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WARNING:

The information regarding the future of the Draft Declaration on the Rights of Indigenous Peoples and the Human Rights Council are likely to be modified according to the pending decisions of the Commission on Human Rights. The paragraphs that relate to these issues in this Update may be modified consequently.
1. EDITORIAL

The three weeks of this past – and perhaps final – session of the Working Group on the Draft Declaration (WGCD) were overflowing, intense, and full of disheartening moments. They concluded abruptly but on a positive note, as 16 of the 19 preambular paragraphs and 21 of the 45 articles were agreed on for adoption, with an additional three articles nearly ready for adoption. On the other hand, consensus was not reached on key articles regarding: self determination; lands, territories and natural resources; and reference to sovereignty and territorial integrity of states and the rights of third parties (Article 45), which could have the effect of limiting internationally recognized rights, as well as those in the Declaration. Finally, certain states want to resume discussion of selected paragraphs and articles that have already been agreed upon for adoption.

Discussions were characterized by the indigenous delegations’ desire to maintain consensus among themselves; this in effect muted the most radical voices. The states did not exercise the same self-discipline among themselves; consequently, the Chair has the responsibility of resolving this imbalance.

In fact, the Chair decided to submit a draft of his own\(^1\), released in English after the session, to the Commission on Human Rights, without providing a mechanism allowing the delegations to express an opinion. In addition, this text will not be available in other languages until two weeks before it is scheduled to be discussed at the Commission under Item 15. So perhaps mid-April will see the appearance of a Draft Declaration on the Rights of Indigenous Peoples, adopted by the Commission, which would be submitted first to the July ECOSOC session in Geneva and then to the 61st Session of the United Nations General Assembly in New York this Autumn.

However, there are other options, depending on the indigenous delegations, who have designated a technical team to analyse the Chair’s text. They can petition the Commission to allow a supplementary WGCD session, or for anything else they may deem appropriate. Various options are possible: at the end of this issue we list those enumerated in AILA’s (American Indian Law Alliance) report.

**Much is still uncertain. Now that the new Human Rights Council has been voted in, will the Commission reconvene long enough to deal with the Draft Declaration, or will this matter be sent to the Council? After weeks of complete uncertainty about the Commission, the 13 March session was suspended as soon as it opened, and there was no hint of what might happen to its work. However, the schedule makes it definite that the members of the new Council will be elected on 9 May; on 16 June the Commission will be abolished and on 19 June the first session of the Council will be held. When further information is available it will be on our website, www.docip.org.**

2. WORKING GROUP ON THE DRAFT DECLARATION


During this 11th session, the debates focused again on the key issues of self-determination and of lands, territories and resources. The Chair presented new drafts for the preamble paragraphs and articles related to these crosscutting themes. The provisions regarding treaties and other constructive agreements between IPs and States were also discussed. Article 45 focused the attention of some governments wanting to have specific safeguards included in the Draft Declaration for states’ sovereignty and territorial integrity, as well as for third party rights. Finally, 16 preamble paragraphs and 21 articles were presented as ready for adoption, meaning they no longer need further discussion. Three more articles are very close to consensus.

WGCD Synthesis

**doCip’s Report on the 11th session of the WGCD: a new methodology**

Last year doCip summarised the interventions of the participants in this Working Group dividing them into two sections: 1) summary of IPs’ and NGOs’ interventions for each article discussed; 2) summary of interventions for each state present, for each article discussed.

This year the report consists of a paragraph describing the session of the Working Group and its procedures, followed by a synthesis of the debates on each of the themes that structured the debate during this 11th session: “self-determination”, “lands, territories and resources”; and “treaties and other constructive arrangements”. The last section of the report regards the provisional adoption of sixteen preamble paragraphs and twenty-four articles as well as the future of the Draft Declaration.

We chose to present the information in this form because the increase in dialogue between representatives made alliances and differences easier to synthesize. But this same dialogue makes it unmanageable for doCip to summarize each intervention, and produces an impractical report for the readers in terms of excessive length or concentration of information. Having “readable” reports in the Update is one of our concerns, as it was recommended by several indigenous delegates during the 2004 evaluation of our work.

However, in addition to this synthesis, we also have summarised the positions of all states present at the 11th session of the WGCD, because we thought this information could be useful for IPs to do lobby at national level. Given the developments of the meetings, it seems to us that the positions of the indigenous delegations are duly summarized in the synthesis. This summary is available at doCip and on doCip’s website (**www.docip.org**).

**Work plan and plenary procedures of the WGCD**

The Chair, Mr. Luis Enrique Chavez, put the contentious articles under the main themes of “self-determination” and “lands and territories”. At the beginning of each of the three weeks of the WGCD, the Chair presented in writing an updated proposal of the articles grouped under the above-mentioned themes. His proposals encompass the elements of previous discussions. The state and indigenous delegates were asked by the Chair to use his proposals as the basis for the discussions, they were asked to say whether they could accept or not the proposed language.

Three parallel informal consultations were held on the following issues: 1) establishing a list of preamble paragraphs (PPs) and articles (Arts.) ready for provisional adoption (coordinated by Norway); 2) treaties, agreements and other constructive arrangements (coordinated by IOIRD and IITC); 3) article 45 (coordinated by Canada). All three informal consultations coordinators presented the outcomes of the consultations in the plenary sessions, only the outcomes of the treaties and agreements consultations were opened for discussion in the plenary.

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2 The informal consultations were held outside the official plenary sessions. Only the interventions in plenary session have an official value and are taken into consideration by the Chair.
To facilitate your reading of this synthesis and allow comparison with the Chair’s Report on the 11th session of the WGCD (document E/CN.4/2006/79), you may need two reference documents:

The Report on the 10th session of the WGCD (document E/CN.4/2005/WG.15/2) contains the proposals of the Chairperson-Rapporteur, or Chair’s proposal, relating to the DD that were submitted to the Commission on Human Rights at its 61st session (2005). This document is available at doCip or at: http://www.ohchr.org/english/issues/indigenous/groups/groups-02.htm, where you will also find the Chair’s Report of the 11th session of the WGCD.

The Chairperson’s summary of proposals (document E/CN.4/2005/WG.15/CRP.7) contains the proposals of the Chairperson-Rapporteur on provisions of the DD related to self-determination and to lands, territories and resources, which were presented at the end of the second week of the 11th session. This document is reproduced on pages 9-11 of this Update. An intermediate version of this summary, as distributed earlier during the 1st and 2nd weeks of the session with some differences in proposed changes, is available at doCip.

Self-determination: PPs 12, 14, 15, 15 bis, and Arts. 3, 31-35, 45, 45 bis

At the crux of the contentions surrounding the right to self-determination of IPs is the definition of this right within international law. Some states, in particular Australia, New Zealand, UK and USA, claim it is a new right different from the right established in the common Article 1 of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, which states (paragraph 1): “All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development”. This “common article 1” right of self-determination is understood in international law as including, under certain circumstances, the right to secession and full independence. Whereas several statements delivered at the WGCD have made clear that secession and independence are not the intended outcomes of article 3 in the Draft Declaration (DD). Since these states consider it a right that does not exist in international law they question what this right, as presented in the DD, would entail and how it would be practically put into application. The particular concerns of the above-mentioned states are the preservation of the territorial integrity and political unity of the states, the impact of the DD on third party rights and the balance between individual and collective rights. Australia specifically said “there is no consensus and in fact fundamental disagreement on these issues”; when referring to the definition of self-determination in the DD.

Argentina, France, Indonesia, Japan, and the Russian Federation also expressed the desire to have some language in the DD directly mentioning and safeguarding the territorial integrity and political unity of the state. The provisions proposed by the Indigenous Caucus for PP 15 and PP 15 bis (see Update 61-62 printed version p. 20, electronic version p. 23), and supported by many other states, were unable to eliminate these concerns. PP 15 and PP 15 bis allow states to invoke any principle of “international law”, which could thus cover potential cases of secession. ILRC and CPN were concerned that PP 15 would precisely limit self-determination to its current status in international law, which according to them does not deal with IPs’ right to self-determination.

The right to self-determination as established in article 3 of the original Sub-Commission text (1994) – to which none of the present IPs’ delegations opposed – counted with the support of Bolivia, Brazil, Canada, Chile, Denmark, Ecuador, Guatemala, Mexico, Norway, Spain, Sweden and Venezuela. Many declared that this DD cannot be used to promote or enable secession (Brazil, Denmark, Guatemala, Mexico also MITK, NKIKLH, TF). More specifically Mexico, Canada, Denmark, Guatemala and Venezuela declared that the role of the DD is to establish a positive relationship between states and IPs. Canada, Guatemala and Venezuela added that the DD is to act as a step towards remedying past wrongs.

3 Australia, New Zealand and USA presented a long text clearly establishing their position with regard to the issue of self-determination, including new language for PP15, article 3 and article 45. This document is available at doCip.

4 In this context it means a person or group besides the two primarily involved in the situation (i.e. IPs and states), which are involved in a transaction.
MEXICO also reminded state representatives of the international recognition of the collective nature of indigenous peoples at the General Assembly in 2005. Mexico’s report on the International workshop on the Draft UN Declaration informs that: “This discussion was enhanced by the recent adoption by the Heads of State and Government, of the outcome document of the World Summit 2005, in the framework of the High-Level Plenary Session of the General Assembly, which consolidates the recognition of the term indigenous peoples, and makes a commitment to uphold the human rights of indigenous peoples.”

There was a strong opposition to including such language as “rule of law” (RUSSIAN FEDERATION proposal for Art. 31) and “in accordance with public interest… as determined by law/in accordance with the rule of law” (Art. 45). One of the main arguments against it is the impossibility to know who would determine what is meant by “law” or whose “public interest” is to be defended, especially when IPs’ have historically experienced how they are not determined in their favour (Artic Caucus, AILA, AFN, CAPAJ, ICSA, IITC, IPACC, JOHAR, MPIDO, TF, TOTSNTC, also BRAZIL, GUATEMALA, SPAIN). There is also the concern of limiting the rights of IPs to the national context (Artic Caucus, AN, CAPAJ, CPN, CV, IOIRD, ILRC, also GREECE). AUSTRALIA, NEW ZEALAND and the RUSSIAN FEDERATION expressed themselves specifically in favour of such language.

**Article 45:** This last article, which remains a centre of disagreement, is of particular importance in determining the content of other articles since its language is to address transversal issues such as self-determination and collective rights. It became an important source of debate in this session as NEW ZEALAND, USA, AUSTRALIA, UK, FRANCE and the RUSSIAN FEDERATION insisted on introducing language in this article to address what they consider pending issues in many other articles of the DD, mainly to ensure that the rights set forth in the DD do not affect third party rights, public interest and territorial integrity.

Many IPs and states fervently resisted this sort of language invoking the need to end this aspirational DD on a positive note (AILA, BRAZIL, BOLIVIA, CANADA, DENMARK, GUATEMALA, MEXICO, SPAIN), insisting on the sound basis of international law behind the drafting of the DD while also acknowledging the evolutionary nature of international law (AILA, ICC, ILRC, IITC, NKIKLH, JOHAR, NN, SER, SC, Taungya, VENEZUELA), emphasizing the misguided perception that collective rights are a threat to individual rights or to the public interest and the need to accept their legal standing (AIRT, AN, ICC, IITC, IPACC, NKIKLH, SER, TF, DENMARK, CANADA, GUATEMALA, MEXICO, VENEZUELA), the danger of adding language to the DD that puts individual rights or national law above the collective rights of IPs (Artic Caucus, AN, AIRT, AILA, CAPAJ, CPN, IITC, IPACC, ILRC, MEXICO, GREECE, VENEZUELA), and the inappropriateness of bringing language from other instruments such as the Universal Declaration of Human Rights which was written in another context and for individual rights (AN, AILA, ICC, IITC, NKIKLH, CANADA, DENMARK, GUATEMALA, MEXICO). CANADA proposed a new paragraph trying to address the needs of both sides; it was well received by the IPs’ organisations but was considered insufficient for the states insisting on introducing limitations in article 45.

IPs’ organisations insisted on the fact that the DD is about the rights of IPs, it is their rights that need safeguards and not those of states (AILA, CPN, CV, ICC, IITC, ILRC, IOIRD, JOHAR, MITK, NKIKLH, Taungya, TF, TOTSNTC).

**Lands, territories and resources: PPs 10 and Arts. 10, 21, 25, 26, 26 bis, 27, 28, 28 bis, 29, 30, 38**

There was no opposition to the language in PP 10 as presented in the last proposal of the Chair (see page 10).

In **Art. 10** the opposition by ICSA, IITC, AILA, CV, FAIRA and TF to the proposal of USA to include “forcibly moved or arbitrarily displaced” led the Chair to remove it from his proposal. The USA reserved its right to discuss this further in the future.

**AUSTRALIA, NEW ZEALAND and USA** presented language to emphasize the right to “mechanisms to redress” (Art. 21) and “pursue claims to redress” (Art. 27), whereas the majority argued that this is not the same as the actual right to “just and fair redress”. Furthermore, IITC, TOTSNTC and SC argued that “compensation” (as in the Sub-Commission text) is more appropriate in terms of ensuring IPs their means for subsistence and development. Whereas AUSTRALIA, NEW ZEALAND and USA consider that “redress” encompasses restitution and other forms of compensation.

