete “other constructive arrangements”, as they may imply that there are no formal documents proving the obligations of the state.

BRAZIL prefers proposals closer to the original text, they could only consider the Canadian one.

FRANCE is concerned with the juridical correctness of the text and consider that the word Treaty is an agreement between two states, so “convention” should be used in article 36. After ICN and FOAG (also CHRO, IMTA, AFN, IOIRD, CTT, CEALP) having highlighted the term “treaties” in relation to states and IPs in international instruments, France withdraws its proposal but maintains its position.

JOHAR, CTT, CHRO, NN and IITC among others, support article 36 as is.

PDP point out that it might be states that want to take disputes to the international level.

CTT consider that all the states’ proposals restrict the scope of treaties, which are potentially important in conflict resolution (also IOIRD), and refer to the Study on Treaties as an important basis to understand article 36 (also IMTA, IITC at length). IMTA propose to divide article 36 into three sections, in order to make it clearer.

CHRO refer to IPs’ situation in Burma and to the Panglong Agreement signed by IPs and the Burmese State in 1947, as an example of what the spirit and intent of an agreement is: several issues were discussed when elaborating this Agreement, and although they were not included in writing, they nevertheless appear in Burma’s Constitution, based on the Panglong Agreement.

AFN underline that the last sentence of article 36 makes it clear that the resort to an international body should only occur when the national negotiations are not possible (also PDP). BRDN object to
removing the last sentence of article 36: they have exhausted all legal avenues within Canada without success, their treaties as well as their lands and resources are threatened. They need to come to an international body for help and protection.

**IOIRD** mention the need to include international bodies as an independent tribunal, and refer to the **Cree Nation’s Treaty**, originally signed by the Queen and then transferred to Canada: UK must answer the questions arising from this transfer in an international independent tribunal. IPs’ treaties are not only domestic issues (also **NN, IITC**).

Article 36 is important to **NN** although the wording “original spirit and intent” is problematic, since treaties were imposed on IPs at gunpoint. The violation of IPs’ treaties and rights is commonplace in the USA (also **IPNC**), and there is no way for IPs to defend themselves (also **IITC**). **IPNC** object to the USA proposal, which does not give minimum protection to IPs, and disapprove governmental proposals that weaken the DD.

Amendments proposed by states would enable them to be the sole arbiter in deciding whether a treaty was violated, when in fact they are the party that violates treaties as in the **Western Shoshone** case (**IITC**).

**Articles 25 to 30**

**Australia** (supported by **Canada**) states that these articles are the most complex issues in the DD because of competing rights and claims: solving these issues is crucial to the adoption of the Declaration. Australia and Canada have developed a new text, which deals with omissions within the current text (state recognition and demarcation of IPs’ lands, historic and contemporary circumstances, distinction between IPs established and claimed rights). The proposal contains four elements: 1) the fundamental principle of IPs’ right to recognition of their distinctive relationship with the land; 2) development of national laws; 3) processes to recognise IPs’ right to such lands and resources; and 4) distinction between land for exclusive or shared use. The **USA** supports this proposal as a basis for discussion.

**Article 25**

**Finland** support article 25 as is. **Argentina** proposes “lands or territories” instead of “lands, territories”. **New Zealand** has reservations on “have traditionally owned, or otherwise occupied or used” in articles 25 and 26, but could accept the remainder with a provision on third parties’ rights included elsewhere in the DD, and suggest that Australia addresses its problems in the current text (also **CEALP**). New Zealand objects to including sub-surface resources, but could accept to include “otherwise acquired” (see below).

**HD/ILRC** present an alternative text aiming at including in article 25 lands obtained through other means than occupation, sub-surface resources (also **IPNC**) and the aboriginal title (supported by **NKIKLH, PDP, SC** in principle).

**NKIKLH** also refer to the need of strengthening the situation of IPs’ rights on lands they were given by states without resources being specifically mentioned. The right to development should be included (**IPNC**).

