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1. EDITORIAL

The 10th session of the Working Group on the Draft Declaration (WGCD) – to which this issue of the Update is dedicated – was marked by a hunger strike by six indigenous delegates; by the President’s decision to base the discussion on another text than the Sub-Commission’s, and adopting a procedure that did not allow expression of all opinions; and – at the very end of the session – by not giving the floor to the Indigenous Caucus’s spokesperson to read a statement expressing the consensus they had reached (see page 26). The President did, however, announce that he would take into account comments sent to him within two weeks of the end of the session, and this was done.

This Indigenous Caucus’s declaration demonstrates the substantial progress achieved by the WGCD, given that 9 preambular and operative paragraphs are subject neither to objections from States nor from Indigenous Peoples (IPs); 7 paragraphs are subject to minor objections; and 8 need further discussion but are not far from consensus. The Indigenous Caucus declaration underlines the conciliatory attitude of some indigenous organisations who had had extreme difficulty accepting any change to the Sub-Commission text. We should keep in mind that this has long been the position held by indigenous organisations as a whole.

Another important change during this session was that Canada approved the Indigenous Caucus proposal on the right to self-determination (see page 23). This resulted from effective lobbying by Canadian indigenous organisations and is commendable.

In the next session of the Commission on Human Rights\(^1\), the text presented will probably be the President’s. However, he has neither IPs’ support, nor much from States. Canada will present the recommendation regarding the WGCD. According to our information, Canada will propose a prolongation of the WGCD, but until when? A prolongation for one year, or an open-ended one? With a new mandate, or with proposed changes to the mandate? A prolongation retaining the same President? Certain States will most probably want to limit the prolongation to one year (USA and Australia). Other will want a precise deadline (Nordic states). Meanwhile, the position of the African, Asian and Latin American governments remains unknown, and could turn out to be decisive. On several occasions, these governments have succeeded in tipping the balance in favour of the IPs, after the latter outlined their arguments.

Up until now, to our knowledge, little pressure has been exerted on the Commission. The proclamation of a new Decade is very encouraging, as is the call by Mrs. Louise Arbour, High Commissioner on Human Rights, for a two-year extension of the WGCD. The lobbying that the IPs will carry out during the session will play an important role, provided that it is coordinated. We can expect that the majority will plead for a prolongation of more than a year for the WGCD, and others will ask for certain changes particularly regarding the presidency, and maybe even a change in the mandate.

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\(^1\) Item 15 is scheduled on April 11, morning session. Voting is scheduled on April 19.
2. WORKING GROUP ON THE DRAFT DECLARATION

10th session, Geneva, 13-24 September and 29 November – 3 December 2004

Denmark, Finland, Iceland, New Zealand, Norway, Sweden and Switzerland presented a redrafted version of the Draft Declaration (DD) as agreed upon by the Sub-Commission. Referred to as Conference Room Paper 1 (CRP. 1), it includes many modified preamble paragraphs (PP) and articles (Art). A second CRP, referred to as CRP. 4, was issued after the first two weeks by the Chairperson, who compiled the comments and proposals. After consultation with some indigenous representatives present at the session, we found it more appropriate and useful to summarise the debates into two sections. In the first part, the interventions made by each state present have been grouped according to their region (apart from the CRP. 1 states). In the second part, the interventions of the indigenous peoples’ (IPs) organisations and NGOs have been organized according to the PP or Art. examined, respecting the order in which the latter were considered.

Report on the WGCD

Organization of work

The Chairperson, Mr. Chavez, established an unprecedented procedure whereby the discussions in plenary were to base themselves exclusively on the text presented in the CRP.1 or CRP.4 (during the third week of the session) and not on the text of the Sub-Commission, this was the case even for articles that were discussed for the very first time in the ten years. Mr. Chavez insisted on hearing specific comments on the proposed language in the CRP.1 or CRP.4 and on strictly limiting the time of discussion for each article. Thus, it was difficult for delegates to make general comments on the DD or to express their support for the original text of the Sub-Commission. Furthermore, Mr. Chavez explained that the silence of a delegation would imply that they were in agreement, or at least had no problems, with the text of CRP.1 or CRP.4.

This way of proceeding was problematic for many indigenous representatives, and also for some states, since it did not allow them to clearly state their position and to have a truly transparent debate.

Another development of this session was the creation of informal working groups led by either state or indigenous representatives, or by both, to discuss, outside of the plenary, specific articles or groups of articles. The results of these informal sessions has been summarised, please see page 25.

Finally, by the end of the first two weeks of the 10th session the first reading of the entire DD was completed, thanks to which it became apparent that PP 2, PP 3, PP 7, and PP 9 as drafted in the Sub-Commission text, present no disagreement. Despite the repeated request by several IPs and state delegates, the Chairperson deferred their provisional approval arguing that he did not feel there was a consensus and that in any case they should be approved together as a group with other related articles.

Positions of the States present at the session

CRP.1 Authors & Supporters

DENMARK & GREENLAND do not associate themselves with the introductory statement of New Zealand and introduce PP 19 (CRP.1), explaining that the amendment is drawn from the preparatory work of the Universal Declaration of Human Rights.

ESTONIA associates itself with CRP.1, explaining that it is balanced. Introducing Art 38 (CRP.1), Estonia explains that the amendment is intended to reinforce the Declaration’s human rights aspects and to broaden its application by referring to other human rights instruments.

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2 To facilitate your reading of this Report of the WGCD, you may wish to download documents E/CN.4/2004/WG.15/CRP.1, CRP.4 and CRP.5 at http://www.ohchr.org/english/issues/indigenous/groups/groups-02.htm. These documents are also available at doCip.

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

4 Articles never discussed until this session: 22, 32, 34, 35, 37, 38, 39 and 41.

5 If reference is made to an article as contained in CRP.1, this is indicated (CRP.1 in brackets after the mention of the article).
FINLAND introduces Art 41 (CRP.1) and explains that since the Permanent Forum on Indigenous Issues (PF) exists, the reference to the PF can be deleted. “Relevant” was added because some UN bodies are not relevant, and “included at country level” was amended because of the OHCHR’s regional offices. The last sentence is to ensure that the Declaration is a living document.

NEW ZEALAND introduces CRP.1 as a whole and several specific articles. The reasons for the amendments are: 1) to add rights deriving from arrangements and treaties with States (PP 6); 2) because agreements and other arrangements are not matters of international responsibility and concern but pertain only to the parties involved (PP 13); 3) because in most States there exists one law that applies to all citizens, with no separate legal systems (Art 33); 4) to make the Declaration consistent with international standards and clarify what happens in case of tensions between individual and collective rights (Art 34); and 5) to cover conflicts between IPs and third parties (Art 39).

Changes to Art 20 and Art 23 reflect the fact that the political process did not include IPs; however, particular groups do not have the right to determine policies (it is the task of elected parliaments). “Participate fully” means only getting into the room, whereas “actively involved” means being actively involved in the process.