Despite long debates on the importance of keeping the word “material” in **Art. 25**, AUSTRALIA, NEW ZEALAND and USA insisted that it be removed since its impact on third party rights would make the applicability of the article problematic for states. For other delegations it is essential to keep “material” due to IPs’ world vision in which the spiritual and material are inextricably connected (ICC, ICSA, IITC, JOHAR, RAIPON, TOTSNTC), and because of the material aspects of IPs’ spiritual practices (AN, ICC, SC, TOTSNTC). Several states

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5 This workshop was held in Patzcuaro, Michoacán, Mexico, from 26 to 30 September 2005. The report (E/CN.4/2005/WG.15/CRP.1) is available at doCip or at http://www.ohchr.org/english/issues/indigenous/groups/groups-02.htm.
understood that “material” in this context should not be interpreted in the Western or economic sense of the word (BRAZIL, CANADA, MEXICO, VENEZUELA).

MEXICO proposed language to be added to Art. 25 regarding the rights of nomadic peoples and shifting cultivators: “The State shall take measures to facilitate that IPs concerned have access to lands or territories not exclusively occupied or used by them, for carrying out their spiritual traditional activities. Particular attention shall be paid to the situation of nomadic peoples and shifting cultivators in this respect.” NEW ZEALAND, AUSTRALIA and USA were the only ones to express reservations on this language.

The recognition of IPs’ traditional ownership of the land (Arts. 25, 26, 27) as well as the “restoration” of IPs’ lands (Art. 28) remain a problem for AUSTRALIA, NEW ZEALAND and USA, because of the difficulties of addressing IPs’ claims to traditional lands which are on private property and because “restoration” is not always feasible. Their positions on these articles are dependent on the outcome of article 45 in the self-determination cluster where third party rights and public interest are dealt with.

The concept of “seek” or “seek to obtain free, prior and informed consent” (Art. 30) is supported by AUSTRALIA, CANADA, NEW ZEALAND, SWEDEN and USA in order to avoid giving IPs a right to veto. Whereas the majority of IPs and all the Central and South American states present emphasized the importance of “obtaining” consent, since only then are IPs empowered and able to defend their interests.

Treaties, agreements and other constructive arrangements: PPs 6, 13 and Art. 366

The UK and FRANCE oppose the inclusion of “inherent” in PP 6, they question what is meant here by “inherent rights” in a context talking about a variety of rights. This language is defended by several delegations, invoking existing human rights instruments recognising “inherent rights” (FAIRA), as well as its importance in integrating IPs’ world vision of this right deriving from the creator (IITC), being inherent to their being and their pre-existing state legal systems (NKIKLH). (These arguments were supported by CAIPCD, CPN, ICN, ICC, ILRC, IOIRD, JOHAR, NARF, NN, Taungya, TF, CANADA, DENMARK, GUATEMALA, VENEZUELA).

The USA insisted on defining treaties as exclusively of national concern and therefore under domestic law (PPs 13 and 36). TOTSNTC, CV, JOHAR, SC, TF, NKIKLH, NN, CANADA and VENEZUELA spoke in favour of treaties being of international concern because IPs have treaties and agreements with several nation states, they are nation to nation treaties and are therefore international in nature, furthermore the wording “in some situations” precisely gives the necessary flexibility to USA.

The USA was the only state that raised its voice against article 36 as proposed by the coordinators of the discussion groups.

Provisionally Adopted Preamble Paragraphs and Articles

NORWAY was asked to carry out a round of discussion on a list of preamble paragraphs and articles that had already been discussed and where there seemed to be a chance of reaching a consensus. This process had already been initiated during the 10th session and the text proposed by the Chair was used as a starting point for the discussions. By the end of this session Norway presented a list of sixteen PPs and twenty-four articles (see page 12). Norway defined provisional agreement by saying that the language agreed on “does not mean uniformity of views”, but rather an acceptance of the language in this cluster of articles to the degree that it “no longer requires further discussions”.

The Working Group as a whole saw the establishment of this list as a real progress, however uncertainties remained. Some of the language is dependent on the outcome on other articles, thus Norway adopted the premise that “nothing is agreed until everything is agreed”. As stated previously, Article 45 is pivotal in determining the content of other articles, hence its possible impact on provisionally adopted articles (see section on Self-determination p. 4). NEW ZEALAND specifically pointed out that for them PP 1 and Arts. 1 and 2 will need further discussion. In response to New Zealand’s position ICC and IITC as well as BOLIVIA, CHILE, ECUADOR, GUATEMALA, MEXICO, SPAIN and VENEZUELA all urged the Chair to present this list of articles as a consensus text, hoping that individual or isolated positions would not jeopardize the whole DD and reaffirmed the need for IPs’ consultations back home to have the assurance that the language in this cluster is final.

6 For PPs 6 and 13: see page 12.

Article 36 is as follows: “IPs have the right to the recognition, observance and enforcement of treaties, agreements and other constructive arrangements concluded with States or their successors and to have States honour and respect such treaties, agreements and other constructive arrangements.

Nothing in this Declaration may be interpreted as to diminish or eliminate the rights of IPs contained in treaties, agreements and other constructive arrangements.”
Future of the Draft Declaration

The report of the Chair on this last session of the WGCD and his recommendations for the future will be presented under Item 15 (Indigenous Peoples) of the Commission on Human Rights (CHR) at its 62nd session. In his closing statement the Chair declared that he would present the list of provisional agreements as text ready for adoption and for the rest of the articles, particularly those concerning self-determination and lands and territories, he would draw up a text based on the discussions trying to bring together the different views. The Chair also declared that he is hoping that no further session of the Working Group will be necessary, and is counting on the support of the delegations for the report he will present at the CHR.

However, even if IPs’ organisations did have strong oppositions to certain language or recommendations in the Chair’s report, no official mechanism was set up by the WGCD or the HCHR Secretariat to allow IPs to present their opposition.

The following joint statement by several indigenous delegations was presented as a closing statement in this 11th session of the WGCD.

IPs’ Joint Statement

11th Session of the WGCD - Geneva, 03 February 2006

Agenda Item: Articles 31, 45 and 45 bis – Autonomy & Self Determination and Third Party Rights

Joint Statement by:
Taungya, AILA, Programa Pueblos Indigenas del CEALP, AN, Wara Instituto Indigena Brasileiro, AIRT, CJIRA, Centro de Estudios Multidisciplinarios Aymara, IITC, Association TAGAZT Djanet - Tuareg people, Culture et développement du monde berbère, JOHAR, Co-ordination Autochtone Francophone (CAF), IPACC, Tamaynut, World Amazigh Congress and African Caucus

On Article 45

The IPs’ delegations joining together in this statement are conscious of the fact that the enjoyment of the rights and freedoms referred to in the DD, as in other human rights instruments, must be balanced with the rights and freedoms of others. However, the manner in which such enjoyment of rights is to be balanced cannot, and should not, be determined in an instrument of this nature. Firstly, the detailed nature and extent of the numerous possible ways of balancing the potential conflicts or tensions, would be impossible to accurately anticipate, and provide for, in this Declaration. Secondly, and more importantly, there is ample scope for balancing the enjoyment of such potentially conflicting rights and freedoms under existing instruments on international human rights law, to which states, IPs and others may have recourse to, when so required.

The wording contained in the Sub-Commission draft of Article 45 goes in this direction by stating that no state, group or person should interpret this Declaration in a manner that would be contrary to the Charter of the United Nations.

However, a small number of delegations at this Working Group had difficulties with this formulation and wished to add further limitations. In an effort to reach consensus, and in order to account for these concerns, the delegations subscribing to this statement were flexible and accommodative enough to agree to some of the proposed changes to the Sub-Commission draft. Some of these delegations thereby agreed to the inclusion of language stating that the exercise of the rights and freedoms contained in this Declaration must meet international human rights law and international standards of good governance. However, the proposed inclusion of further limitations, namely, the “just requirements of morality, public order and the general welfare in a democratic society”, which have been reflected in the proposal of the chairperson of this Working Group’s (as contained in UN Doc E/CN.4/2005/WG.15/2 dated 15 September, 2005) have no place in this Declaration, because such requirements of “morality” etc. have historically been invoked to justify the perpetration of severe injustices against IPs, including genocide and ethnocide. They are sweeping in nature, and would severely undermine the exercise of IPs’ rights, and undo a most fundamental purpose of this declaration, namely, to protect and promote the rights of IPs.

7 Please see the Editorial for information on how this session is being held.
Generic references to limitations upon the exercise of rights and freedoms are more appropriate, and more common, in national legal instruments, than in international law. Limitations of this nature refer generally to specific individual rights and freedoms, such as the freedom of expression, or freedom of assembly, or freedom of movement. Other references to such limitations are applicable in their particular contexts, and are not relevant to the situation of the rights of IPs in general.

Therefore, we believe that the best way to address this issue is to accept the proposal made by the Canadian delegation, with amendments to it by the American Indian Law Alliance (AILA), as presented on 1 February, 2005, (an English language copy of which is annexed to this statement⁸). This proposal has been supported by a large number of governmental and indigenous delegations, whereas the proposals contained in the chairperson’s proposal (as contained in UN Doc E/CN.4/2005/WG.15/2 dated 15 September, 2005) are based upon the support of only a very few delegations participating at this Working Group.

On Article 45 bis

Given the broad scope of Article 45, as contained in the AILA-Canada proposal on article 45, the concerns, if any, regarding potential conflicts or tensions between the rights of IPs and the interest of states, and rights of other third parties, have already been met, and we therefore see no need whatsoever of retaining the provisions of this proposed new article.

Articles 3 and 31

We reiterate the fundamental importance of the right of self-determination, from which flows so many of our rights, including our collective rights. This right needs to be reflected in its true essence, as we believe it has, in the article 3 as reproduced in the chairperson’s proposal. We cannot agree to any changes to this formulation. Furthermore, the essence of one of the corresponding articles on the right of self-determination, namely, that autonomy and self-determination, as contained in article 31, must also remain unqualified. Its placement as the first article of Part VII, is logical, and must be so retained. Any proposed reordering of the placement of the provisions this article, such as to place them in an article after article 3 would be inappropriate, confusing and limit the scope and extent of the right of self-determination.

We hope that the strong views that we have expressed with regard to the provisions of articles 45, 45 bis, 3 and 31 will be accurately and appropriately reflected in the report of this Working Group on its 11th session.

⁸ This proposal is available at doCip.
Chairperson’s summary of proposals, presented on 16 December 2005

Chairman’s Summary on Self-Determination

PP12
Recognizing also that indigenous peoples have the right freely to determine their relationships with States in a spirit of coexistence, mutual benefit and full respect,

PP14
Acknowledging that the Charter of the United Nations, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights affirm the fundamental importance of the right of self-determination of all peoples, by virtue of which they freely determine their political status and freely pursue their economic, social and cultural development,

PP15
Bearing in mind that nothing in this Declaration may be used to deny any peoples their right of self-determination, exercised in conformity with international law,

PP15 bis
Convinced that the recognition of the rights of indigenous peoples in this declaration will enhance harmonious and cooperative relations between the State and indigenous peoples, based on principles of justice, democracy, respect for human rights, non-discrimination and good faith,

PP18
Believing that this Declaration is a further important step forward for the recognition, promotion and protection of the rights and freedoms of indigenous peoples and in the development of relevant activities of the United Nations system in this field,

PP18 bis
Recognizing and reaffirming that indigenous individuals are entitled without discrimination to all human rights recognized in international law, and that indigenous peoples possess collective rights which are indispensable for their existence, well being and integral development as peoples,

A3
Indigenous peoples have the right of self-determination. By virtue of that right they freely determine, their political status and freely pursue their economic, social and cultural development.

A31
Indigenous peoples, as a specific form of in exercising their right to self-determination, have the right to autonomy or self-government in all matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.

This right shall be exercised in accordance with the rule of law, with due respect to legal procedures and arrangements and in good faith.

A32
Indigenous peoples have the collective right to determine their own identity or membership in accordance with their customs and traditions. This does not impair the right of indigenous individuals to obtain citizenship of the States in which they live.

Indigenous peoples have the right to determine the structures and to select the membership of their institutions in accordance with their own procedures.

A33
Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.

A34
Indigenous peoples have the collective right to determine the responsibilities of individuals to their communities.

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9 Document E/CN.4/2005/WG.15/CRP. 7, of 20 December 2005. Strike-through means proposed deletion of the language. Bold means proposed addition. An intermediate version of this summary, as distributed earlier during the 1st and 2nd weeks of the session with some differences in proposed changes, is available at doCip.
Indigenous peoples, in particular those divided by international borders, have the right to maintain and develop contacts, relations and cooperation, including activities for spiritual, cultural, political, economic and social purposes, with their own members as well as other peoples across borders.

States, in consultation and cooperation with indigenous peoples, shall take effective measures to facilitate the exercise and ensure the implementation of this right in accordance with border control laws.

Nothing in this Declaration may be interpreted as implying for any State, people, group or person any right to engage in any activity or to perform any act contrary to the Charter of the United Nations.

The exercise of the rights set forth in this Declaration shall not prejudice impair the enjoyment by all persons of all universally recognized human rights and fundamental freedoms in the exercise of the rights and freedoms set forth herein, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting shall meet the just requirements of morality, public interest order and the general welfare in a democratic society, as determined by law / in accordance with the rule of law.

Nothing in this Declaration shall be construed as authorizing 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 whole people belonging to the territory without distinction of any kind.

Without prejudice to the rights envisaged in this Declaration, no provisions contained herein shall be invoked for the purposes of impairing the sovereignty of a State, its national and political unity or territorial integrity.