**Article 26**

**New Zealand** also has problems with “the right to the full recognition of […]” as this could conflict with national or international law, and proposes to delete “full” and add “unwarranted” before “interference”.

**Brazil** could consider the ILRC proposal on article 26 but prefer to keep closer to the original text. The **USA** objects to the current text and to the ILRC proposal.

**ILRC** present alternative wording for article 26, aiming at including both surface and sub-surface resources, as well as the acquired property, and to giving the aboriginal or ancestral title the same level of legal protection within the context of property right (supported by **JOHAR**). IPs’ land also needs to be promptly demarcated and recognized, in order to be legally protected.

Titling and demarcation is problematic since it denotes individual rights (**JOHAR, also COCEI-FDD, AFN**). Demarcation process can take up to 10 years and thus delay the property right of IPs. The current text covers the concerns advanced by ILRC (**CEALP**).
IPNC object to reducing the scope of article 26 to the aboriginal title and want to work on the basis of the current text (also ICN).

**Article 27**

**NEW ZEALAND** considers that restitution of lands is rare and proposes some changes, but withdraws then its proposal to support TKM. **GUATEMALA** cannot accept the deletion of the third sentence of article 27.

**TKM** propose the following alternative: leave the first sentence as is; second sentence: “where this is not possible they have the right to just, fair and agreed upon redress”; delete the third sentence (supported by CEALP). The word redress, within the political climate, includes restitution, compensation and redress.

**ILRC** consider it important to include the acquired property as in previous articles, they propose “compensation determined through fair and equitable procedures” (supported by CEALP); and to address expropriation of IPs from their land by adding “States shall not take or appropriate the lands, territories or resources of IPs under any circumstances”.

“Redress” in English is not as strong and appropriate as “restitution” within the context of IPs territories being returned (IITC). **AILA** underline that in the USA Indian land claims may take decades, with strong political pressure for settlement. **IPNC** consider that TKM proposal allows for the open-ended ownership of lands taken from IPs, and support article 27 as is (also CJIRA).

**STP** state that IPs’ future generations depend on their lands. Compensation in money would not allow future generations to live. If states require sharing IPs’ lands, it should be on “reasonable rental terms”.

The DD must be as effective as possible, since IPs’ lands and resources rights are already being implemented in many countries, such as Argentina (CJIRA). **CEALP** note that article 27 is consistent with international law, in particular ILO Convention 169.

**IMTA** propose changes in article 27 (as well as in articles 25 and 26) aiming at considering compensation of IPs by colonizing states. The issue of trans-national corporations (TNC) should also be addressed.

**Article 28**

**NEW ZEALAND** asks what “total environment” means and deems restoration almost impossible; its proposal is to delete both terms, and to amend the last part of the first sentence: “[...] as well as an equal right to any assistance available for this purpose from States and through international participation”.

**ATSIC** believe that the issue of the transportation of hazardous material must be addressed in article 28 (also CEALP), by saying “disposal or transportation”.

**IITC** support the current text and disagree with the New Zealand proposal (also IMTA, CEALP, IPNC). Restoration is fundamental to IPs’ lives and rights (also ICSA, ICC). Many IPs are trying to restore their total environment by themselves (also ICSA). The meaning of “total environment” is explained in article 26 (also ICC). **IMTA** consider that the word “total” could be deleted and propose various changes to article 28, to deal with biodiversity, demilitarisation of IPs’ lands, strategic resources and TNC.

**CEALP** underline the consistency of article 28 with ILO Convention 169; the Convention to Combat Desertification and Agenda 21 mention restoration and reconstitution of the environment. **CEALP** claim that assistance is never available for IPs’ protecting their environment.

**ICC** note that the term environment is not reflective enough of IPs’ concept of total environment (also CEALP). Because of the special meaning of their lands to IPs, the particular needs of IPs for the restoration and protection of their total environment must be addressed.

IPs in Alaska will have to talk with many actors, states and corporations, to restore the ozone gap, and address global warming and climate change (IPNC).