Changes to articles on land and territories are to make sure that States can live up to the standards; the original articles are too prescriptive and go against legislation and principles in many countries. “Lands… traditionally owned or otherwise occupied or used” is ambiguous and unclear; “their lands” allows for each country to determine what constitutes indigenous lands. “Compensation” (Art 27) and “restitution” (Art 12) are replaced by “redress” which is broader.

Unless the DD could authorise the dismembering of political unity of States, then there should be no opposition to the third paragraph, as presented in CRP.1 to be part of Art 3. The explanatory notes presented by the Indigenous caucuses do not have an official status and therefore could not be part of the drafting of an official Human Rights Declaration.

Intellectual property issues are being dealt with appropriately in other international bodies, the language in CRP.1 tries not to pre-empt the outcome from the current negotiations, it would be dangerous to do so. The CRP.1 proposes a generic language (Art 29).

NORWAY introduces PP 10, PP 11 and PP 15, and Art 16, Art 18, and Art 45 (CRP.1). Replacing “could” for “will” makes PP 10 more reasonable since demilitarisation does not automatically lead to “peace …”. Norway does not agree with Guatemala proposing “contributes” for “could/will”, but provisionally agrees with the Chair’s proposal of replacing “could” by “can”. Changes to PP 11 emphasise the right of the child; the language is inspired by ILO Convention 169. Changes to PP 15 reflect an emerging consensus in the 2003 session and should be read in connection with Art 3 which quotes agreed language from the 1993 Vienna Declaration.

Art 16 and Art 18 are as proposed last year; Art 16 is based on the result of consultations in the 2003 session, the words “combat” and “eliminate” could be combined; a certain consensus had been reached on Art 18.

Changes to Art 33 are technical; changes to Art 35 result from consultation with transboundary IPs. The changes to Art 45 are a technical improvement to the 2003 proposal, one to which many delegates agreed.

SWEDEN introduces Art 22 (CRP.1) explaining that a right to special measures cannot exist; only an equal right can exist, as a policy option. Changes to Art 32 (CRP.1) aim at distinguishing between self-identification and citizenship.

SWITZERLAND can approve the original text of Art 16, but in order to reach consensus it agrees to the amendments in CRP.1. Switzerland explains that amending “other” clarifies that IPs, having their own distinct culture, are part of society. Introducing Art 37 (CRP.1), Switzerland explains that the second sentence was removed because a declaration does not have judicial standing and cannot force States to change their legislation, but only encourage them to take measures in consultation with IPs.

Latin America

GRULAC asks all delegations to approve as soon as possible a Declaration based on the Sub-Commission’s text. Political will has to be translated into an increased effort to reach consensus and advance with the negotiations. GRULAC is committed to dialogue and disposed to find solutions with proposals that strengthen the Declaration; it reiterates the importance of a Declaration, not only for IPs, but for society as a whole; full participation of IPs, on equal footing, and their recognition as collectivities is a necessity for strengthening democracy.

ARGENTINA prefers “lands or territories” in PP 8 and throughout the whole text of the Declaration.

BOLIVIA regrets that in ten years only two articles have been adopted and urges States to increase their efforts to adopt a Declaration. Bolivia supports Guatemala’s proposal for Art 12; agrees with the Norwegian proposal to

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6 The texts or expressions in italic refer to discussion that took place during the third week of the session, from November 29 to December 3, 2004.
combine “combat” and “eliminate” in Art 16; wants Art 18 to maintain the words “IPs”; and explains that Art 22 establishes positive discrimination in favour of IPs.

Bolivia prefers the original text: for Art 25 (but could agree to alternative language if it maintains the idea of “traditionally owned...”), for Art 33 (because it considers that traditional systems can coexist with indigenous legal systems), and for Art 37 (where it could contemplate other proposals that uphold the original content). It suggests including in Art 41 “all the bodies, specialised agencies of the UN, and other international organizations” in order to avoid “relevant” (CRP.1).

**Brazil** is ready to accept PP 10 as contained in CRP.1, however, it proposes replacing “understanding”, which weakens the PP, by “without prejudice towards IPs”. It proposes putting “traditional” in front of “lands” in Art 25 (CRP.1), which might help to address concerns of both IPs and States; and agrees that it is useful to have an explanatory note annexed to the Declaration.

Brazil has no problems with collective rights in Art 34; concrete arrangements can be established at the national level. A possible way towards consensus on Art 41 could be to fuse Art 40 and Art 41: “the bodies and specialized agencies of the UN system, especially the PF, and other intergovernmental organisations as well as the pertaining bodies at country level shall promote respect for and contribute to the full realization [plus rest of Art 40]”.

**Brazil prefers to work on the basis of the Sub-Commission text for Art 29.**

**Chile** recalls Argentina’s proposal for PP 8. In Art 13, “human remains” should be amended to “human remains belonging to the communities and traditions”. Chile, concerned by the issue of civil and penal responsibilities, has reservations on Art 34, and its position depends on the outcome of the discussion of Art 45. It has no problems with the original text and CRP.1 proposal for Art 35, and suggests borrowing language from ILO Convention 169 and replacing “ensure/promote” by “facilitate”.

**Cuba** sees no reason for taking the CRP.1 text as the basis for discussions and does not understand why the term “IPs” is replaced by “individuals” in Art 18, which would mean losing the Declaration’s essence. The UN Charter recognises the right to self-determination of peoples and IPs consider themselves as distinct peoples, given that their history and culture are different from the rest of society.

Cuba proposes to simplify Art 35, since “promote” (CRP.1) could be misunderstood; and to replace the second paragraph by “States shall adopt effective measures for the application of these rights”. Cuba supports the original text for Art 37, since a Declaration can only be applied in national legislation and the reference is therefore logical.

**Ecuador** understands the UK’s concerns with PP 17, but recalls that this Declaration is on the rights of IPs. Ecuador supports the first paragraph of Art 22 in the original text and suggests adding “education” after “retraining”; it proposes changing “citizenship/identity” to “nationality” in Art 32 (CRP.1) since IPs are recognised in Ecuador as nations; it agrees to Guatemala’s proposal for Art 34 and considers it appropriate to remove “international human rights standards”, since the responsibility of States is not limited to human rights; and it supports the Bolivian proposal for Art 41. Ecuador supports the IPs’ proposal for the **self-determination (SD) cluster** (the SD cluster refers mainly to PP 14, PP 15, Art. 3 and Art. 33).

**Guatemala** suggests replacing “which will/could contribute” in PP 10 by “contributes” since it is undeniable that demilitarisation contributes to “peace …”; it wants to maintain the first paragraph of Art 16, but could accept “combat and eliminate”. Guatemala could support the CRP.1 proposal for Art 12 if the mechanisms for redress are established in consultation and collaboration with IPs. Like Bolivia, it wants to maintain “IPs” in Art 18 and explains that ILO Convention 169 mentions collective labour rights; and that amending “applicable” would give governments the choice of applying a right or not. The second, amended paragraph does not weaken the declaration but reaffirms the rights of children; however, procedures to protect indigenous children must include active participation by IPs.