Chairman’s Summary on Lands And Resources

Recognizing the urgent need to respect and promote the inherent rights of indigenous peoples, especially their rights to their lands, territories and resources, which derive from their political, economic and social structures and from their cultures, spiritual traditions, histories and philosophies, especially their rights to their lands, territories and resources

Further recognizing the urgent need to respect and promote the rights of indigenous peoples affirmed in treaties, and other agreements and other constructive arrangements with States

Convinced that control by indigenous peoples over developments affecting them and their lands, territories and resources will enable them to maintain and strengthen their institutions, cultures and traditions, and to promote their development in accordance with their aspirations and needs,

Emphasizing that the contribution of the demilitarization of the lands and territories of indigenous peoples, can contribute to peace, economic and social progress and development, understanding and friendly relations among nations and peoples of the world,

Indigenous peoples shall not be forcibly removed or arbitrarily displaced from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.

Indigenous peoples have the right to maintain and develop their political, economic and social systems or institutions, to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities.

Indigenous peoples who have been and are deprived of their means of subsistence and development are entitled to just and fair / effective mechanisms for redress.

Indigenous peoples have the right to maintain and strengthen their distinctive spiritual and material relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.
A26
Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess/hold by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.

States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to in accordance with the customs, traditions and land tenure systems of the indigenous peoples concerned.

A26 bis
States shall establish and implement, in conjunction with indigenous peoples concerned, a fair, impartial, open and transparent process to recognize and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources, including those which were traditionally owned or otherwise occupied or used. Indigenous peoples shall have the right to participate in this process.

A27
Indigenous peoples have the right to pursue claims for redress, by means that can include of restitution or, when this is not possible, of a fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.

Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size and legal status or, when this is not possible, of monetary compensation or other appropriate relief.

A28
Indigenous peoples have the right pertaining to the conservation, restoration and protection of the environment and the productive capacity of their lands or territories and resources. States shall/should establish and implement assistance programs for indigenous peoples for such protection, without discrimination.

States shall take effective measures to ensure that no storage, transit or disposal of hazardous materials shall take place in the lands or territories of indigenous peoples without their free, prior and informed consent.

States shall also take effective measures to ensure, as needed, that programs for monitoring, maintaining and restoring the health of indigenous peoples, as developed and implemented by the peoples affected by such materials, are dully implemented.

A28 bis
Military activities shall not take place in the lands or territories of indigenous peoples, unless justified by a significant threat to relevant public interest or otherwise freely agreed with or requested by the indigenous peoples concerned.

Where possible, States shall undertake effective consultations with the indigenous peoples concerned, through appropriate procedures and in particular though their representative institutions, whenever consideration is being given to use of / prior to using their lands or territories for military activities.

A29
Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge, traditional cultural expressions / cultural and intellectual property and the tangible and intangible manifestations of their cultural and intellectual property in their sciences, technologies and cultural manifestations, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to own their intellectual property.

In conjunction with indigenous peoples, States shall take effective measures, including special measures, to recognize and protect the exercise of this right.

A30
Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.

States shall obtain / seek their free and informed consent prior to the approval of any project significantly affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of their mineral, water or other resources.

States shall / should provide effective mechanisms for just and fair redress where appropriate for any such activities, and measures shall be taken / including appropriate measures to mitigate adverse environmental, economic, social, cultural or spiritual impact.
Indigenous peoples have the right to have access to financial and technical assistance from States and through international cooperation, for the enjoyment of the rights contained in this Declaration.

Preamble Paragraphs and Articles ready for Provisional Adoption

The following is a summary of the informal consultations led on provisional adoption during the 11th session of the WGCD. Sixteen preamble paragraphs and 21 articles are included as such in the Chair’s Report to be presented to the 62nd session of the CHR. In addition, articles 12, 13 and 20 are very close to consensus.

PP1
Affirming that indigenous peoples are equal to all other peoples, while recognizing the right of all peoples to be different, to consider themselves different, and to be respected as such,

PP2
Affirming also that all peoples contribute to the diversity and richness of civilizations and cultures, which constitute the common heritage of humankind,

PP3
Affirming further that all doctrines, policies and practices based on or advocating superiority of peoples or individuals on the basis of national origin, racial, religious, ethnic or cultural differences are racist, scientifically false, legally invalid, morally condemnable and socially unjust,

PP4
Reaffirming also that indigenous peoples, in the exercise of their rights, should be free from discrimination of any kind,

PP5
Concerned that indigenous peoples have suffered from historic injustices as a result of, inter alia, their colonization and dispossession of their lands, territories and resources, thus preventing them from exercising, in particular, their right to development in accordance with their own needs and interests,

PP6
Recognizing the urgent need to respect and promote the inherent rights of indigenous peoples which derive from their political, economic and social structures and from their cultures spiritual traditions, histories and philosophies, especially their rights to their lands, territories and resources;

Further recognizing the urgent need to respect and promote the rights of Indigenous Peoples affirmed in treaties, agreements and other constructive arrangements with States.

PP7
Welcoming the fact that indigenous peoples are organizing themselves for political, economic, social and cultural enhancement and in order to bring an end to all forms of discrimination and oppression wherever they occur,

PP8
Convinced that control by indigenous peoples over developments affecting them and their lands, territories and resources will enable them to maintain and strengthen their institutions, cultures and traditions, and to promote their development in accordance with their aspirations and needs,

PP9
Recognizing also that respect for indigenous knowledge, cultures and traditional practices contributes to sustainable and equitable development and proper management of the environment,

PP11
Recognizing in particular the right of indigenous families and communities to retain shared responsibility for the upbringing, training, education and well-being of their children, consistent with the rights of the child,

PP13
Considering that the rights affirmed in treaties, agreements and constructive arrangements between states and Indigenous Peoples are, in some situations, matters of international concern, interest, responsibility and character.

Also considering that treaties, agreements and other constructive arrangements, and the relationship they represent, are the basis for a strengthened partnership between Indigenous Peoples and States.
PP16
Encouraging States to comply with and effectively implement all their obligations as they apply to indigenous peoples under international instruments, in particular those related to human rights, in consultation and cooperation with the peoples concerned,

PP17
Emphasizing that the United Nations has an important and continuing role to play in promoting and protecting the rights of indigenous peoples,

PP18
Believing that this Declaration is a further important step forward for the recognition, promotion and protection of the rights and freedoms of indigenous peoples and in the development of relevant activities of the United Nations system in this field,

PP18 bis
Recognizing and reaffirming that indigenous individuals are entitled without discrimination to all human rights recognized in international law, and that indigenous peoples possess collective rights which are indispensable for their existence, well being and integral development as peoples,

PP19
Solemnly proclaims the following United Nations Declaration on the Rights of Indigenous Peoples as a standard of achievement to be pursued in a spirit of partnership and mutual respect.

A1
Indigenous peoples have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights and international human rights law.

A2
Indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their indigenous origin or identity.

A4
Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their rights to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

A6
Indigenous individuals have the rights to life, physical and mental integrity, liberty and security of person.

Indigenous peoples have the collective right to live in freedom, peace and security as distinct peoples and shall not be subjected to any act of genocide or any other act of violence, including forcibly removing children of the group to another group.

A7
Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture.

States shall provide effective mechanisms for prevention of, and redress for:

a Any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities;
b Any action which has the aim or effect of dispossessing them of their lands, territories or resources:
c Any form of forced population transfer which has the aim or effect of violating or undermining any of their rights;
d Any form of forced assimilation or integration by other cultures or ways of life imposed on them by legislative, administrative or other measures;
e Any form of propaganda designed to promote or incite racial or ethnic discrimination directed against them.

A9
Indigenous peoples and individuals have the right to belong to an indigenous community or nation, in accordance with the traditions and customs of the community or nation concerned. No discrimination of any kind may arise from the exercise of such a right.

A12
Indigenous peoples have the right to practice and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as
archaeological and historical sites, artefacts, designs, ceremonies, technologies and visual and performing arts and literature.

States shall provide **effective mechanisms for redress / redress through effective mechanisms**, which may include restitution, developed in conjunction with Indigenous Peoples with respect to their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs.

**A13**
Indigenous peoples have the right to manifest, practice, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites; the right to the use and control of their ceremonial objects; and the right to the repatriation of their human remains.

States shall seek to enable the access and/or repatriation of ceremonial objects and human remains in their possession through fair, transparent and effective mechanisms developed in conjunction with indigenous peoples concerned.”

**A14**
Indigenous peoples have the right to revitalize, use, develop and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems and literatures, and to designate and retain their own names for communities, places and persons.

States shall take effective measures to ensure this right is protected and also to ensure that indigenous peoples can understand and be understood in political, legal and administrative proceedings, where necessary through the provision of interpretation or by other appropriate means.

**A15**
Indigenous peoples have the right to establish and control their educational systems and institutions providing education in their own languages, in a manner appropriate to their cultural methods of teaching and learning.

Indigenous individuals, particularly children, have the right to all levels and forms of education of the State without discrimination.

States shall, in conjunction with indigenous peoples, take, effective measures, in order for indigenous individuals, particularly children, including those living outside their communities, to have access, when possible, to an education in their own culture and provided in their own language.

**A16**
Indigenous peoples have the right to the dignity and diversity of their cultures, traditions, histories and aspirations which shall be appropriately reflected in education and public information.

States shall take effective measures, in consultation and cooperation with the indigenous peoples concerned, to combat prejudice and eliminate discrimination and to promote tolerance, understanding and good relations among indigenous peoples and all other segments of society.

**A17**
Indigenous peoples have the right to establish their own media in their own languages and to access to all forms of non-indigenous media without discrimination.

States shall take effective measures to ensure that State-owned media duly reflect indigenous cultural diversity. States, without prejudice to ensuring full freedom of expression, should encourage privately-owned media to adequately reflect indigenous cultural diversity.

**A18**
Indigenous individuals and peoples have the right to enjoy fully all rights established under applicable international and domestic labour law.

States shall in consultation and cooperation with Indigenous Peoples 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 for their empowerment.

Indigenous individuals have the right not to be subjected to any discriminatory conditions of labour and, inter alia, employment or salary.
Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.

States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions / seek the free and informed consent of the indigenous peoples concerned / use their best efforts to obtain the free, prior and informed consent of indigenous peoples before adopting and implementing legislative or administrative measures that may affect them / their rights.

Indigenous peoples have the right, without discrimination, to the improvement of their economic and social conditions, including, inter alia, in the areas of education, employment, vocational training and retraining, housing, sanitation, health and social security.

States shall take effective measures and, where appropriate, special measures to ensure continuing improvement of their economic and social conditions. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities.

Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities in the implementation of this Declaration.

States shall take measures, in conjunction with indigenous peoples, to ensure that indigenous women and children enjoy the full protection and guarantees against all forms of violence and discrimination.

Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development. In particular, indigenous peoples have the right to be actively involved in developing and determining health, housing and other economic and social programs affecting them and, as far as possible, to administer such programs through their own institutions.

Indigenous peoples have the right to their traditional medicines and to maintain their health practices, including the conservation of their vital medicinal plants, animals and minerals. Indigenous individuals also have the right to access, without any discrimination, to all social and health services.

Indigenous individuals have an equal right to the enjoyment of the highest attainable standard of physical and mental health. States shall take the necessary steps with a view to achieving progressively the full realization of this right.

States in consultation and cooperation with indigenous peoples, shall take the appropriate measures, including legislative measures, to achieve the ends of this Declaration.

The organs and specialized agencies of the United Nations system and other intergovernmental organizations shall contribute to the full realization of the provisions of this Declaration through the mobilization, inter alia, of financial cooperation and technical assistance. Ways and means of ensuring participation of indigenous peoples on issues affecting them shall be established.

The United Nations, its bodies, including the Permanent Forum on Indigenous Issues, and specialized agencies, including at the country level, and States, shall promote respect for and full application of the provisions of this Declaration and follow-up the effectiveness of this Declaration.

The rights recognized herein constitute the minimum standards for the survival, dignity and well-being of the indigenous peoples of the world.

Nothing in this Declaration may be construed as diminishing or extinguishing the rights indigenous peoples have now or may acquire in the future.
Abbreviations

AFN: Assembly of First Nations
AILA: American Indian Law Alliance
AIRT: Aoteaora Indigenous Rights Trust
AIWN: Asia Indigenous Women’s Network
AN: Asociación Napguana
CAIPCD: Caribbean Antilles Indigenous Peoples Caucus & the Diaspora
CAPAJ: Comisión Jurídica para el Autodesarrollo de los Pueblos Originarios Andinos
CJIRA: Comision de Juristas Indígenas de la República Argentina
CPA: Cordillera Peoples’ Alliance
CPN: Citizens Potawatomi Nation
CTSFN: Confederacy Treaty Six First Nation
CTT: Consejo de Todas las Tierras
CV: Chickaloon Village, Alaska
FAIRA: Foundation for Aboriginal and Islander Research Action
GCC: Grand Council of the Crees
HD: Haudenosaunee Delegation
ICC: Inuit Circumpolar Conference
ICN: Innu Council of Nitassinan
ICSA: Indian Council of South America
II TC: International Indian Treaty Council
ILRC: Indian Law Resource Centre
IMTK: Indian Movement "Tupaj Katari"
IOIRD: International Organisation of Indigenous Resource Development
IPACC: Indigenous Peoples of Africa Co-ordinating Committee
IPNC: Indigenous Peoples and Nations Coalition
IWA: Indigenous World Association
JOHAR: Jharkandis Organisation for Human Rights
MPIDO: Mainyoiato Pastoralists Integrated Development Organisation
NARF: Native American Rights Fund
NIYC: National Indian Youth Council
NKIKLH: Na Koa Ikaika o Ka Lahui Hawaii
NN: Navajo Nation
RAIPON: Russian Association of Indigenous Peoples of the North
SC: Saami Council
SER: Servicios del Pueblo Mixe
TF: Tebtebba Foundation
TOTSNTC: Tetuwan Oyate Teton Sioux Nation Treaty Council
Summary of State Interventions

Africa

EGYPT
Self-determination
PPs 15 and 15 bis: Egypt does not support PP 15 as in the Chair’s proposal. It prefers the reference to “principles”, and proposes to add “the principles of international law”. Also, Egypt supports the deletion of the final phrase, for the same reasons as the USA. If there is a double reference to international law and the Draft Declaration (DD), there is the risk that in some contexts the DD will not be considered as part of international law. Egypt would like a clarification on the difference between the “right to self-determination” and “of self-determination”.