At this point, **Mr. Chávez** put back on the table the 11 points of the Australian/Canadian proposal, to be compared with the current text of articles 25 to 30.

Paragraph 1 in **AUSTRALIA**’s proposal reflects article 25 of the existing text, stating the overarching principle of the special relationship of IPs with their lands. **CANADA** claims to present a clearer text, which takes all preoccupations into account. Canada and Australia need a dialogue on these issues at
an international and domestic level. The USA calls for the revision of the Canadian/Australian proposal (also UK).

NORWAY regards the Sub-Commission chapter on lands as a good basis for the discussion, even if some changes are needed, and does not consider the Australian/Canadian proposal very helpful (also SWEDEN, FINLAND, DENMARK, MEXICO, BRAZIL, GUATEMALA and CHILE). IPs' right to lands cannot be subjected to domestic law.

FAIRA (also COCEI-FDD, AIRT) cannot accept the Australian proposal, since it: 1) introduces a lesser right of recognition; 2) refers to the land instead of territory; and 3) does not mention IPs' future generations.

IITC claim that two proposals submitted by IPs' organisations have not yet received any commentary from governments (also AIRT).

COCEI-FDD (also SC, CJIRA) support the original text and could consider some of the proposed amendments to articles 25 to 30. CEALP call for Australia and Canada to withdraw their proposal, which is not consistent with states' obligations under existing international law (also COCEI-FDD).

Mr. Chávez adjourned the debate, considering that no further progress could be achieved in a plenary. He would elaborate, for further discussion, a document based on the text of the Sub-Commission and including as many suggestions as possible from those received during the sessions.

Adoption of articles

Informal consultations among delegations and with Mr. Chávez tried to reach an agreement on provisional adoption of articles.

Article 3 and pp. 14 and 15

NORWAY, asked by Mr. Chávez to consult with all delegations on pp. 15, informs that as a basis for further discussions, pp. 15 could be accepted with the amendment proposed by Guatemala (adding at the end of the paragraph: “exercised in accordance with principles of international law, including the principles contained in this Declaration”); whereas pp. 14 could be kept as is. But some delegations also need changes in article 3.

Also responding to a request for consensus by Mr. Chávez and given the urgent need to achieve progress, including through the provisional adoption of articles, and to find a consensus on the fundamental principles of the DD, the majority of the Indigenous Caucus supports the following amendments combining elements proposed by the Nordic Group, AILA and Guatemala: replacing, in current pp.14, “by virtue of which they freely determine […] cultural development” by “and that this right applies equally to IPs”; support Guatemala’s proposal for pp. 15; and maintain article 3 as is (supported by IITC, SC among others). Some IPs’ organisations are still committed to the Sub-Commission’s pp. 15 (ICSA).

ICC call for substantive progress on the recognition of IPs as peoples and of their right of self-determination, that relates to matters extending far beyond their territories and respective national governments, and which is crucial to the issue of redressing violations of their fundamental rights. Focusing on the concept of territorial integrity could distort IPs’ right of self-determination. States should adopt the DD in a form that strictly adheres to the very principles they are obligated to uphold as UN members (also FAIRA, IPACC).

IITC, IMTA and JOHAR object to the process of informal consultations, which completely excludes IPs.

Articles 14, 16, 18, 33, 44 and 45

NORWAY proposes the provisional adoption of articles 14, 16, 18, 33, 44, 45 (proposal available at doCip), and is supported by ITALY on behalf of the EUROPEAN UNION, NEW ZEALAND, the RUSSIAN FEDERATION, SWITZERLAND, the USA and CANADA.

GUATEMALA, SOUTH AFRICA, MEXICO, EGYPT, ECUADOR and VENEZUELA thank all delegations, and in particular Norway, for their last-minute efforts to reach consensus (also CHILE, PERU, BOLIVIA, BRAZIL, CHINA), but cannot support Norway’s proposal, since it does not reflect the positions of all participants in a balanced way, and since there is no consensus. GUATEMALA, VENEZUELA, CHILE, PERU, BOLIVIA, BRAZIL, MEXICO, CHINA and ECUADOR suggest that the discussion be kept open on this proposal in order to reach consensus.
MEXICO calls for the inclusion of all delegations, including IPs', in future informal consultations. This last-minute attempt to reach consensus gives a clear idea about the position of each delegation (also GRULAC).