Guatemala proposes deleting “if they so choose” in Art 19. It prefers “participate fully” for Art 20, since one can be active without having the right to full participation; it also prefers “obtain” to “seek” (CRP.1); as well as “have been and are” in Art 21; and it suggests keeping “compensation and effective mechanisms for redress” unless better wording is found. It also prefers the original text for Art 22: although it is problematic to establish special measures for IPs, there is a need for IPs-specific programmes, since studies demonstrate that IPs suffer the most discrimination; however, it could accept deleting “special measures for” if the rest of the text remains unchanged.

Guatemala considers the first part of the CRP.1 proposal for Art 23 to be correct in the context of self-government, but the second part seems to contradict the first; if this was the case, the original text would be preferable. The changes to Art 25 proposed in CRP.1 negate IPs’ rights; the WGCD should consider how to restore the vital aspects of this article, and Guatemala reserves its support of this CRP.1 proposal until it is

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7 Proposal presented by ICC and supported by: African, Arctic, Asian, Latin American and Pacific Caucus, AILA, AFN, CIP, ICN, GCC, NWAC, RAIPON. See also page 23.
certain that the rights of IPs are respected. Even though the Guatemalan Constitution recognises collective rights to lands and resources, an international instrument that recognises the relationship between IPs and their lands would be important.

Guatemala suggests dividing Art 27 into two paragraphs, proposing for the second paragraph “when this is not possible States shall/will establish, in conjunction with IPs, the mechanisms for effective reparation”.

For Guatemala it is important that Art 29 remains in its original language, however it proposes one change to the second paragraph of the Sub-Commission text so that the States have equal responsibility for the application of the rights: “The states together with IPs will adopt special measures”.

It considers the original text of Art 30 to reflect best the needs of IPs and proposes for the second part: “States will establish, with the participation of IPs, effective mechanisms for fair and equal redress and compensation”. It has no problems with recognising IPs’ legal systems in Art 33; the CRP.1 language would not recognise Guatemala’s advances in this field.

Guatemala asks the CRP.1 authors to withdraw their proposal for the second paragraph of Art 34, since limiting the right of IPs with respect to the rights of third parties and individuals would weaken the Declaration. Art 34 defines responsibilities of individuals towards their communities within indigenous communities, and this has not caused tensions as to the position of IPs within the population of a country; accordingly, Guatemala proposes to add “in accordance to their philosophies” after “communities”.

It prefers maintaining the second paragraph of Art 37 in its original form but would consider other proposals. Guatemala prefers the original language of Art 38 until the self-determination issue is resolved; however it could accept the CRP.1 proposal if the concepts of self-determination, lands, and territories are understood in broad terms. Guatemala suggests working on wording for Art 39 that ensures that the main responsibility, in cases of conflict, is in the hands of States. It explains that although Art 40 and Art 41 are similar, they are not equivalent and should, therefore, both be maintained. It agrees with IOIRD that the CRP.1 proposals for Art 41 would make sense if the PF is not limited in time and resources. Guatemala notes that CRP.1 contains a new translation of Art 45 into Spanish (“undertake” instead of “participate in” activities).

Guatemala would have liked to see the SD cluster remain in its original form, since it was drafted by experts who provided the best possible wording for the right to self-determination applicable to IPs; however, due to the need to advance, it supports the IPs’ proposal. Guatemala has no problems with Art 3; it understands that other States may have concerns, but it cannot accept the proposed amendments. Since the Russian Federation is the only delegation to have proposed a change to the first paragraph of Art 3 in the last week of the session, Guatemala proposes, for the sake of consensus, to leave the first paragraph in its original language.

MEXICO states for the record that many organisations not present support the text in its original form, and that the basis for discussions is the Sub-Commission’s text. The end of PP 6 should be changed to “as well as the additional rights that have been established in treaties or arrangements with States”. Mexico supports the AILA/Guatemala proposal for PP 15.

Mexico considers inadequate the word “adverse” in Art 2. The elimination of “IPs have the right” in Art 16 would diminish the reach of the Declaration; Mexico could accept adding “combat and eliminate” in the second paragraph. It supports TF’s proposal to combine “have been” and “are deprived”; thinks it is appropriate to maintain “compensation”; and proposes amending “effective and full compensation” in Art 21. It supports Guatemala’s statement on Art 25 and is willing to include language from other international instruments such as the first paragraph of Art 13 of ILO Convention 169.

Mexico having a serious drug traffic problem means that IPs are sometimes in a position where they need military. In the context of Art 28, Mexico suggests that military presence is not always unilaterally imposed on IPs, it should be possible to reach an agreement at a domestic level.

It is important for Mexico that the second paragraph of Art 29 be maintained so as to recognise IPs’ rights and enable them to obtain the benefits from globalisation, as well as use the resources to which they are entitled.

Mexico supports maintaining “obtain” in Art 30, and explains that “compensation” is broader than “redress”, which often is limited to monetary redress. It proposes for the first sentence of Art 32, “IPs have the collective right to determine their identity or indigenous citizenship in accordance with their customs and traditions”.

Mexico considers it important to recognise indigenous legal systems in Art 33; these are a compilation of applied oral legal systems and can be harmonised with national and international legal systems; Mexico could agree to the suppression of “recognised”. It is in favour of the CRP.1 proposal for the first paragraph of Art 35, but prefers “ensure” to “promote” in the second paragraph.

Mexico prefers the original text for Art 37 and points out that the Declaration on the Protection of All Persons from Enforced Disappearance also mentions national legislation. It could support the first CRP.1 amendment for Art 38 (“for the enjoyment … human rights instruments”) but wants to maintain the rest of the original text (“to pursue freely … in this Declaration”).

Mexico would be ready to agree to the inclusion of third parties in Art 39, since many conflicts are with individuals not States; the article could refer to “individuals, physical and moral persons” [individuals or

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8 The AILA/Guatemala proposal is available at doCip. See also page 23.
incorporated organizations]; it agrees with the CRP.1 amendment “and international human rights standards”. Mexico cannot support the CRP.1 proposal for Art 41 since it is not the PF’s responsibility alone to implement the rights of IPs.

Regarding the SD cluster, Mexico requests that the Chairperson investigate the possibility of giving the explanatory notes of the IPs’ proposal an official or legal status in order to be integrated into the drafting of the DD and offer some reassurance to the states.

PERU recalls that it is committed to IPs and the Declaration; it understands the significance of many IPs in proposing a change to an important article and it is disposed to support the IPs’ proposal for the SD cluster.

VENezuela, commenting on Art 8, recognises the right to self-determination and the collective rights of IPs; wants to collaborate in a consensus and in accordance with its new Constitution; and urges delegates to avoid proposals for issues that need to be dealt with at the national level.