Asia

CHINA
Self-determination
Article 31: China can support the Chair’s proposal and can accept the article with no list or if it is kept, then have a more exhaustive list. As to merging article 3 and 31, this will enrich article 31, however there is the risk that people’s attention will move from autonomy to self-determination.

Articles 45 and 45 bis: In the second paragraph the expression “by all persons”, should be changed to “peoples” in order to be consistent with the rest of the DD.

China understands the difficulties of some delegates with paragraph four of the Chair’s proposal and therefore suggest replacing “as determined by law” by “international law” and delete what comes after.

INDONESIA
Self-determination
PPs 14 bis and 14 ter: Indonesia fully understands that self-determination is not about secession, however 14 bis and 14 ter do include important elements. Territorial integrity and political unity should be explicitly mentioned in the DD.

JAPAN
Self-determination
PPs 14 bis and 14 ter: For Japan this language should be included in the DD, especially territorial integrity and political unity, this is essential for Japan to accept article 3 as drafted by the Sub-Commission.

Article 31: Japan wants to keep “internal and local affairs”, since it is in the original Sub-Commission text most IPs can probably live with it.

Articles 45 and 45 bis: Japan supports the Chair’s proposal.

Land, territories and resources
Article 28: Japan agrees with Canada regarding the ambiguity of the word “transit”, as included in the Chair’s summary of proposals. Japan could accept the last sentence of the first paragraph as long as “should” is kept.

Pacific

NEW ZEALAND
Self-determination
New Zealand Self-Determination Package
Together with the USA and Australia, New Zealand presents the following package: PP 14 according to Chair’s proposal, PP15 according to the Chair’s intermediate text, PP 15 bis as presented by the Indigenous Caucus, Article 3 with the additional language that aims to clarify the fact that the right to self-determination in this text

10 This report is based on oral and written statements. Given the informal nature of the debate, the present report cannot be exhaustive, but aims to provide an overview of the progresses made.

11 Reference documents available at doCip: The “Chair’s proposal” refers to the text presented at the beginning of the first week contained in the 2004 report (E/CN.4/2005/WG.15/2). The “Chair’s intermediate proposal” refers to the proposals for self-determination and lands presented at the beginning of the second week. The “Chair’s summary of proposals” refers to the proposals for self-determination and lands presented at the beginning of the third week (UN document E/CN.4/2005/WG.15/CRP.7 – see page 9). The text on Treaties, agreements and constructive arrangements was presented by the consultation group for PPs 6 and 13 (see page 12 under section “Preamble Paragraphs and Articles ready for Provisional Adoption” for the language) and Article 36 (see footnote 6 on page 6).
is a distinct right separate from that of all other peoples. The package also includes safeguards for territorial integrity and political unity in article 45.

Under international law, the right to self-determination is addressed in Article 1 of both the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights:

"All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development."

This article is understood in international law, under certain circumstances, to include the right to secession and full independence. The original text of DD implies that what we are dealing with is different form of self-determination than already exists in international law, it is a new right that is to be practiced within the nation state. Since a new right is being established, we have to determine exactly what is meant by self-determination in this DD, otherwise it risks staying open to interpretation and rending it meaningless. What is desired is a DD that is clear, and transparent and that can be applied in a meaningful way. This proposal of New Zealand provides a text that distinguishes the right stated in article 3 of the DD from the right stated in the common article 1 of the International Covenants on Human Rights.

PP 14: New Zealand can live with the Chair’s proposal for PP 14.

PPs 14 bis and 14 ter: New Zealand would like to see PP 14 bis in the operative part, due to reasons outlined by USA and Australia.

PPs 15 and 15 bis: PP 15 from the Chair’s proposal needs further consideration. New Zealand’s national position is that it is comfortable with the language in PP 15 bis but it still does not offer the proper safeguards. New Zealand requires a specific reference to “territorial integrity and political unity” in an operative paragraph. New Zealand prefers to keep PPs 15 and 15 bis separate.

Article 31: This article needs to be amended and brought closer to article 3. One noticeable omission for New Zealand is “territorial integrity”, this is an essential requirement before accepting a package on self-determination. New Zealand cannot agree to “specific form”, it is ambiguous and brings up the question of what are non-specific forms of self-determination? Furthermore, New Zealand has a strong preference for mentioning funding and assistance issues only in article 38.

Articles 45 and 45 bis: New Zealand is concerned about amending or deleting the fourth paragraph of the Chair’s proposal. The language is a direct quote of the UDHR, article 29. Deleting this paragraph might put into jeopardy New Zealand’s agreement with other articles.

In response to the Chair’s intermediate proposal, in particular to the elements set forth in the fourth paragraph of article 45, New Zealand states that it is very important for the protection of all people in a democratic state, this paragraph intends to place limitations for non-democratic states and allow democratic states to take necessary measures in emergency situations.

Canada’s proposal is a positive contribution, but cannot replace the text of the Chair’s proposal, New Zealand can agree to have it as an additional paragraph.

Lands, territories and resources

Article 21: New Zealand opposes the inclusion of “just and fair mechanisms” in the second phrase but agrees with the Swiss proposal of “IPs deprived” (Chair’s summary of proposals).

Article 25: New Zealand could possibly accept keeping “material” or “tangible”, but the final position is dependent on the outcome of article 45 regarding third party rights.

Articles 26 and 26 bis: The Chair’s proposal is imprecise and ambiguous, it mixes the right to own, develop and use lands with the issue of protecting lands. New Zealand asks what is meant by “protection”: environmental or military? In any case these two are covered in other articles. The original text of article 26 is about ownership, use, development and control over resources and also the recognition of indigenous laws and customs etc., this second right is lost in the Chair’s new version. The word possession, in English at least, is imprecise, the concern for New Zealand is whether the “possession” is legal or illegal, it can be interpreted both ways. New Zealand finds their proposed language in E/CN.4/2004/WG.15/CRP.2 is more appropriate.

Regarding the Chair’s intermediate proposal for article 26, “possess” is certainly a problem for New Zealand, “own” would be better. New Zealand could accept the replacement of “in accordance” by “shall take into account” or “with due respect” as proposed by the Russian Federation. It would also want to see “as well as the rights of other parties” added somewhere to the text.

New Zealand supports the Chair’s intermediate proposal for article 26 bis.

Article 27: The Chair’s proposal is an improvement for New Zealand. The right of other parties, however remains an issue. There is a clear distinction between “redress” (all inclusive) and the different forms of

12 Canada’s proposal for article 45 is: “The principles of justice, democracy, respect for human rights, equality, non-discrimination, good governance, and good faith shall be essential elements in resolving any conflict between the rights of indigenous peoples and individuals, States and other parties concerned.”

13 This document is available, in English only, at:
http://www.ohchr.org/english/issues/indigenous/groups/sessions-02.htm
compensation, restoration etc. The USA’s proposal to include “pursue claims to redress” is acceptable to New Zealand and it proposes: “have the right to pursue claims for redress which may include/including…”. New Zealand thinks that the second paragraph of the Chair’s summary of proposals is too prescriptive, it is rendered inoperable. New Zealand cannot accept a text that limits the definition of redress.

**Articles 28 and 28 bis:** New Zealand suggests the wording: “IPs have the equal right” and also removing “restoration” from the second line since it is impossible to restore the environment in the way described in the Sub-Commission text. With regard to the Chair’s summary of proposals, New Zealand, in a spirit of extreme compromise, could lend support to the first paragraph including “without discrimination” and also “should” rather than “shall”.

New Zealand supports the language in E/CN.4/2004/WG.15/CRP.1 for article 28 bis.

**Article 29:** The list poses difficulties for New Zealand, which agrees with Australia regarding “special measures”. New Zealand has to consult with its authorities before agreeing to the Chair’s summary of proposals, but would advise them to look on it favourably.

**Article 30:** Regarding the Chair’s summary of proposals, New Zealand can accept paragraph one, accept “seek” not “obtain”, can live with “significantly”, prefers “shall” rather than “should” in paragraph three. New Zealand suggests to delete “where appropriate” and leave “appropriate measures”.

**Article 38:** This is an overarching article for New Zealand, it covers the whole DD in terms of issues of financial and technical assistance, New Zealand is glad to support it.

*Treaties, agreements and constructive arrangements*

**PP 6:** New Zealand thinks that “other agreements” would be clearer and more in line with PP 13 and article 36. New Zealand could also live with the USA proposal to confine treaties to the domestic realm (PP 13 and article 36).

**AUSTRALIA**

*Self-determination*

Australia supports New Zealand package on self-determination (see page 17).

**PPs 14 bis and 14 ter:** The PP 14 ter language needs to be expressed in the operative part of the DD, Australia needs this for an emerging or actual consensus.

**PPs 15 and 15 bis:** The problem with merging these two is that it draws a connection between the two separate rights described in each paragraph and creates a degree of confusion.

**Article 3:** The preferable solution is to reformulate article 3 as a distinct and additional right of self-determination, since for Australia it is not the same as the common article 1 of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

Australia supports the self-determination package presented by New Zealand, with amendments to article 3. For Australia the proposal of keeping article 3 in its original form continues to present fundamental concerns. If article 3 is saying something new and important then it is also important for the WGCD to deal with its serious, maybe unintended consequences.

**Article 31:** Australia has the following questions and concerns: How far do we go with internal and local affairs? Would the criminal code be substituted for example? What do we mean by financing autonomous functions? Does that mean that taxation would be different?

**Articles 45 and 45 bis:** The goal of the second paragraph in the Chair’s proposal is to address the constraints that work on rights, those of other individuals and those of society as a whole. Australia questions what is the best way of dealing with this general provision: one broad article or change article by article? The Universal Declaration of Human Rights (UDHR) article 29 is sound language for this article.

Australia shares New Zealand’s stance on the Chair’s intermediate proposal, especially regarding paragraph four. Canada’s proposal is a positive contribution, but cannot replace the text of the Chair’s proposal or even summary of proposals. Australia can agree to have it as an additional paragraph.

*Lands, territories and resources*

**Article 10:** In cases where states need to protect land or even IPs, they need to be able to act without obtaining free, prior and informed consent; for example in cases of evacuation due to weather hazards. There needs to be a qualifying term here for it to be acceptable to Australia.

**Article 25:** If the word “material” is deleted, Australia would be more willing to include “traditionally owned…”, otherwise it supports the text in document E/CN.4/2004/WG.15/CRP.1. Concretely, Australia questions how the state would go about enforcing the “material” relationship to the land, especially on privately owned lands.

**Articles 26 and 26 bis:** Australia concurs with the text from the Chair’s proposal. One question remains: is article 26 about a state’s obligation to give legal recognition of an indigenous title? If this aspect is mentioned elsewhere, then why not leave it out here?

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14 This document is available at: [http://www.ohchr.org/english/issues/indigenous/groups/sessions-02.htm](http://www.ohchr.org/english/issues/indigenous/groups/sessions-02.htm)
The spirit behind the second paragraph of the Chair’s summary of proposals for article 26 would pose enormous problems, because the entirety of the continent is considered aboriginal thus to respect this right would mean having everyone “climb back into the boats”.

**Article 27:** Australia can accept the Chair’s proposal, apart from the first sentence that reduces redress to restitution and compensation, after redress Australia suggests: “including forms of restitution and…” since there are several forms of redress, also symbolic redress.

**Article 28:** Australia appreciates the history and intent behind restoring the environment, however it questions it as an unqualified right and how one can practically achieve that, regardless of whether it is for IPs or not. It is difficult to have an obligation to conserve and protect the environment if you do not have any control over the development of that land.

**Article 28 bis:** Regarding the proposal of: “eminent risk to public interest”, Australia actually prefers “significant public interests” as suggested by the USA.

**Article 29:** The Chair’s summary of proposals is a good basis for consensus. Australia makes a technical comment on “special measures” which is used in the context of the Committee on the Elimination of Racial Discrimination (CERD) as having a temporary effect, Australia would prefer “effective measures”.

**Article 30:** Regarding free, prior and informed consent, Australia states that it is unreasonable to give the private owner the right to veto and hold the public order to ransom. We have to resort to language like “seek free, prior…” or have a specific clause for when there is a public project at stake.

*Treaties, agreements and constructive arrangements*

**PP 6:** “Constructive arrangements” is unclear for Australia, it might be a source of dispute. Treaties and agreements are sufficiently broad. As for “inherent”, Australia can appreciate the desire to use it in this context, it is uncommon to use in such a document and therefore prefers “innate”, “unique”, or “intrinsic”.

**Europe & Russian Federation**

**EUROPEAN UNION:** After the first two weeks the EU is encouraged by the positive attitude of IPs and states and the emerging consensus on many articles. The EU appreciates the efforts to maintain article 3 in the original language and to use a package approach.