NORWAY expresses its deep disappointment that a consensus could not be achieved on these articles, but notes progress and the wish for consensus, and will stay at disposal for further consultations.

SC/ICC, MNC, ILRC, HD and FAIRA/ATSIC/TSRA/ATSISJC/NAILSS support the proposal by Norway and hope it will be reintroduced quickly in the debates in order to reach consensus.

FAIRA/ATSIC/TSRA/ATSISJC/NAILSS remain committed to support IPs’ rights as stated in the DD and to its adoption as soon as possible. They can support text changes that clarify, strengthen or otherwise improve the DD, but will not endorse a revised discriminatory declaration, without the full right to self-determination and the right of IPs to own and develop their respective lands, territories and resources. There is no justification in repeating debates about the legitimacy of IPs’ claims.

IITC, IPNC, CTT/AN/FPCI, IPACC and ICSA support the statements by Guatemala, Mexico, South Africa and other states.

COCEI-FDD completely disapprove of the procedure for adoption of the articles which they consider a trick to avoid transparency (and further debates, TKM). Some states are not willing to consider IPs’ rights (also ICSA). TKM need to take Norway’s proposal home and consult on it, and believe that these articles could have reached consensus, but the procedure did not allow it (also IITC).

On behalf of GRULAC, COSTA RICA express appreciation for the work and the willingness of all delegations, particularly of IPs, to maintain a good spirit for work. The USA does not see this declaration as merely political, it must be realistic as it can have real and practical implications for the IP worldwide.

In the final invocation, Adelard Blackman from the Buffalo River Dene Nation, calls for recognition and respect of the indigenous brothers and sisters around the world who have given their lives for these rights.

**Written statements**

Due to lack of time, several speakers were not able to submit their statement orally during this session of the WGCD. The following statements are not included in the present report, but are available at doCip, as are all the written statements that were presented orally during the session:


ICN: on article 27.

EUROPEAN UNION and Accessing Countries: on articles for provisional adoption.

NEW ZEALAND: on articles 20 and 30.

NKIKLH: on the Nordic proposal to cluster articles 3, 31, 19, 20, 21, 23, 30, 33 and 36.

NN: on articles 4, 19, 20, 21, 31 and 33.