Africa

SOUTH AfrIca disagrees with the US proposal to replace “effective” by “reasonable” (e.g., in Art 21) because it is not clear who determines what is reasonable or not. South Africa proposes to add “in particular” after “the UN PF” in Art 41 (CRP.1); it supports organisations which trust the UN with the implementation of the Declaration and would therefore like to retain the original text of Art 41.

Asia

JAPAN places a reservation on the term “territories” in PP 5, PP 12, PP 14 and Art 19, dependent on the outcome of the discussion on self-determination. It could accept all three PPs if the CRP.1 proposal for Art 3 was accepted, which Japan approves, and it would like to have a reference to territorial integrity and political unity, though, not necessarily in Art 3. Japan does not oppose the original text or the CRP.1 proposal for PP 6; but rights deriving from arrangements with States (CRP.1) cannot be inherent rights; it therefore proposes amending “and rights which derive from their arrangements with States”.

Pacific

AUSTRALIA notes the preliminary nature of its comments because elections have not yet occurred. It has been silent about most CRP.1 articles because it generally agrees with the proposed amendments. Regarding PP 8, Australia has concerns about the unqualified use of the word “control” in the Declaration: absolute control is not necessary and the term “increased control” should be used.

Australia is interested in the US proposal for Art 8, considering it neither productive, feasible nor desirable to define what it means to be an IP, but important to establish a process for the purpose of recognizing IPs in States where they are not recognized. In Australia, a difference exists between self-identification and identification for the purpose of accessing or claiming the rights established in the Declaration or rights under domestic legislation.

Australia proposed alternative language for Art 10 in order to include instances of public emergencies where free, prior, and informed consent may not be viable; if Art 10 relates only to permanent relocation, it would have other problems. Australia considers “redress” more adequate than “restitution” in Art 12; asks how there can be restitutions for intellectual property issues; and explains that the interaction between Art 12 and Art 29 must be kept in mind. It refers to the 2003 session’s report regarding its reservation on Art 19, which it considers too broad, particularly the term “participate fully”.

It welcomes the CRP.1 proposal for Art 33 but is concerned that the proposed changes do not fully address the problem of individuals being subjected to overlapping or conflicting legal systems: this depends on the meaning of ‘juridical custom’, and Australia would prefer “take account of indigenous juridical customs, traditions, procedures and practices”.

Australia supports the CRP.1 proposal for paragraph 1 of Art 34 (“in accordance with international human rights standards”). As to Art 39, Australia is concerned about cases where it is not possible to agree on mutually acceptable dispute resolution procedures (e.g., a State disapproving to an external or international dispute resolution mechanism over domestic issues) and therefore would like to replace “mutually acceptable” with “suitable” or “appropriate and fair procedures”.

Australia explains that the additional PP proposed by IPs for the SD cluster neither clarifies Art 3 nor is part of PP 15; it supports the inclusion of a new PP and the relocation of the second paragraph of Art 3 to the preamble section but the third paragraph of Art 3 (CRP.1) must stay in the operative section. Unless the DD could authorise the dismembering of the political unity of States, there should be no opposition to this third paragraph being part of Art 3; if there is to be an agreement on the Declaration then it will need to reflect the language of CRP.1. The continuation of the WGCD is dependent on the resolution of the issue of self-determination.
For Australia the hunger strike does not reflect the contents of the discussions and is not relevant to its future work and is consequently not worth mentioning in the Chairperson’s report, E/CN.4/2004/WG.15/CRP.6/Revised.

North America

Canada wants to discuss the “right to development…” in PP 5, as well as “lands, territories and resources” in PP 8; reserves the right to reopen the debate on PP 8 in light of the discussions on Art 30; and proposes changing the beginning of PP 11 to “[r]ecognising in particular the responsibilities, rights, and duties of indigenous families and communities for the upbringing, … consistent with the convention on the rights of the child.”

It proposes deleting “the fundamental importance of” in PP 14, because no hierarchy of human rights should be created; and proposes in PP 16 replacing the whole article with “[e]ncouraging states to comply with and effectively implement treaties under international instruments on human rights for IPs in consultation with them”, since States cannot be encouraged to implement treaties to which they are not a party.

Canada is prepared to remove “individuals” in Art 2 and accept the text. It can agree to Art 10 in its original form, but stresses that the article is addressing the issue of permanent and not temporary relocation in times of emergency. In Art 13, the issue of reasonable access is still a concern.

Canada supports for Art 14 the 2003 proposal and suggests considering whether “effective” or another word should be used throughout the whole Declaration.

Canada could agree either to “States should” (as in 2003 report) or “States shall” (CRP.1) in Art 18; since it has legislation protecting all children, also indigenous ones. “Peoples” has been replaced by “individuals” because ILO articles apply to individuals not peoples; according to Canada the majority of States had no problem with this change in 2003, except Guatemala, Mexico, Egypt and South Africa.

Canada suggests changing the wording in Art 19 to “IPs have the right to participate, if they so choose, in decision making in matters which directly affect them through representatives chosen by themselves in accordance with…”.

Art 19 and Art 20 are closely related and Canada recalls proposals in 2003 and concurs with Guatemala on Art 19.

Canada is willing to discuss further Art 25; a distinctive spiritual and material relationship with lands is something different from ownership and control of lands; Canada suggests exploring further how IPs wish to express the right to a relationship with land, and to try clarify the intent of the article. The differences between Art 25 and Art 26 should be explored as to better understand the issues at play (e.g., “redress”, and “effective measures”).

Canada can in the spirit of other articles support Art 32 in its original form, and agrees to “membership” instead of “identity” (CRP.1). It still has difficulties with the reference to distinct legal systems/juridical customs in both Art 4 and Art 33; and it has concerns in Art 35 about border control laws, custom controls, and so forth, which apply to all people.

It supports the principle in Art 39 and proposes replacing “shall take into consideration” by “shall give due consideration to”.

Canada reaffirms its association to the IPs proposal for the SD cluster, and considers the explanatory note important for building consensus on a common understanding of the articles’ content.

The USA says that PP 1 and Art 2 seem to equate IPs with “peoples” as in International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Civil Rights and considers it premature to discuss these articles before having resolved the self-determination issue. It agrees to adopt PP 2 without changes; can accept PP 3 consistent with its obligations under CERD; and objects to “right to development” in PP 5.

The USA suggests deleting PP 10 since tribes in the USA have the possibility of leasing their lands for military purposes as a result of their self-governance. It agrees to the original text of PP 11 and does not see the need for the amendment proposed in CRP.1, which might conflict with USA legislation. The USA states that PP 12 could be interpreted to mean that governments are not allowed to set policies and laws that apply to IPs, but the USA’s interpretation is that federally recognised tribes can decide how to interact with the federal government; it could agree to the UK proposal for PP 12.

The USA opposes the phrase “are properly matters of international concern and responsibility” in PP 13 if it has the same meaning as in Art 36. It is not ready to accept PP 14 until Art 3 is resolved and considers on PP 16 that States have no duty to comply with and implement treaties to which they are not a party; it supports Canada’s amendment to PP 14 and PP 16.