**BELGIUM AND NETHERLANDS**

*Self-determination*

**PPs 18 and 18 bis:** The Guatemalan proposal for PP 18 bis is very constructive. This will change the dynamics of the discussions significantly, Belgium and Netherlands think that it will allow dozens of articles to be adopted.

**DENMARK**

*Self-determination*

**PPs 12 and 14:** Denmark has difficulties seeing how anybody could be against what is stated in these paragraphs.

**PPs 15 and 15 bis:** These provisions are about how one exercises the right to self-determination, i.e. in conformity with the principles of international law and this DD. PP 15 bis is a general comment on human rights, something that is referred to a lot in the text. Denmark does not have any serious objections to merging these two PPs.

**PPs 18 and 18 bis:** PP 18 is not about self-determination, since it is about individuals, Denmark does not see how self-determination can be practiced by individuals.

**Article 3:** Denmark agrees that the discussion on self-determination is always in connection with article 3. It is a key article in this DD and should remain as it is. It is probably the first time the right of self-determination is surrounded by twelve other articles to clarify what it means. The point is that it cannot be defined precisely, it is a proclamation, and will develop according to each context. Denmark is concerned that though the WGCD is making progress, it is also complicating matters. It reminds the other delegates that this DD will be presented to 191 countries, hopefully in 2006 General Assembly, and it may be confusing to have 12 provisions to explain what is meant by self-determination in this DD.

**Article 31:** Denmark could agree to the Chair’s proposal for this article. It is not necessary to bring all the articles on self-determination together, especially if they are all given the same value. Denmark can agree to the language in the Chair’s intermediate proposal. However, it has to say “IPs as a specific form of their…”; to write “in exercising their right to self-determination” would neutralise the whole goal of article 3, it would then be only about self-government and autonomy. Denmark also strongly supports to have the word “inter alia” if the list is kept.

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15 **Guatemala’s proposal for PP 18 bis is as follows:** “Recognizing and reaffirming that IPs have the right without discrimination to all human rights recognized in international law and that IPs possess collective rights which are indispensable for their existence, well being and integral development as a peoples”.

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Second paragraph in the Chair’s summary of proposals is too general, this type of clause should appear at the end of the DD.

**Article 32:** Denmark draws attention to the fact that article 8 is also crucial for identity. It could support 32 as it stands in the Chair’s proposal and with the technical amendment suggested by the USA.

**Articles 45 and 45 bis:** Denmark cannot see how paragraph four of the Chair’s proposal for article 45 is at all relevant to the whole DD. It is inappropriate to quote the International Covenants on Human Rights or the UDHR out of context and in such a broad manner. Indeed it would burden the DD if we went article by article saying: “in accordance with human rights standards”, maybe except for article 15, which does not have limitations. Denmark questions in how many articles is this reference needed? Embarking in sweeping statements that apply to all possible situations and attempt to predict all situations, can easily create loopholes. Denmark does not see the need to further complicate article 45 with 45 bis, this text is neither needed in the preamble nor in the operative part. If the right to self-determination was translated in the document as a right to secession, then including territorial integrity would be appropriate, but that is not the case. PP 15 should already address all concerns of territorial integrity.

Denmark wishes to end the DD on a positive note and considers Canada’s proposal to be a step in the right direction.

**Lands, territories and resources**

**Article 10:** Denmark supports the Chair’s proposal for this article, but to be consistent it is better to say “free, prior and informed consent” as throughout the whole text.

**Articles 26 and 26 bis:** Denmark believes firmly in the necessity of an article on dispute settlement, because land issues will give rise to dispute, article 26 bis is indispensable. However, the last part of the article seems rather weak, instead of “to participate” Denmark suggests: “states shall consult and cooperate…”. It would be stronger and more in line with other articles.

**Article 30:** Denmark agrees with other states that “seek” free, prior informed consent is too weak, this right has to be asserted more strongly with “obtain”.

**Article 35:** International law principles imply that you should implement your agreements in good faith and that is what is here as a general provision for the whole DD.

**Treaties, agreements and constructive arrangements**

**PP 6:** Denmark supports the Chair’s proposal for PP 6. It particularly supports “inherent” since the first paragraph of the Covenant on Civil and Political Rights speaks of the “inherent dignity and of the equal and inalienable rights of all members of the human family” and “inherent dignity of human person”. Regarding “constructive arrangements”, Denmark agrees that it is an unclear term, but would agree to it, also can accept “other agreements”.

**FINLAND**

**Self-determination**

**PPs 18 and 18 bis:** Finland has no issues in recognising collective rights, but if the Guatemalan proposal for 18 bis helps other states it will be happy to support it, Finland’s goal is to bring this DD to a successful end.

**Article 31:** Finland prefers “as a specific form” and no list.

**Article 45:** Finland would prefer to keep the last sentence of the second paragraph of the Chair’s summary of proposals since it is in line with other conventions.

**FRANCE**

**Self-determination**

**Article 3:** France thinks article 3 and 31 could be merged into one article. The right to self-determination has to be practiced in respect of all people living in that territory.

**Article 34:** France has reservations on this article, its position depends on the outcome of article 45.

**Article 31:** France supports the position of the UK regarding “in exercising their right”.

**Articles 45 and 45 bis:** Paragraph four in the Chair’s proposal is from the UDHR, it is a reference text and therefore should not be changed.

France is favourable to the inclusion of Canada’s proposal as a third paragraph.

**Lands, territories and resources**

**Article 21:** France questions how articles 21, 26 and 26 bis are connected?

**Article 27:** In terms of the French text, France suggests that “compensation” should be translated to “compensations” and not “indemnisations” (reparation). France shares Australia and UK’s concerns regarding the Chair’s intermediate proposal.

For internal judicial procedures, France would like to see “and/or individuals” after “indigenous peoples”, this would enable the application of this right in France.

France agrees with New Zealand regarding the second paragraph of the Chair’s summary of proposals.

**Treaties, agreements and constructive arrangements**

**PP 6:** France agrees with the UK’s reasoning for deleting the word “inherent”.

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NORWAY

Self-determination

PP 12: Norway can support the Chair’s proposal.

PPs 14 bis and 14 ter: Norway finds these paragraphs are redundant.

PPs 15 and 15 bis: Norway thanks Mexico for its proposal to merge PP 15 and PP 15 bis, Norway supports it and can also agree to delete the reference to international law in PP 15 bis.

PP 18 and 18 bis: Norway welcomes Guatemala’s proposal for a PP 18 bis, though Norway itself has no issues in accepting collective rights.

Article 3: Norway would like this article to be left in its original language and also supports the idea of an article 3 bis as suggested by Sweden.

Article 31: Norway supports the Chair’s summary of proposals, “as a specific form”, whereas the second paragraph is not fruitful in a DD about IPs’ rights, it would give supremacy to domestic law.

Article 33: Norway supports the Chair’s proposal and reminds that article 33 was in the package for provisional approval in 2004. Though like Canada, it would prefer to have “juridical customs” instead of “systems”.

Articles 45 and 45 bis: Norway can agree to the Chair’s proposal for this article. For article 45 bis Norway proposes “the whole population / all peoples belonging to the territory”. Norway understands the need for a provision bringing the DD in harmony with the well-being and interests of the state, but article 45 as presented in the Chair’s summary of proposals is too broad and negative. Canada’s proposal is more uplifting and balanced. Norway does not need the safeguard in article 45 bis, its concerns are taken care of in PP 15, self-determination “in accordance with international law” is sufficient.

Lands, territories and resources

Article 25: Norway can accept the Chair’s proposal for this article. Norway has ratified ILO Convention 169, so out of principle it cannot introduce language that weakens or creates ambiguities with the ILO 169.

Articles 26 and 26 bis: For article 26 bis, Norway agrees to: “IPs shall have the right to participate in this process”, the addition of “independent and impartial judicial processes” as proposed by AN.

Article 30: Norway agrees to the first paragraph. Regarding the second paragraph, it has problems with the word “obtain” free, prior informed consent; it could accept USA proposal on this issue.

RUSSIAN FEDERATION

Self-determination

PPs 15 and 15 bis: The Russian Federation does not oppose the language in these paragraphs but does not think that they resolve all the issues regarding self-determination.

PPs 18 and 18 bis: The Russian Federation is ready to back the Guatemalan proposal for PP 18 bis. It recognizes that IPs possess both collective and individual rights, which, being exercised, will promote the well-being of IPs.

Article 3: The Russian Federation agrees to keep article 3 in the DD with the Sub-Commission text if its amendments for article 31 as well as the second paragraph of article 45 bis as in the Chair’s summary of proposals are kept.

Article 31: The Russian Federation would like the following text to be added: “This right shall be exercised in accordance with the rule of law, with due respect to legal procedures and arrangements and in good faith.” The “rule of law” should not be interpreted in the narrow national sense, it also includes international law. The Russian Federation does not understand why the “rule of law”, which is constantly brought up in human rights law, poses any problems in this DD.

Articles 45 and 45 bis: The Russian Federation would like to add the following language to article 45 bis or as 45 ter: “Without prejudice to the rights envisaged in this Declaration, no provisions contained herein shall be invoked for the purposes of impairing the sovereignty of a State, its national and political unity or territorial integrity.”

Land, territories and resources

Article 21: The Russian Federation would prefer the word “institutions”, since these are to be seen as parallel systems to that of the state.

Articles 26 and 26 bis: The Russian Federation proposes to replace the second sentence in article 26 with: “such recognition shall be conducted with due respect to the customs, traditions and ...”

Article 27: In order to adopt this article the Russian Federation would have to include “when illegally taken”. Otherwise it can accept the text of the Chair’s summary of proposals.

Article 28: The Russian Federation considers that the first sentence in the Chair’s summary of proposals does not clearly declare that IPs have the right to a healthy environment, and that this is an obligation of the state. The term “conservation” means both protection and restoration, so it is redundant to include the latter. The Russian Federation disagrees with adding “transit” (Chair’s summary of proposals), this issue is covered under “conservation of the environment”.

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SPAIN

Self-determination

PPs 14 bis and 14 ter: Spain considers that PPs 14 bis and ter are unnecessary since these concerns are spelled out in PP 15.

PPs 15 and 15 bis: Spain supports Mexico’s proposal for these two paragraphs. If the merged PP 15 does not get the support it needs, Spain would then revert back to the original text of the Sub-Commission.

PP 18 and 18 bis: Spain thanks Guatemala for its proposal for PP 18 bis and see it as a good basis to solve the transversal issues of “collective rights”. Would this enable the adoption of all other articles that deal with collective rights in the DD?

Article 3: Spain is in agreement with keeping article 3 as drafted by the Sub-Commission.

Article 31: Spain supports the Chair’s proposal and the intermediate proposal for article 31. It prefers “as a specific form”, agrees with Denmark on this regard. Spain is hesitant about moving article 31 close to article 3. Spain prefers not to include the second paragraph of the Chair’s summary of proposals.

Article 32: Spain can agree to the Chair’s proposal for this article.

Articles 45 and 45 bis: Spain can agree to the Chair’s proposal for article 45, also to the fourth paragraph, though effectively there is still a possibility to change the language so as to be more in line with IPs’ traditions. For the latter paragraph, Spain prefers a language that goes in the direction of the Mexican proposal. On the first two paragraphs Spain agrees with Mexico and Guatemala, it does not see any difficulty in defending collective or individual rights of IPs and all peoples.

Spain clearly prefers the Mexican proposal for article 45 bis, considering that the concept of territorial integrity exists in PP 15 and in article 45 as proposed by Mexico, though Spain cannot imagine having both article 45 bis as well as the PP 15 as proposed by the Chair or Mexico, it should be one or the other.

Lands, territories and resources

Article 10: Spain supports the Chair’s proposal. Though it also understands Australia’s concerns, Spain believes that the government has the responsibility to care for its citizens and also the responsibility for compensation. It prefers to keep the term “desplazados” (displaced) since “desalojo” (relocate) is less transitory.

Article 21: Spain considers that “rezarcimiento” is an adequate translation into Spanish for “redress”.

Article 28: Spain can approve the Chair’s proposal. It proposes: “or through international cooperation” because including “or” amplifies the capacity for international cooperation.

Article 29: Spain agrees with Venezuela regarding the role of the WGCD in establishing the right to collective intellectual property.

SWEDEN

Self-determination

PPs 12 and 14: Sweden is ready to accept PP 12 and PP 14 as proposed in the Chair’s proposal.

PPs 15 and 15 bis: Sweden is flexible with respect to PP 15, and can accept PP 15 bis. If 15 and 15 bis are to remain separate, Sweden prefers the wording “with principles of” (Chair’s proposal).

PPs 18 and 18 bis: Sweden welcomes the constructive spirit of the Guatemalan proposal for PP 18 bis, it could very well bridge remaining gaps regarding collective rights, it has Sweden’s firm support.

Article 3: Sweden can accept article 3 but also sees a link with article 31.

Article 31: Sweden supports the Chair’s proposal or the intermediate proposal language for this article and can support it being an article 3 bis. Like Switzerland, Sweden proposes “directly relating to local and internal affairs”. Sweden has a strong preference for not including the list of the original Sub-Commission text nor the second paragraph in the Chair’s summary of proposals.

Article 34: Sweden would have preferred the text as in document E/CN.4/2004/WG.15/CRP.16 and to have a reference to human rights. Its final word on this article is dependent on the outcome of article 45.

Article 45: Sweden is not ready to replace the text in the Chair’s proposal with the Canadian proposal, there should be a reference to the enjoyment of human rights by all peoples, not only by IPs.