VENEZUELA: on articles 16, 17 and 18.
### 3. LIST OF ABBREVIATIONS

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Full Form</th>
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<tbody>
<tr>
<td>AFN:</td>
<td>Assembly of First Nations</td>
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<tr>
<td>AILA:</td>
<td>American Indian Law Alliance</td>
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<tr>
<td>AIRT:</td>
<td>Aotearoa Indigenous Rights Trust</td>
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<tr>
<td>AITPN:</td>
<td>Asian Indigenous and Tribal Peoples Network, India</td>
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<td>AN:</td>
<td>Asociación Napguana</td>
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<tr>
<td>ASP:</td>
<td>Association of the Shor People</td>
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<tr>
<td>ATSIC:</td>
<td>Aboriginal and Torres Straits Islander Commission</td>
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<tr>
<td>ATSISJC:</td>
<td>Aboriginal and Torres Straits Islander Social Justice Commissioner</td>
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<tr>
<td>BRDN:</td>
<td>Buffalo River Dene Nation</td>
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<tr>
<td>CAPAJ:</td>
<td>Comisión Jurídica para el Autodesarrollo de los Pueblos Originarios Andinos</td>
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<tr>
<td>CEALP:</td>
<td>Centro de Asistencia Legal Popular</td>
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<tr>
<td>CHRO:</td>
<td>Chin Human Rights Organisation</td>
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<tr>
<td>CJIRA:</td>
<td>Comisión de Juristas Indígenas de la República Argentina</td>
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<tr>
<td>COCEI:</td>
<td>Coordinadora Obrera Campesina Estudiantil Independiente</td>
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<tr>
<td>COICA:</td>
<td>Coordinadora de las Organizaciones Indígenas de la Cuenca Amazónica</td>
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<td>CPA:</td>
<td>Cordillera Peoples' Alliance</td>
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<td>CT:</td>
<td>Consejo de Todas las Tierras</td>
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<td>FAIRA:</td>
<td>Foundation for Aboriginal and Islander Research Action</td>
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<tr>
<td>FDD:</td>
<td>Frente por la Democracia y el Desarrollo</td>
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<tr>
<td>FEINE:</td>
<td>Federación Evangélica Indígena de Ecuador</td>
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<td>FOAG:</td>
<td>Fédération des Organisations Autochtones de Guyane</td>
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<td>FPCI:</td>
<td>Fundación para la Promoción del Conocimiento Indígena</td>
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<td>HD:</td>
<td>Haudenosaunee Delegation</td>
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<td>ICC:</td>
<td>Inuit Circumpolar Conference</td>
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<td>ICN:</td>
<td>Innu Council of Nitassinan</td>
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<td>ICSA:</td>
<td>Indian Council of South America</td>
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<td>IITC:</td>
<td>International Indian Treaty Council</td>
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<td>ILRC:</td>
<td>Indian Law Resource Centre</td>
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<td>IMTA:</td>
<td>Indian Movement &quot;Tupaj Amaru&quot;</td>
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<td>IOIRD:</td>
<td>International Organisation of Indigenous Resource Development</td>
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<td>IPACC:</td>
<td>Indigenous Peoples of Africa Co-ordinating Committee</td>
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<td>IPNC:</td>
<td>Indigenous Peoples and Nations Coalition</td>
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<tr>
<td>JOHAR:</td>
<td>Jharkandis Organisation for Human Rights</td>
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<td>KYM:</td>
<td>Kuna Youth Movement</td>
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<td>MCTP:</td>
<td>Mejilis of Crimean Tatar People</td>
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<td>MNC:</td>
<td>Métis National Council</td>
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<td>NAILSS:</td>
<td>National Aboriginal and Islander Legal Services Secretariat</td>
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<td>NARF:</td>
<td>Native American Rights Fund</td>
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<tr>
<td>NIKIKLH:</td>
<td>Na Koa Ikaika o Ka Lahui Hawaii</td>
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<td>NN:</td>
<td>Navajo Nation</td>
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<td>PDP:</td>
<td>Programme Droits des Peuples</td>
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<td>RAIPON:</td>
<td>Russian Association of Indigenous Peoples of the North</td>
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<td>SC:</td>
<td>Saami Council</td>
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<td>STP:</td>
<td>Society for Threatened Peoples</td>
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<td>TIPRDC:</td>
<td>Taungya Indigenous Peoples Resource and Documentation Centre</td>
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<td>TKM:</td>
<td>Te Kawau Maro</td>
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<tr>
<td>JSRA:</td>
<td>Torres Straits Regional Authority</td>
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4. OTHER MATTERS

International Decade of the World's Indigenous People

During the 60th session of the Commission on Human Rights in Geneva, Switzerland, there will be between 8 and 15 April 2004 a Lunchtime panel to evaluate achievements and challenges of the Decade with the participation of indigenous peoples, NGOs, States, the Special Rapporteur and Chairpersons of the WGIP and Voluntary Funds, as part of the activities organized in 2004 by the Office of the High Commissioner for Human Rights for the end of the Decade.

Permanent Forum on Indigenous Issues

The 3rd session of the Permanent Forum on Indigenous Issues will take place from 10 to 21 May 2004, at the UN Headquarters in New York. The special theme of this session will be “Indigenous Women”.

For more information, please visit the website: http://www.un.org/esa/socdev/pfii
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