The USA holds that since the Declaration spells out the responsibility of States, States need to determine to whom it applies; it proposes new language for Art 8. There should be a standard or process by which States can

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9 IPs have the collective and individual right to maintain and develop their own distinct identities and characteristics and may identify themselves as such. IPs have the right to be recognized as such by the State through a transparent and reasonable process. When recognizing IPs States should include a variety of factors,
determine who is and who is not indigenous, which would also allow IPs to obtain recognition from States that do not recognise them, getting States to uphold the Declaration’s principles. The USA is not ready to accept the words “and have the right” in Art 2. It has concerns as to the breadth of Art 10; asks if the article refers to permanent and temporary relocation; considers that this article is unnecessary since covered in part in Art 7 and in the articles on lands; and explains that compensation depends on the nature of the rights of IPs. It reserves its position on Art 12 and would like the 2003 proposed language for Art 13 to be considered.

The USA has no objection to the proposed changes to Art 18 in CRP.1, and it supports Australia’s proposal for Art 19. It agrees to the CRP.1 proposal for Art 20; however, it asks what “devising legislative or administrative measures” means and wants to be more specific in the first paragraph as to “that may affect them”. It has concerns about the inclusion of “equal” in Art 22 (CRP.1), which would not be consistent with federal trust responsibilities towards recognised tribes; and it considers “improvement of disadvantage” awkward.

The USA is concerned that Art 21, Art 23 and Art 4 overlap and asks what Art 21 is meant to address. In particular, it has concerns about mixing the concepts of development and subsistence, and wishes to delete the concept of development in Art 21. It is happy with the language of CRP.1 for Art 23, but suggests deleting the right to development as this concept has been discussed but not resolved within the UN. The USA agrees with the future-looking language of CRP.1 (“IPs who are deprived”), and suggests replacing “effective” by “reasonable” throughout the DD.

The USA supports the language of CRP.1 for the articles on lands and resources (Art 25, Art 26) as this language (inclusion of “their”) covers both adjudicated rights to lands and resources (which cannot be changed), and future claims to traditional areas. The USA wishes to find a solution that recognizes significant rights of IPs to lands and resources, but would like to see a formulation that links particular circumstances to the varying nature and extent of these rights. In order to ensure that States address IPs’ rights to lands and resources, the USA proposes a new article requiring States to develop a process for adjudicating and determining these rights (Art 25 and 26): “States shall/should establish a fair, open and transparent process to adjudicate and recognize the rights of indigenous peoples pertaining to their lands and resources, including those which were traditionally owned or otherwise occupied or used.”

Regarding Art 27, the USA clarifies that what it is seeking is to impose a duty on states to have a fair, transparent, open process for restoration.

The USA proposes deleting “territories” in Art 28, since “lands and resources” is comprehensive and suggests providing a requirement for States to set up appropriate conservation and protection of IPs lands rather than to establish an “equal right” (CRP.1). It considers the reference to hazardous waste as too far-reaching since IPs may be interested in accepting waste for economic reasons, to address this possibility, the USA proposes to end this paragraph with: “without their free, and informed consent”. It will study the CRP.1 proposal on military land use. In Art 30 it is more appropriate to focus on meaningful dialogue with IPs; “affecting their land” is too broad and the article should focus on “projects on indigenous lands”.

The USA is prepared to accept Art 33 in its original form; it shares concerns with Canada about the scope and depth of Art 35, and with the Russian Federation and Australia on Art 39, and proposes changing “human rights standards” (CRP.1) to “human rights law”.

A Declaration should not mandate economic contributions; therefore the USA proposes changing Art 40 so that it reads: “The organs and specialized agencies of the United Nations system should/shall contribute to the realization of this Declaration through inter alia ensuring participation of IPs on issues affecting them.” In the discussion of Art 42 the USA explains that if the Declaration is meant to be a minimum standard, language should use “should” instead of “shall”, and proposes replacing “shall” by “should” wherever the former appears. The USA proposes amending Art 44: “nor may this declaration be construed to diminish the human rights of indigenous individuals”; it agrees with the rest of the text. If the understanding is that collective rights will not suppress or change individual human rights law, the USA could consider accepting the article in its original form.

As to the SD cluster, the USA previously introduced language that combined Art 3 and Art 31 and which provides the right to internal self-determination for IPs, namely rights to self-government and autonomy in local matters. The USA would be willing to acknowledge in a PP that the Covenants allow for the right to self-determination, which would allow for an IPs to exercise the right to self-determination in the case where an IPs can demonstrate that it is “a peoples” within the meaning of Article 1 and 2 of the Covenants. The USA supports the IPs’ proposal for a new PP, but concurs with Australia that Art 3 must be clearly worded; to establish the right to self-determination in Art 3 while only referring to limitations in a PP would not be acceptable. The
The rights of IPs are specific rights for a specific group within a State; therefore, the USA believes that the Declaration must not state that IPs have the right to self-determination, but instead must create a new, special right and label it differently so that it is not subject to misinterpretation. The USA is open to proposals other than “internal”.

The USA were against including a paragraph regarding the hunger strike in the Chairperson’s report, E/CN.4/2004/WG.15/CRP.6/Revised.

**Europe**

The EU considers CRP.1 an improvement over the previous draft and wishes to use it as the basis for continuing discussions; this preference is without prejudice to any comments that the EU as a whole or its individual Member States may have in the course of the WGCD.

**France** has problems with **PP 1**; it needs a text in accord with the French constitution; and it prefers “organs of society” to “segments of society” (CRP.1) in **PP 19**. Referring to the USA’s statement, France is concerned that **Art 8** as currently written could be misused.

France recalls its 2003 proposal, supported by a large number of countries, to include “reasonable measures” in **Art 14**; however, it would be ready to debate another adjective. It proposes to return to the proposal by CIDOB and Guatemala to remove “if they so choose” in **Art 19**.

In the discussion on **Art 34** France suggests placing an article in the Declaration which holds that the rights of individuals are respected. France recalls that it presented language similar to that of CRP.1 for **Art 45** in 2003. As to the IPs’ proposal for the **SD cluster**: France says that the principle of self-determination should be applicable to all citizens living in France’s territory; if IPs want to practice their right to self-determination and secession, all others living in the same territory must also be given the opportunity to present their position. France would like to establish the principle of equality between citizens in **Art 3**, and could consider including it in the new **PP proposed by IPs**.

**The Russian Federation** strongly disagreed to allowing the hunger strike (and mentioning it in the Chairperson’s report) as well as having a prayer to open the session, considering these actions contrary to the WGCD’s mandate.

The Russian Federation is prepared to adopt **PP 1** without changes; it prefers the original version of **PP 19** because it underscores the solemn nature of the Declaration and is constructive.