Lands, territories and resources

Article 21: Sweden would prefer to delete “have been”.

Article 26: This is one of the most problematic articles for Sweden, it can accept the text as it stands in the Chair’s summary of proposals, however Sweden would need a reference to either “hold” or “possess”, an alternative would be to remove “control” from the first sentence.

Articles 28 and 28 bis: Sweden cannot go along with approving a right to restoration, that should be covered in article 27 regarding restitution and compensation, though it could accept the AILA proposal to keep “pertaining” and “restoration” (Chair’s summary of proposals). Sweden prefers the original text for article 28 bis.

Article 29: Sweden prefers to eliminate “control” from the first sentence.

16 This document is available at: http://www.ohchr.org/english/issues/indigenous/groups/sessions-02.htm
Article 30: Sweden would like to see “seek” free, prior informed consent rather than “obtain”. There are cases of expropriation where there is no possibility for free, prior and informed consent, “obtain” would mean a right to veto.

SWITZERLAND

Self-determination

PPs 15 and 15 bis: Switzerland can support the merger proposed by Mexico.

Article 31: Switzerland supports the Chair’s proposal for this article and proposes “in all matter relating directly to their internal and external affairs”.

Lands, territories and resources

Article 21: Switzerland proposes: “IPs deprived of”, that way all time frames are covered, past, present and future.

UNITED KINGDOM

Self-determination

PP 12: UK can live with the Chair’s proposal for PP 12.
PP 14: UK can live with the Chair’s proposal for PP 14.
PPs 14 bis and 14 ter: Like other states, UK needs this language to be included in the DD.
PPs 15 and 15 bis: UK can live with the Chair’s proposal for PP 15 bis or the original text. UK is flexible about using “principles of international law” or “applicable to international law”. It is the opinion of UK that this particular right of self-determination does not have any content in international law. One solution would be to go back to the original text of PP 15. The Chair’s proposal is an enormous leap forward; it would be better to write “indigenous peoples” and not “any peoples”. The UK does not think that the merger of PPs 15 and 15 bis solves any of the problems.

PPs 18 and 18 bis: UK can live with the Chair’s proposal for PP 18 and is committed to provisionally adopting a good number of articles. It can accept the Guatemalan proposal for PP 18 bis as a compromise, therefore making it possible to approve most other articles in the DD without further amendment, “indigenous peoples” would pose no more problem.

Article 3: UK has been clear in the past that article 3 should be amended to clarify that it is an additional right to the common article 1 of the International Covenants on Human Rights. This DD should not preclude or limit the common article 1. UK fully shares the understanding of self-determination within international law as set out by New Zealand. UK is ready to accept the approach of keeping article 3 in original form with the understanding that there is an article 3 bis that sets out the new definition of self-determination.

Article 31: UK requires the use of “in exercising their right”, to give clarity to the right expressed here and to allow progress with article 3. UK would also need to see it positioned as an article 3 bis. UK believes article 45 covers the second paragraph of this article presented in the Chair’s summary of proposals.

Treaties, agreements and constructive arrangements

PP 6: According to UK the use of “inherent” in PP 6 is inappropriate since this PP talks about a variety of rights, furthermore this language has specific connotations in international law that attaches it to individuals, but this Declaration is about collective rights.

SOUTH & CENTRAL AMERICA

ARGENTINA

Self-determination

Article 31: Regarding self-determination, Argentina considers that the common article 1 of the International Covenants on Human Rights defines the extent to which this right is practiced, that is to say self-government compatible with territorial integrity and political unity.

Article 32: Argentina agrees to the Chair’s proposed text and will need to consider the removal of “collective” as suggested by the USA.

Lands, territories and resources

Article 25: Argentina prefers the wording “lands or territories”, as in ILO 169, this is a preference for the whole DD, however Argentina will not block consensus on this basis.

Article 26: Argentina agrees to adding “impartial” to the Chair’s intermediate proposal.

Treaties, agreements and constructive arrangements

PP 6: Argentina can accept the text presented by the consultation group.
**BOLIVIA**

**Self-determination**

**PPs 15 and 15 bis:** Bolivia agrees with Mexico’s proposal of merging PPs 15 and 15 bis.  
**Articles 45 and 45 bis:** Bolivia can agree to the first and second paragraphs of the Chair’s proposal, but not to the fourth one. In response to New Zealand’s comments on the fourth paragraph, Bolivia states that the Universal Declaration already exists and is applicable to all. The deletion of this paragraph has nothing to do with a question of democracy or not.

**Lands, territories and resources**

**PP 6:** In Spanish the word “intrínseco” (intrinsic), is not the same as “inherent” that is used in the English version.  
**PP 10:** Bolivia believes the Chair’s proposal best addresses the issues in this paragraph.  
**Articles 26 and 26 bis:** For article 26, Bolivia believes we have to keep the right to subsistence.  
**Article 27:** Bolivia still leans towards the original text.  
**Articles 28 and 28 bis:** Bolivia understands the importance of keeping “restoration” and can therefore accept the AILA proposal to keep “pertaining” and “restoration” (Chair’s summary of proposals). Regarding article 28 bis, Bolivia would prefer to keep “where possible” since in case of a war, the government would have to ask for permission, which is not the usual way of proceeding in those situations (Chair’s summary of proposals).  
**Article 29:** Bolivia agrees with Venezuela regarding the role of the WGCD in establishing the right to collective intellectual property.  
**Article 30:** Throughout the debates Bolivia has understood that redress is essential to IPs, and should be kept without qualifications. Bolivia also agrees to “obtain” free, prior and informed consent (Chair’s summary of proposals).

**BRAZIL**

**Self-determination**

**PPs 14 bis and 14 ter:** In the end, self-determination will be defined according to the conditions existing within each country. PPs 14 bis and ter are symmetrical and opposite, they emulate one another and annull one another. Furthermore, they both are aggressive statements against both IPs and states. Their elimination would be wise a decision, especially in light of the Chair’s proposal for PP 15.  
**Article 3:** Brazil accepts the Sub-Commission text for article 3; it should be maintained as such.  
**Article 31:** Brazil disagrees with the inclusion of the second paragraph of the Chair’s summary of proposals.  
**Article 33:** The states’ concerns regarding compatibility between indigenous and state jurisdiction, is answered in the last phrase with: “in accordance with international human rights standards”.  
**Articles 45 and 45 bis:** Brazil is dismayed by the idea of closing a DD that will be a novelty and new page in history, with such a limiting article. Brazil entreats the countries suggesting this language to at least not put it in article 45, we need to finish on a high note such as with article 44. This DD is not about granting the right to self-determination since this right has already been won as a result of many years of struggle and rebuilding of social and political structures. By virtue of self-determination IPs have rights and obligations. In that view we should not be afraid of self-determination since it will allow IPs to be responsible for the future of their people, until now they were dependent as colonized nations. It might be important to have the first paragraph since it speaks to the relation between the IPs and the UN, but Brazil considers it could be moved to another part of the DD. Brazil is in favour that “people” be included as suggested in the Chair’s intermediate proposal.  
Brazil supports the proposal made by Canada to replace the second paragraph of the Chair’s summary of proposals.  
**Lands, territories and resources**

**Article 10:** Brazil supports the Chair’s proposal.  
**Article 21:** Brazil prefers to keep “that have been dispossessed”. Regarding the Chair’s intermediate proposal, Brazil believes that the term “system” is a broader word since it is understood as a set of institutions. In terms of the time frame for this article, covering also the past means that in many cases redress or compensation will be impossible. The DD must be practical, and parties have to remain open to a broad interpretation.  
**Articles 26 and 26 bis:** Brazil can accept the Chair’s proposal, though it could be more precise since possession could not mean legal possession in Brazil without a change in its constitution. There needs to be a strong language stating the right of IPs so that the state can carry out its obligations. Brazil clarifies that IPs definition of “material” is not economic or capitalistic, it stems more from a pre-economic view of the materiality of the world. Brazil finds the last sentence of article 26 bis in the Chair’s summary of proposals to be redundant.  
**Article 27:** The Chair’s proposal is good for Brazil.
Article 28: It is important to think about the environments surrounding indigenous lands, as these become more polluted, due to agricultural practices in particular. In this regard there should be language along the lines of: “industries that impact indigenous resources, should be discouraged in areas close to IPs territories”. Brazil agrees with the AILA proposal to keep “pertaining” and “restoration” (Chair’s summary of proposals).

Article 29: Brazil agrees with Venezuela regarding the role of the WGCD in establishing the right to collective intellectual property.

Article 30: For Brazil IPs should have the right to say “no”, for example to projects that are contrary to their spiritual and cultural views. It proposes: “IPs have the right to say no to private projects that they consider may negatively impact their cultural and spiritual practices.” The right to “obtain” free, prior and informed consent should definitely be kept, rather than “seek” as proposed in the Chair’s summary of proposals.

Article 35: Brazil supports the Chair’s proposal for this article.

Treaties, agreements and constructive arrangements

PP 6: Brazil emphasizes and supports arguments in favour of maintaining “inherent”, the best one being the fact that it is already used in other Human Rights Covenants.

CHILE

Self-determination

PPs 14 bis and 14 ter: Chile wonders how “relating to internal and local affairs” fits in with the obligations of the state regarding health, education, and the standards that have to be maintained in such areas? Maybe the question can be answered at the national level.

In any case for Chile PPs 14 bis and ter are not good formulations and do not have a place here, but the concerns they express have to be dealt with.

PPs 18 and 18 bis: Chile supports Guatemala’s proposal for a PP 18 bis.

Lands, territories and resources

PP 8: Chile reminds that it proposed, “lands, territories and/or other resources”. A suitable wording should be found for the whole text.

ECUADOR

Self-determination

PPs 15 and 15 bis: Ecuador supports Mexico’s proposal to merge these two in function of what happens with article 3. Though it should not be forgotten that PP 15 states that nobody can deny the self-determination of IPs and PP 15 bis talks about the need for balanced relationships between IPs and the states.

Articles 45 and 45 bis: The Chair’s proposal for article 45 is acceptable to Ecuador, in particular the first and second paragraph. Ecuador understands the concerns for the integrity of the state but also understands self-determination as a fundamental human right. Mexico’s proposal as article 45 bis encompasses both concerns but gives a different focus.

Lands, territories and resources

Article 25: This article is about spiritual and material relations to land, not about ownership. Ecuador proposes to link it with article 26 by adding: “and other resources that they own according to the terms in article 26…”

Articles 26 and 26 bis: Ecuador supports article 26, however it agrees with Canada’s proposal for the last sentence regarding IPs’ participation in the process.

Article 30: The right to “obtain” free, prior and informed consent should definitely be kept, rather than “seek” as proposed in the Chair’s summary of proposals.

GUATEMALA

Self-determination

PPs 14 bis and 14 ter: Guatemala understands the concerns of other states regarding territorial integrity, but there are other means through which IPs could achieve secession, they can refer to other more pertinent instruments than the DD with or without PP 14 bis and ter. Regardless, it is clear that IPs are not interested in talking about or obtaining secession within the context of this process of establishing a DD.

Guatemala agrees with Mexico’s proposals, and shares the view that this process is about creating positive relations between States and IPs.

PPs 15 and 15 bis: This document is aiming to improve the living conditions and general well being of IPs, we should be cautious not to limit the development of IPs in some articles. If Mexico’s proposal of merging the two gains support, then Guatemala will support it.

PP 18 and 18 bis: Guatemala hopes to facilitate the understanding of individual and collective rights with the following proposal as PP 18 bis: “recognizing and reaffirming that IPs have the right without discrimination to all human rights recognized in international law and that IPs possess collective rights which are indispensable for their existence, well being and integral development as a peoples”. The first part recognizes the individual enjoyment of human rights by IPs, and then comes the reaffirmation of the collective rights that we are stressing in this DD.
Article 31: Guatemala invites delegations refusing the Chair’s intermediate proposal to put themselves in a middle ground. The fundamental point here is “autonomy and self-government”, in light of that Guatemala proposes: “IPs as a concrete form of exercising their right to self-determination have the right to autonomy and self-government for the exercise of their rights, as well as the right to finance these autonomous functions”. This would be a way to not to put limitations on the interpretation of this article, considering that in Guatemala IPs already participate at local, national and even international levels.

The language in the Chair’s summary of proposals is acceptable to Guatemala apart from the second paragraph, which should be deleted since under dictatorships in Guatemala the population experienced the repression of the “rule of law”.

Articles 45 and 45 bis: Guatemala agrees with Mexico in that “morality, public order…” should be removed. Guatemala has no difficulty in keeping paragraph two, if paragraph four is removed. Mexico’s proposal for replacing the second and fourth paragraph is interesting, but it has problems with “determined by law”, because this has not taken IPs’ rights into account neither in the past nor in the present.

Guatemala suggests, as a possible way to find a balance, to add after fundamental freedoms “and the individual rights will not be prejudicial to the rights of IPs in this Declaration”.

The implications of New Zealand’s comment on this article is that states which are not in favour of the fourth paragraph are not democratic countries, this is a false assumption.

Guatemala thinks that article 45 bis is unnecessary, there exists already many safeguards for states regarding territorial integrity, thus it is convenient to make a DD that is useful and restores IPs’ dignity.

Lands, territories and resources

PP 10: Guatemala supports the Chair’s proposal, demilitarization can contribute to peace.

Article 21: Guatemala believes that “deprived” includes all time frames. For Guatemala it is important to reflect that there is a right to redress. It supports Mexico’s proposal.

Article 25: Guatemala can accept the Chair’s summary of proposals.