In general, it has no objections to **Art 10**; however, as there are no clear boundaries between ethnic groups in the Russian Federation and this could give rise to problems, it proposes changing the first sentence to “IPs shall not be forcibly removed from their places of traditional residence and economic activities”. The two important but different aspects of **Art 14** could be presented in two separate articles.

The Russian Federation prefers the original text of **Art 22**, since IPs are a distinct group of the population and, as this Declaration is for IPs, it is appropriate to recommend special measures; however, it prefers a more realistic approach and proposes striking “immediate”. It agrees with the amendments of CRP.1 to the second paragraph of **Art 22**. It proposes changing the last sentence of **Art 33** to “in accordance with national legislation and international human rights standards”.

The Russian Federation agrees with the CRP.1 proposal to change “ensure” to “promote” in **Art 35**; supports the CRP.1 proposal for **Art 39**; and further proposes in **Art 39** changing the last sentence to “… concerned, relevant provisions of the national legislation and international provisions”. **Art 41** duplicates **Art 40** and since the PF will review the implementation of the Declaration, it is appropriate to eliminate **Art 41**.

The Russian Federation supports **PP 15** with the amendment proposed by AILA/Guatemala as well as the new **PP proposed by IPs**, although it does not believe that these will lead to the adoption of **Art 3** without amendment. The Russian Federation does not question the right to self-determination; but the realisation of this right in economic, social, and cultural spheres should take place in accordance with constitutional provisions. To this effect it proposes to introduce after “freely determine” in the first paragraph of **Art 3**: “within constitutional provision of States concerned or other positive arrangements”. The Russian Federation has difficulties accepting the concept that IPs have territorial integrity and sovereignty.

**The United Kingdom** proposes changing “peoples” to “people” or “individuals” in **PP 1**, **PP 5**, and **PP 18**; interprets the second part of **PP 1** as a right to non-discrimination; and proposes two alternatives for **PP 17**: a) replace “peoples” with “people” or “individuals”; b) replace “rights of IPs” with “needs and interests of IPs”. It further proposes eliminating “in the exercise of their rights” in **PP 4**; and replacing “have the right freely to determine” by “are free to determine” or “shall be free to determine” in **PP 12**.

The UK makes a reservation on **PP 14** with respect to the right to self-determination; supports the USA and Canada on **PP 16**; and suggest amending “… all of their obligations under international instruments”. It agrees with the USA on **Art 2** and proposes changing “and have the right to be free from any kind of adverse discrimination” to “and shall be free from any adverse discrimination”; and supports France and Australia on **Art 8**.
The UK proposes changing in **Art 14** the beginning of both sentences to “States shall take effective measures to ensure that IPs can...”, since it fears that re-writing international human rights law by establishing particular rights for certain groups might endanger human rights law. In **Art 19**, and in all other articles where this language occurs, the opening “IPs have the right” should be changed to “States shall ensure that IPs can...”. The UK fears that **Art 32** would allow for automatic citizenship for IPs who move to another State. The opening of **Art 42** should be changed to “[t]he provisions of this Declaration constitute” or “[t]his Declaration constitutes”.

As to the **SD cluster**, the UK considers the IPs’ proposal for a new paragraph as a step in the right direction; however, it insists on clarity and shares the concerns of Australia, the USA, and the Russian Federation.

**Spain** says that it strongly supports IPs, and recognises the advances made in the WGCD and the dialogue between States and IPs.

**Position of IPs’ organizations and NGOs**

(The states’ names that are listed in brackets at the end of each PP/Art section indicate that these states made interventions on the PP/Art.)

**Preamble paragraphs and articles which present no amendments in the CRP.1 proposal**

**PP 2, PP 3**, **PP 5**, **PP 7, PP 9, PP 10**, **PP 17**, and **PP 18** were not commented by IPs’ organisations and NGOs (see footnotes for the states which made interventions on these PPs).

**PP 1**

In reaction to the USA and UK statements, **ICC** remind that IPs have justified “ad nauseam” the legal backing for the use of “peoples” (also **AILA**). **IITC** point out that last year’s report indicates that there is no disagreement on the use of “indigenous peoples”.

[USA, Russian Federation, France, Mexico, UK]

**PP 4**

In response to the UK proposal, **IOIRD** state that the Declaration is on the rights of IPs and to delete the phrase “in the exercise of their rights”, waters down this fact.

[UK]

**PP 8**

**Suanpa** disagree with the Australian proposal to include “increased control”.

[Canada, Australia, Argentina]

**PP 14**

**AILA** note for the record that together with Guatemala, they had presented a proposal for PP 14 that had obtained the support of the majority of delegations. AILA propose to add “and that this right applies equally to indigenous peoples” after “self determination of all peoples”.

[Canada, Japan, UK, USA]

**PP 16**

**IITC** remind the USA that it has ratified the Covenant on Political and Civil Rights, which also applies to IPs.

[Canada, USA, UK]

**Article 2**

**WPC** is concerned that the discussion on the above articles as well as many other articles cannot be productive until self-determination is resolved.

[Guatemala, Canada, UK, Mexico]

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10 USA
11 Canada, Japan, USA, UK
12 Japan, UK, USA
13 UK, Ecuador
14 UK
15 WPC presented a number of proposals for articles 1, 2, 3, 6, 7, 10, 11, 12, 13, 14, 15, 16, 17, 18, 23, 25, 26, 27, 28, 29, 31, 36, 44, 45; the text of these proposals is available at doCip in Spanish.
Article 8
In response to the proposal of the USA, COCEI declare that it is not possible to present new articles at this stage of the procedure without a juridical basis. IPACC/Tamaynut consider that the current structure of the debate enables states to express themselves and influence others. IITC point out that many IPs organisations are also not present because they do not have the means to attend, where as states have a choice, if they choose not to attend it is not up to the IPs to guess their position. TOTSNTC remind that this Declaration does not have legislative power; the USA’s proposal is applicable for legislation that is to be developed at a state level.
WPC regret the fact that the debate is regressing to the issue of who is indigenous or not.
[USA, Australia, France, UK, Venezuela, Mexico, New Zealand, Norway]

Article 10
IITC question whether the deletion of this article as proposed by the USA is not straying far from the process and the instructions set forth by the chair. ICSA is concerned that Australia’s proposal would mean that IPs could be forcibly relocated without compensation. Knowing the current violence in the world, this would make this article completely obsolete. RAIPON does not support the proposal by the Russian Federation as it is an issue that can be dealt with at the national level.
[Canada, Australia, Russian Federation, USA]

Article 14
In this article and this process as a whole, positive discrimination in favour of IPs is necessary in order to establish equal rights with the rest of the populations. Tamaynut remark that the UK and other states are seemingly trying to block this process. ICC declare that the UK proposal prohibits the article from its rights-based approach (also Yatama). IITC recall that many IPs’ organisations and states opposed the replacement of “effective” with “reasonable”, the aim of this Declaration is to have an effect.
[UK, France, Canada, Russian Federation]

Article 19
CIDOB clarify that the right expressed in this article refers to issues that affect IPs and not to those that do not affect them, and declare that the conditional phrase “if they so choose” should be removed. WPC state that it is discriminatory to give IPs the right to participate in issues that affect them and not in others that do not affect them since the rest of the population are free to participate in all matters.
[Canada, Australia, UK, USA, Japan, Guatemala]

Article 40
COCEI does not support the USA proposal, nor does WPC which state their support to the original text approved by the Sub-Commission.
[USA]

Article 42
WPC remind the USA and UK that their proposals go against all the work that has been carried out over the last 10 years in establishing rights for IPs.
[USA, UK]

Article 44
TOTSNTC clarify that the USA has government-to-government relations but also nation to nation relations such as with the Tetuwan Oyate. IOIRD add that the concerns expressed by the USA for this article are covered in article 1, since individuals are part of the “indigenous peoples”. NKIKLH clarify that there are well established rules governing the construction or interpretation of this Declaration. The general rule is that language in human rights standards are to be read as complementary, not contradictory. Other provisions in the Declaration address and protect the rights of individuals, as do the Human Rights Covenants. IITC find the USA proposal offensive since it implies that indigenous governments would take every opportunity to violate the human rights of individuals.
[USA]
Preamble paragraphs and articles which are considered to be close to consensus and for which CRP.1 presents amendments

Article 16

IITC object to the CRP.1 changes, they seriously weaken the intent of this article. As for the second paragraph, IITC continue to support the word “eliminate”, since it is in line with CERD (also CTT, AILA, ICSA, NKIKLH, AFN).

TF can support the proposal “combat discrimination and eliminate prejudice” as presented by Norway and the deletion of “IPs have the right to” (also ICN, ICC). On the other hand, ICSA believe that “combat discrimination and eliminate prejudice”, is not viable since discrimination is a part of prejudice, both need to be eliminated. IOIRD declare that to replace “combat” with “eliminate”, would lower the standard of the article (also AIRT, JOHAR, TOTSNTC).

IPACC are concerned that if “IPs have the right to” is deleted, it would allow the UK to eliminate it throughout the text therefore seriously weakening the Declaration (also SC, AILA).

NKIKLH declare that in Human Rights law the format for drafting is that the “right” is set forth with clarity, thereafter the states’ obligations are set forth. Thus, the proposal to eliminate “IPs have the right to” strays from and even violates the mandate of the WGCD. The CRP.1 text is a statement of aspiration, but does not establish a right, it is not acceptable (also AIRT, AWN, CTT, JOHAR, AN, TOTSNTC, IPNC, CPA, NN, ICN, ICSA).

FAIRA declare that to accept the CRP.1 text would be to accept a text that is weaker than already existing international human rights texts such as the Human Rights Covenants (also ICN).

JOHAR could accept the inclusion “other” in the second paragraph. ICC believe that the word “other” can expand on IPs’ right to be different.

For TOTSNTC, the inclusion of the word “other” would create divisions. COCEI cannot accept the word “other” since IPs have a unique status (also ICSA). CPA consider that IPs are immersed in society and therefore propose “the rest of the society” as an alternative to “other”.

SC can accept the proposed changes in the text, though they would prefer the use of the word “shall” instead of “should” in the first paragraph.

For the record, AFN state that Canada has not consulted with the IPs, nor has the UK with its ex-colonies. The links between IPs and their culture, education etc. are inextricable, the proposed changes endangers this link.

[Norway, Mexico, Guatemala, Netherlands, Bolivia, Switzerland, USA]

Article 18

AILA and TOTSNTC object to the amended text, the proposed change implies that the rights have already been achieved, which is not the case (also Asian Caucus, ICSA). The additional text regarding indigenous children is too long and is reflected in other international treaties (also ICSA).

Discrimination within the employment section is against indigenous peoples and not against one person (also AN, CTT, CEALP, ICC, IITC). ICSA adds that it is precisely because “peoples” is not mentioned in any other international human rights text that it should be included in this Declaration.

The Asian Caucus can agree with the proposals for the second paragraph, however it would like the first sentence of the new paragraph proposed in the CRP.1 to read as follows: “States shall, in consultation and in cooperation with IPs, take...” (also ICC). ICC prefer the language proposed last year by the Finish delegation, regarding the right of the child.

[USA, Guatemala, Bolivia, Cuba, Canada, Mexico, Norway]

Article 33

The Asian Caucus cannot approve the proposed changes in CRP.1 since the intention of the original Sub-Commission text was to have the word “juridical” apply to “customs, traditions, procedures and practices”, since in effect IPs do have distinct juridical systems (also IPNC, AILA, TOTSNTC, IITC, AIRT, SUANPA, Taungya, NN, Yatama). CTSFN emphasise that IPs’ way of viewing justice should also be respected since it includes healing and reconciliation, which is not part of states’ juridical systems (also TOTSNTC). ILRC add that in several states such as Mexico and Brazil, IPs customary law has been recognised in equality with the national law, thus the proposed change would affect the rights already acquired by certain IPs (also CJIRA, NN). Furthermore, AIRT declare that the recognition of indigenous legal systems does not threaten the sovereignty of states.

WCC declare that articles 4 and 33 should be consistent and use the term “juridical systems” (also Taungya), the long term goal should be the creation of pluri-judicial systems.

[New Zealand, Canada, Mexico, Australia, Guatemala, Bolivia, USA]
Article 45

IPNC declare that self-determination is already recognised without limitations within the Human Rights Covenants. The discussions on this article is very much dependent on the outcome of the debate on self-determination, mainly article 3 (also IITC, CTT, AN, FPCI, ICSA).

NKIKLH oppose the proposal in CRP.1 because article 103 of the UN Charter clearly states that no provision in international law can contravene provisions of the Charter, therefore the Declaration being a statement of intent, it cannot be construed to contravene any provisions of a Convention or the Charter.

ICC find CRP.1 changes unclear, ICC prefer the language proposed last year found on page 29 of the 2003 report.

The Asian Caucus deems that the original text of the Sub-Commission better reflects the concerns of both IPs and states (also African Caucus, AIRT).

[France, Norway, Guatemala]

Preamble paragraphs and articles discussed on the basis of the amendments proposed in CRP.1

PP 6

AFN cannot agree to the proposed amendments in CRP1 since the rights of IPs in Canada do not solely derive from agreements with the states.

In response to Japan and AFN, ICC and AILA propose the following statement: “as well as those rights that have been affirmed in treaties, agreements and other constructive arrangements with states”. AILA further proposes to omit the words “and characteristics” and add to the opening line: “Acknowledging the dignity of indigenous cultures, and recognising the urgent need...”.

IITC state the inherent rights of IPs derive from them being IPs. The proposal to mention “arrangements with States” gives the impression that rights derived from agreements are more valid than inherent rights (also ICSA).

JOHAR add that the inherent rights of IPs should not be diminished by man-made arrangements.

IPNC disagrees to the amendment in CRP.1 since there are treaties and arrangements that were unilaterally implemented.