Articles 26 and 26 bis: Removing the recognition of the “lands, territories and resources that were traditionally owned, used or occupied” from the beginning of the text or worse from the whole text, undermines the fundamental rights of this article. Guatemala agrees to the Chair’s intermediate proposal.

Guatemala thinks that article 26 bis can clarify the content of article 26. The word “conjunction” is essential because there are judicial processes where there is no participation of those affected.

Article 27: Guatemala asks to delete “pursue” and “that can include” from the Chair’s summary of proposals.

Article 28: Guatemala agrees to keeping “restoration” in the text (Chair’s summary of proposals).

Article 30: Guatemala knows from experience that “seek” free prior and informed consent does not guarantee the same rights as “obtain”.

Article 32: Guatemala agrees to the USA’s proposal to remove “collective”, since this is already dealt with in PP 18 bis.

Treaties, agreements and constructive arrangements

PP 6: Guatemala is concerned that Australia and UK’s vision may limit Guatemala’s judicial system. Regarding the reference “constructive arrangements”, IPs in Guatemala also have agreements with other IPs, agreements are not necessarily between IPs and states. It urges Australia to desist from removing this reference since it is pertinent for others, though not necessarily for them. Guatemala cannot accept the deletion of the word “intrinsic” or “inherent”.

MEXICO


The seminar held in Patzcuaro to hold further discussions on the DD has brought Mexico to be convinced that a solid and substantive Declaration is achievable by 2006. The seminar was not meant for negotiations but rather for exchange, unfortunately not all actors could be present. “This discussion was enhanced by the recent adoption by the Heads of State and Government, of the outcome document of the World Summit 2005, in the framework of the High-Level Plenary Session of the General Assembly, which consolidates the recognition of the term indigenous peoples, and makes a commitment to uphold the human rights of indigenous peoples.” The seminar served to clarify the terms territories, which is seen more widely here than sovereign territory. Military occupation was also clarified. Mexico is positive that such exercises allow the parties to come out of the rhetoric in which they have been caught in for so many years.

Self-determination

PP 12: Mexico reiterates that according to the consultations, there should be no disagreements on this article.

PPs 14 bis and 14 ter: With regard to PPs 14 bis and 14 ter, Mexico laments that the discussion on territorial integrity has been reopened and warns on the danger of discussing this topic forever.

PPs 15 and 15 bis: Mexico’s proposal to merge PPs 15 and 15 bis, is based on the fact that the recognition of IPs’ self-determination in this DD will strengthen the harmonious relations between the state and IPs, they encourage other states to adopt a positive and constructive outlook. Regarding the whole myth that IPs want
secession, we have to come to terms with the fact that this possibility exists independent of this declaration, this DD is to recognize the rights of IPs and through that improve the relationship between IPs and the State. The proposal omits “principles in this DD” as it is implicit in “principles of international law”. International law must not be seen as competing with this DD. In response to Australia’s concern on how to define internal and local affairs, Mexico declares that it depends on the local situation, in Mexico each state deals with this issue. The language is broad enough to fit all national contexts.

**PPs 18 and 18 bis:** Mexico supports Guatemala’s proposal for PP 18 bis.

**Article 3:** Mexico takes the stand that the discussions on self-determination should be on the basis of an article 3 as drafted by the Sub-Commission. PPs 15 and 15 bis in particular may make this possible. Mexico agrees that this is basically the proposal that was tabled by the Indigenous Caucus in the 2004 session for article 3, PP 15 and PP 15 bis, which had gathered a lot of support amongst states. Mexico can though support article 3 and PP 15 in the Chair’s intermediate proposal.

Regarding New Zealand’s package proposal on self-determination, Mexico thinks it is inappropriate to discuss a package that has at the heart of it a revised article 3 that has been discussed endlessly and for which there was a general understanding that it would be kept in its original form.

**Article 31:** We are here to create a context for self-determination for IPs, not to create “self-determination”. This recognition is the states commitment to build a new relation with IPs, we are no longer in the discussion of “people” or “peoples”, it is important that this group recognizes this.

Mexico proposes “all” instead of the list, but is flexible. The proposal by the Russian Federation does not necessarily reduce it to national jurisdiction; this could be interpreted differently. The reference to financial assistance in article 38 is more “paternalistic”, whereas in 31 it is an exercise of self-determination, so it should be kept.

**Article 32:** The Chair’s proposal is broad enough to take on all the concerns of the delegates.

**Article 35:** In order not to dismiss the idea that IPs may build constructive arrangements with states regarding the crossing of borders, Mexico proposes: “in accordance with the applicable norms”. However, Mexico can also adopt China’s proposal if it gathers more consensus.

**Articles 45 and 45 bis:** Mexico can be flexible with the third paragraph of article 45, whereas the fourth paragraph is too broad. Mexico does not need the inclusion of “morality and public order…”. As a replacement for paragraphs two and four, Mexico suggests: “The exercise of the rights set forth in this Declaration shall not impair the enjoyment by all persons of all human rights and fundamental freedoms, and shall meet the just requirements of public interest and general welfare in a democratic society as determined by law.”

This will allow a positive and progressive dialogue about territorial integrity. What is important is that all people enjoy basic human rights and fundamental freedoms.

Mexico can agree to the deletion of the third paragraph, if the content of the second paragraph is maintained, thus keeping a link between the enjoyment of the universally recognized human rights and fundamental freedoms.

Mexico supports the proposal made by Canada as replacement of the second paragraph of the Chair’s summary of proposals.

**Land, territories and resources**

**PP 10:** It is important to reach a consensus on this PP, thus Mexico suggests: “emphasizing the contribution of demilitarization on the lands…”.

**Article 10:** Mexico has no problem with introducing “prior” before “and informed consent”. It is thankful for the introduction of “arbitrarily displaced” in the Chair’s summary of proposals; that should cover Australia’s concern about emergencies.

In the Spanish version “desplazados” (displaced) is incorrect, it should be replaced with “desalojados forzosamente” (forcibly displaced), however Mexico will not block consensus on this basis.

**Article 21:** Mexico proposes: “IPs shall in no case be deprived of their means of subsistence and development and are entitled to full redress through effective mechanisms”.

**Article 25:** Mexico understands that article 25 is about the spiritual relation of IPs with their territory and article 26 about the territorial ownership. Mexico appeals to other states to understand this nuance and accept the original language. Maybe an alternative to “material” is “tangible”. It proposes to introduce the term “inter alia” before the list or “amongst others” at the end, since the list is not exhaustive.

**Articles 26 and 26 bis:** Another alternative that appeared during the meetings in Mexico was to replace “possess” by “hold”. There is no need for a safeguard reference to third party rights since this is already covered in articles 26 bis and 45.

In article 26 bis there is confusion due to the translation of “adjudicate”, Mexico understands this to be a judicial process, thus there is no doubt that IPs will fully participate in such a process, not simply be consulted. Mexico suggests: “IPs have the right to participate fully in all process that affect them”, adding also “administrative procedure” since not all procedures/processes are exclusively legal. Mexico agrees to AN’s proposal to include “independent and impartial” to the judicial process.
**Article 27:** Mexico proposes: “IPs have the right to redress by means of restitutions and when this is not possible, by a fair and equitable compensation for the lands, territories, and resources that they have traditionally owned or used…”

Mexico asks to delete “pursue” and “that can include” from the Chair’s summary of proposals.

**Article 28:** Mexico can support the word “transit” and suggest that there could be a force that would take care of enforcing the provisions in this article.

Mexico agrees with the AILA proposal to keep “pertaining” and “restoration” (Chair’s summary of proposals)

**Article 29:** Mexico agrees with Venezuela regarding the role of the WGCD in establishing the right to collective intellectual property.

**Article 30:** Mexico can support the Chair’s proposal, though it agrees with Guatemala on the importance of “obtain” free, prior and informed consent. Mexico also supports Brazil’s text since it allows IPs to say no to certain development projects.

**VENEZUELA**

**Self-determination**

**PPs 15 and 15 bis:** Venezuela would prefer not to merge the two and to keep “principles of…”.

**Article 3:** Venezuela supports IPs’ right to self-determination as expressed in the Sub-Commission’s language for this article.

**Article 32:** The Chair’s proposal captures the spirit of many legislations, including Venezuela’s. Venezuela is not against the USA’s proposal to remove “collective”.

**Article 33:** The Chair’s proposal is excellent. Venezuela supports it.

**Article 35:** Venezuela supports the Chair’s proposal, it is very complete and appropriate. Mexico’s proposal may allow to reach consensus. However, the spirit of the article is to “facilitate” the crossing of borders, find ways to enable this within the existing border laws.

**Articles 45 and 45 bis:** Venezuela endorses the voices of Mexico, Brazil, Spain, who expressed difficulties with paragraphs 3 and 4 and with the desire to end this article 45 on an optimistic note.

**Lands, territories and resources**

**PP 10:** Venezuela agrees to Mexico’s proposal: “emphasizing the contribution of demilitarization on the lands…”

**Article 10:** Venezuela supports the Chair’s proposal.

**Article 21:** Venezuela is in favour of “deprived” and “just and fair mechanisms for redress” (Chair’s summary of proposals).

**Article 25:** The interventions make it clear how essential it is to include “traditionally owned or otherwise occupied or used”. IPs may not have formal ownership, but recognizing a traditional right to ownership gives them the recourse to obtain formal ownership. Venezuela recalls how in the last WGCD it agreed on the importance of traditional ownership, together with the USA and Brazil.

**Articles 26 and 26 bis:** It has been six years since the Venezuela’s constitution has recognised the rights of IPs to land, given them land titles and prohibited that more land is taken away from them. There cannot be a better world without making peace with the past, to restore justice IPs must have titles to land. It is not possible to go back 500 years, but we have to face the present, looking towards the future, without forgetting to repair the mistakes of the past. Venezuela would prefer to speak of “giving land rights/title to the land and territories”, “own” is not strong enough.

For article 26 bis Venezuela proposes to add: “the States will have to protect and avoid insurgencies and violations of IPs’ lands”.

**Article 27:** Venezuela can support the text in the Chair’s summary of proposals.

**Article 28:** Regarding the last phrase, Venezuela does not find the current wording in the Chair’s proposal appropriate, it suggests “states as well as international cooperation”.

Venezuela believes it is completely false to say that “restoration” is not possible and asks New Zealand to reconsider its position. Venezuela supports and understands the need to add “without discrimination” (Chair’s summary of proposals), since states could give favouritism to environmental programmes in territories where IPs do not live, thus discriminating against IPs.

**Article 29:** The Chair’s proposal is useful for reaching a consensus. Both the rights of IPs and the obligation of states to enforce these rights need to be attended here. We have to specify that this article is about a collective right because it is not yet recognised within the intellectual property realm, the WGCD should not wait for the World Intellectual Property Organisation (WIPO) to recognise the collective right to intellectual property.

**Article 30:** The right to “obtain” free, prior and informed consent should definitely be kept, rather than “seek” as proposed in the Chair’s summary of proposals.

**Treaties, agreements and constructive arrangements**

**PP 6:** Venezuela disagrees with removing “inherent”. As for “other agreements”, it would be a good solution for replacing “constructive arrangements”.
PP 13: Venezuela finds the USA’s proposal to confine treaties to domestic law unacceptable, it is not in line with the way that international affairs are dealt with.

North America

CANADA

Self-determination

PP 12: Canada supports PP 12 with no changes with respect the Sub-Commission text but can also support the Chair’s intermediate proposal.

PP 14: Canada can accept the Chair’s intermediate proposal for this text.

PPs 14 bis and 14 ter: Canada thinks these are redundant and does not see the need to have them in the DD, but is happy to talk with states which support them and hear why it is useful. Canada reminds that the states have the upper hand in legal terms.

PPs 15 and 15 bis: Canada supports PP 15 in the Chair’s proposal (the added language was not Canada’s doing) and PP 15 bis. Canada can support either the Indigenous Caucus or Chair’s proposal for PP 15 bis.

Canada is prepared to support a separate PP 15 and 15 bis, it prefers the inclusion of “principles”. It remains committed to supporting the proposal on self-determination of the Indigenous Caucus.

PPs 18 and 18 bis: Canada can support the Chair’s proposal because it is unchanged from original text. Canada could support PP 18 bis.

Article 3: Canada supports article 3 with no changes with respect the Sub-Commission text.

Article 31: Canada supports the concept of article 31 being moved after article 3.

Canada agrees with ILRC, this is part of self-determination not the whole measure of it. Canada is concerned by the term “all matters”, it may be too open-ended, it would prefer “in matters relating to”. Canada also suggests adding “or aspects of matters relating to their affairs including inter alia”, followed by the original list in the Sub-Commission text. This proposal aims to make clear that IPs would not have the obligation to practice their rights in all of the areas mentioned.

The second paragraph of the Chair’s summary of proposals puts fences around the article, furthermore articles 39 and 45 deal with this in an adequate manner.

Article 32: Canada can accept the language in the Chair’s proposal. There are four articles where it says “collective” right, since we are on the verge of approving PP 18 bis, we should carefully look at taking out this term from the rest of the text, so that it does not create confusion as to the meaning of “collective right”.

Article 33: Canada still has some issues with this article, it has to reserve its position especially regarding “juridical systems and customs”, there are ongoing discussions in Canada that have to be resolved first.

Article 34: Canada can approve the Chair’s proposal, though it has to be put in the context of the final language for article 45.

Article 35: This article is very important for Canada. It could go forward with the Chair’s proposal, though it needs to continue to work on the second paragraph with Canadian IPs.

Articles 45 and 45 bis: If the UDHR is to be quoted, it should be done properly, and not excise it. We don’t have to put qualifications to the each and every article of the DD, that was the reason for changing article 45. Canada’s proposal for this article aims to deal with collective and individual rights, the obligations of states, third parties’ rights and the public welfare in such a way that they are not in opposition or competing with the rights within the DD. This amendment is presented as a replacement for the second paragraph of the Chair’s summary of proposals: “The principles of justice, democracy, respect for human rights, equality, non-discrimination, good governance, and good faith shall be essential elements in resolving any conflict between the rights of indigenous peoples and individuals, States and other parties concerned.”

For Canada it is totally inappropriate to end an aspirational document with article 45 bis. If states fulfil their obligations and IPs are their partners, then there should be no worries about territorial integrity because each nation will be stronger.

Lands, territories and resources

Article 10: Canada accepts the Chair’s proposal and has the understanding the article is dealing with permanent relocation.

Article 25: Canada thanks IPs for making the spiritual and material relationship clear. We have a forward-looking DD but also have to turn to the past. Canada accepts that the concept of material relationship is broad, and appreciates the concerns of IPs with “their lands, territories…” (Chair’s proposal).

Articles 26 and 26 bis: Canada agrees to the Chair’s intermediate proposal for both articles 26 and 26 bis.

Article 26 bis is focusing on the process but not on the promotion of the rights of IPs. Thus, Canada suggests for the last sentence: “IPs shall have the right to participate in this process”, they have this right and should exercise it.

Article 27: Canada alone and in conjunction with IPs has tried to deal with this issue in open manner. The Chair’s proposal is midway to consensus; it needs further discussion. Canada would like to see a more positive statement of what we are aspiring to achieve here. There should not always be the need to go through the courts.
Achieving redress in practical terms is difficult but not impossible. There are situations where land can be taken legally, there needs to have language that reflects this situation that is particular to Canada.

Taking into account where article 26 is going and the first paragraph of article 27, Canada does not see the need for the second paragraph.

**Articles 28 and 28 bis**: New ground is explored in this article, so Canada has to reserve its position. With regard to the inclusion of the word “transit” (Chair’s summary of proposals), Canada considers the word to be unclear and difficult to implement according to the ordinary meaning of the word. Canada agrees with the AILA proposal to keep “pertaining” and “restoration” (Chair’s summary of proposals).

Canada strongly supports article 28 bis as in the Chair’s proposal. As for “relevant public interest”, Canada still needs to understand what it means. Until article 45 is resolved, Canada requires “where possible” to stay in the text (Chair’s summary of proposals).

**Article 29**: Canada suggests an important grammatical change, the text should read “genetic resources, including human genetic resources”.

**Article 30**: Canada can support the Chair’s proposal. In second paragraph “shall seek to obtain”, is an important issue, Canada needs to be clear whether there is an implied veto or somebody has a right to say no, those are two different things. The situation is also different depending if it is shared territory. To solve these issues and concerns of other states Canada suggests: “states shall seek or in accordance with domestic and international obligations shall obtain”.

**Article 38**: Canada can accept the Chair’s proposal, it helps solve the problems Canada had with article 28 and other articles.

*Treaties, agreements and constructive arrangements*

**PP 6**: Canada supports “inherent” rights. With regard to “constructive arrangements”, Canada’s understanding is that it completes the list of mechanisms that IPs and states have to move forward in their relationship. If we can have an understanding that treaties and agreements encompasses everything, then this reference could be left out. Canada asks the USA to consider that “in some situations” means not all. Some issues in Canada’s treaties have forced it to answer international commitments. Canada reaffirms its support for the cluster of articles presented by the consultation group.

**UNITED STATES OF AMERICA**

**Self-determination**

The USA supports the New Zealand self-determination package (see page 17).

**PP 12**: The USA can agree to PP 12 as in the Chair’s proposal.

**PP 14**: The USA can agree to PP 14 as in the Chair’s proposal.

**PPs 14 bis and 14 ter**: The USA would like to see the language of PP 14 ter in the operative section. Specifically, it needs a reference to “political unity and sovereignty of states”. The USA understands this is not about secession but a robust self-determination within states.

**PPs 15 and 15 bis**: The USA urges to return to the Sub-Commission text for PP 15. The USA could provisionally adopt PP 15 bis, however it will still be requesting additional language to article 3 like from article 31. The USA has the understanding that this is not about developing an understanding of self-determination between states but a right for IPs. The language in PP 15 bis does not quite resolve the issue that the DD may undermine the territorial integrity and political unity of the state.

**Article 31**: The USA would like to keep a non-exclusive list, it proposed an expanded list, but is also open to inserting the word “inter alia” or could even live without the list. This article should be merged to give content to article 3.

**Article 32**: The USA would not mind seeing it moved closer to article 3. The USA likes the Chair’s proposal, however removing “collective” rights would be more consistent with the rest of the DD since when we read indigenous peoples in the text, it should immediately be interpreted as a “collective right”.

**Article 33**: The USA is comfortable with the Chair’s proposal, it reiterates that it should be closer to article 3.

**Article 35**: The USA is disposed to accept the Chair’s proposal.

**Articles 45 and 45 bis**: Territorial integrity is a real concern for some states, if IPs do not intend to threaten it, what is wrong with spelling out this concern in the text? The fourth paragraph of the Chair’s proposal is fundamental to accepting many articles. The USA wants this safeguard to ensure that it can see the requests of IPs in this DD in a reasonable manner. Furthermore, like Australia and New Zealand, the USA believes that there is a new right to self-determination within the nation state established in the DD so it has to be made clear that this new right to self-determination does not include the right to secession. Discarding the second paragraph as in the Chair’s summary of proposals and replacing with Canada’s proposal would not be acceptable. The USA finds it unfortunate that UDHR text is not accepted in this WGCD, it has jurisprudence that does not allow for abuses and is consistently in favour of the right holder.

**Lands, territories and resources**

**PP 8**: The USA prefers “lands, territories and resources”, and could live with Chair’s proposal.
Article 10: The USA welcomes the introduction of “prior”. The USA asks whether “removal” means you can return to land and “relocation” means you cannot return? It is also trying to understand the difference between removal, relocation and displacement. Maybe “forcibly” or “arbitrarily removed” would be better. The first sentence seems like an absolute prohibition to remove IPs from the land and the second sentence seems to allow it. Thus, the USA proposes: “IPs shall not be transferred or relocated without free, prior and informed consent, except in cases of natural disaster, national emergency, or other justifiable grounds through a fair, just and transparent procedure with full participation of IPs”. There should be a fair procedure, but fair compensation is more open to interpretation.

Article 21: The USA prefers the language: “IPs who are deprived”. It is more forward looking. The USA prefers “just and fair mechanisms for redress” (Chair’s summary of proposals).

Article 25: The USA believes that “their lands, territories...” achieves the correct balance and that article 25 must be read in light of articles 26 and 26 bis. The traditional ownership is dealt with in article 26, along with existing means for making claims to land. If this is taken into account then the USA could live with the inclusion “material” or “tangible” (Chair’s summary of proposals).

Articles 26 and 26 bis: The word “own” is broad enough to apply in a number of States and legal frameworks, the USA sees it as possession or equitable ownership. The USA can accept the Chair’s proposal. The USA prefers the Chair’s proposal for article 26 bis rather than the intermediate proposal, it supports adding “territories”, and to adding “impartial”. Including: “states shall establish and implement” would address the USA’s concerns.

Article 27: The USA shares Australia’s concern regarding “redress”. The USA agrees that IPs have the right to pursue compensation for lost lands. It can support the Chair’s intermediate proposal that is based on international law.

Regarding the Chair’s summary of proposals the USA can support “just” and is flexible with “submit” or “pursue”, but needs at least one of them. For the second paragraph, keeping “should” and deleting “when this is not possible” would enable the USA to accept the paragraph.

Articles 28 and 28 bis: USA acknowledges IPs’ right to own, use, develop and control lands but this depends on particular circumstances. IPs in the USA have jurisdiction control over land, thus the USA would like to see a formulation that covers the varying nature of the right. In that light it suggests: “IPs have rights pertaining to the conservation...”. The USA also suggests to add “without their free, prior and informed consent” at the end of second paragraph of article 28. Agree to the concept of third paragraph but the wording is ambiguous.

The USA agrees with Canada regarding “transit” and with Venezuela regarding “without discrimination”. The USA requires to keep “where possible” in the Chair’s summary of proposals for article 28 bis.

Article 29: The Chair’s summary of proposals needs to be consulted with the Capitol. USA continues to believe that this article should be informed by the outcomes of the WIPO.

Article 30: The USA can support the article as in the Chair’s summary of proposals with “seek”, “significantly”, “should” and “appropriate measures”.

Treaties, agreements and constructive arrangements

The USA participated in the discussions and wishes to clarify that there is no consensus.

PP 13: The USA needs the first phrase to be deleted, it internationalises the character of treaties while they are in fact a domestic and national issue.

Article 36: The USA would have to modify this article in the following manner because it is phrased as an absolute right, whereas this is an aspirational document: “States should take all necessary steps under domestic law to recognize, observe and enforce treaties and agreements concluded with IPs. Disputes that arise under such treaties, agreements and other constructive arrangements should be resolved pursuant to any processes specified in the treaties, agreements, and other constructive arrangements, or otherwise submitted to competent domestic bodies or process for timely resolution. Nothing in this Declaration may be interpreted as to diminish the rights of IPs in treaties, agreements and other constructive arrangements”.

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5. OTHERS

Possible options concerning the follow-up of the Draft Declaration

Here are the few options “based on incomplete information”, developed by the American Indian Law Alliance:

- **Chair’s Text is unacceptable; lobby for another session of the WGCD**
- **Chair’s text is not excellent but does not compromise the basic principles. We can choose to neither consent nor object to it but use the Declaration**
- **Unacceptable Chair’s text – lobby for provisional adoption of agreed articles & a specific mandate on the remaining ones**
- **CHR passes Chair’s text in opposition to IPs’ consensus – Fight passage through the General Assembly.**
- **Chair’s text is excellent and fully respond to IPs’ concerns and issues. Lobby for passage of the Declaration.**
- **Utilize the Permanent Forum to advocate for all of these options & passage of a strong Declaration through ECOSOC.**

Commission on Human Rights


Main characteristics of the Human Rights Council

Status: The Council will be a Subsidiary organ of the General Assembly (GA). This status will be reviewed after 5 years.
The present Commission’s standing is lower, as it is a Subsidiary body of ECOSOC.

Meetings: The Council will meet at least three times per year and at least during 10 weeks; it could convene special sessions at the request of one third of its members. Currently, the Commission only meets for six weeks per year, without any possibility of special meetings in case of gross violations of human rights.

Mandate and Functions: The Council should address situations of violations of human rights, including gross and systematic violations. There will be a universal periodic review of the fulfillment by each State of its human rights obligations and commitments. Currently the Commission examines, monitors and reports on thematic issues and human rights situations in specific countries.

Members: The Council will be comprised of 47 Member States (13 from Africa, 13 from Asia, 6 from Eastern Europe, 8 from Latin America and 7 from the Western European and Other States).
The Commission is comprised of 53 Member States (and the membership by regional groups is respectively of 15, 12, 5, 11 and 10).
The Council’s Members will be elected by the absolute majority of the members of the GA.
The Commission’s Members are elected by the ECOSOC.
The Council’s Members will be elected for three years, and not be eligible for immediate re-election after two consecutive terms.
The Commission’s Members are elected for three years, with no limit to their re-election.
All UN Member States are eligible for the Council. They can be removed by 2/3 vote of the General Assembly for gross and systematic violations of human rights.
“When electing members of the Council, Member States shall take into account the contribution of candidates to the promotion and protection of human rights and their voluntary pledges and commitments made thereto (…)”
Elected Members “shall uphold the highest standards in the promotion and protection of human rights”.

Others: The Council will maintain the special procedures developed by the Commission.
The Council will maintain the NGOs’ participation system according to ECOSOC Resolution 1995/31, as well as the practices developed by the Commission.
The Council will use the rules of procedures for committees of the GA (unless subsequently otherwise decided by GA).
The Commission has its own rules of procedure.
The Council will review its work and functioning five years after its establishment and will report to the GA.

The expression « Indigenous peoples » sanctioned by the UN General Assembly

In the resolution entitled 2005 World Summit Outcome (A/RES/60/1), adopted during the 60th session, the UN General Assembly use the expression *indigenous peoples* on several occasions in the English and Spanish versions. On the other hand, the French translation uses the words “collectivities, groups or populations”.

Thus, paragraph 56:

“In pursuance of our commitment to achieve sustainable development, we further resolve: (…) (d) To recognize that the sustainable development of *indigenous peoples and their communities* is crucial in our fight against hunger and poverty; (e) To reaffirm our commitment, subject to national legislation, to respect, preserve and maintain the knowledge, innovations and practices of *indigenous and local communities* embodying traditional lifestyles relevant to the conservation and sustainable use of biological diversity, promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from their utilization;”

And in paragraph 127:

“We reaffirm our commitment to continue making progress in the advancement of the human rights of the world’s *indigenous peoples* at the local, national, regional and international levels, including through consultation and collaboration with them, and to present for adoption a final draft United Nations declaration on the rights of *indigenous peoples* as soon as possible”.

Local and indigenous communities are again mentioned in paragraph 46:

“We reaffirm that food security and rural and agricultural development must be adequately and urgently addressed in the context of national development and response strategies and, in this context, will enhance the contributions of *indigenous and local communities*, as appropriate”.

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