[New Zealand, Japan, Mexico, Guatemala, Canada]

PP 10

IITC stress that demilitarisation is a “need” for IPs and cannot accept the proposal of the CRP.1 since it diminishes this need (also CTSFN, Taungya, TOTSNTC, AN). There is no doubt for IITC that demilitarisation can contribute to peace (also AN).

Taungya clarifies that “militarisation” can mean military presence in its most simplest form but can also be much more than a mere presence. TOTSNTC describe the situation of Tetwuan Oyate, whose land was used as a bombing range during World War II, this land cannot be considered as demilitarised since still today it has not been cleaned up and cannot be used.

[Norway, USA, Mexico, Guatemala]

PP 11

In reference to the proposal in the CRP.1 to add “consistent with the right of the child”, IITC think it is offensive to assume that IPs’ families and communities would act in a manner that is inconsistent with the right of the child (also ICSA). In any case, the rights of the child within the international context, is the responsibility of the state.

CTT find the CRP.1 proposal restrictive within the wider scope that this PP is aiming at.

COICA propose to add “indigenous peoples, their families...” in the beginning of the PP.

[Norway, USA, Canada]

PP 13

IOIRD, CTT and AILA argue that the amendment presented in CRP.1 weakens the text and quote the Study on Treaties, Agreements and Constructive Arrangements which states that treaties continue to be instruments of international law, that they “maintain their original status and continue fully in effect” 16. IOIRD propose to add “status and law” to the end of the original Sub-Commission text, though they would prefer the text to remain in its original language.

NN declare that the aim of PP 13 is to ensure that states remain accountable to the treaties and other agreements they have signed with IPs. The CRP.1 removes the states’ accountability. As an alternative NN suggest: “and in some situations, international responsibilities”.

[New Zealand, USA, Canada]

PP 15

ICC point out that in the 2003 English report17, the AILA/Guatemala proposal that collected a lot of support does not include the word “applicable” and agree that it should not be included (also AILA, IPNC).
The CPN and ILRC declare that the Declaration exists to increase the understanding of the rights of IPs, and not to lock these rights within existing international law, or how ever the latter may develop. NN add that the current interpretation of international law greatly restricts the right of IPs to self-determination, and the CRP.1 proposal would tie this right to outdated interpretations of international law. NN does not seek a right to secede but a distinct right to self-determination as an Indian Nation.

NKIKLH does not have any problems with the word “applicable”. The right to self-determination has to be in conformity with international law, otherwise it would not be valid.

[Norway, Mexico]

PP 19

Even though the proposed additional text in CRP.1 derives from the Universal Declaration of Human Rights, IITC conclude that it deforms the intent of the PP by trading off the rights of IPs for those of “other segments of the society” (also AN, AIRT, TOTSNTC).

FAIRA present the following proposal which derives from the preamble of the Universal Declaration of Human Rights: “Solemnly proclaims the following United Nations Declaration on the Rights of IPs as a standard of achievement for all IPs and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance;” (also ICC).
The African Caucus could accept the amendment if “among IPs and all other…” is replaced with “among all peoples”.

[Russian Federation, France]

Article 22

IITC remark that the text of the Sub-Commission should be the basis of the discussion for articles never before dealt with at the WGCD and ask for more time to consider the amendments presented throughout the CRP.1 (also AIRT).

IITC does not consider that IPs have special rights, but IPs do have specific collective rights, which may not necessarily apply to other segments of society. Furthermore, “special measures” are found throughout many international conventions.

MNC state that the reasoning behind the CRP.1 proposal is incorrect. The Declaration is not a civil rights instrument for citizenship rights, it is a human rights instrument and as such it must be interpreted through concepts of justice. Justice includes both distributive justice, which mandates equal distribution of state benefits for citizens, and corrective justice, which mandates temporary remedial measure to correct a lack of distributive justice. IPs have not enjoyed equal access to the benefits of citizenship, therefore “special” remedial measures need to be taken to correct these sometimes serious cases of injustice (also AIRT, JOHAR, SC, African Caucus, Taungya, ICSA).

AN recall that states often adopt special measures, therefore it is unfair to impede IPs to have their own special measures.

JOHAR could agree to the Russian Federation proposal to remove “immediate” as it is more realistic (also SC).

SC present the following language as a possible compromise: “states shall develop special measures for the immediate and continuing improvement of IPs’ economic…”.

ILRC present the following language as a possible compromise: “IPs for the purpose of overcoming poverty, deprivation and disadvantage, have the right to effective and continuing measures for the improvement of their economic and social…”

AFN find the USA comments regarding “equal” as counterproductive, and propose to add “education” after “areas of”.

Taungya propose to add “especially given their situation of disadvantage” at the end of the first paragraph if it can help clarify the article.

[Sweden, Ecuador, Canada, Guatemala, Russian Federation, Bolivia, USA]

17 E/CN.4/2004/81, p. 20
Article 32

IITC cannot support the amendment proposed in CRP.1, the reality is that citizenships exist within tribes, this does not conflict with citizenship established by the states (also AIRT). AIRT add that the right to identity is covered in article 8, the issue of citizenship is an exercise of self-determination (also AILA, TOTSNTC).

SC support both original and amended texts. “Identity” seems more inclusive, the term “membership” could be a possibility. ICC disagree with “identity” and could accept “membership”.

AILA propose to use both, “membership and citizenship”.

[UK, Canada, Ecuador, Mexico, Brazil]

Article 34

IITC reiterate their support for the Sub-Commission text (also ICSA, SUANPA), regarding the amendments of CRP.1 for the first paragraph, IITC wonder which of the articles discussed are not consistent with international human rights law? They find the dichotomy created between individual and collective rights unfounded (also AIRT).

NKIKLH propose an alternative language to address the fear of threatening third party rights: “in accordance with their cultural traditions, practises and protocols” (also IPNC).

COICA propose: “IPs have the collective right to determine the responsibility of individuals within their communities, according to their traditional judicial practices”.

TOTSNTC state that the teachings of IPs precede by far the nation states and human rights standards. The amendment would limit the way IPs teach their own people and practice their traditions.

Yatama remind that indigenous rights are human rights, that IPs are capable to uphold international human rights, and suggest that the word “indigenous citizens” instead of “individuals”.

The AIWN support the CRP.1 proposal in light of the collective decisions made by IPs, which grant limited responsibility to indigenous women and which are not in line with indigenous or human rights standards.

ICC declare that article 34 provides for the distinct cultural context of IPs and is a critical element of self-determination. The additional paragraph proposed is wholly unnecessary since human rights are not absolute, there will always be competing interests and tensions.

[New Zealand, Guatemala, Australia, Ecuador, Brazil, France, Chile]

Article 35

The Asian Caucus is prepared to accept the CRP.1 amendments (also AILA, SC, Yatama, African Caucus for the first paragraph), but would prefer “ensure”.

AILA remind the USA that it has treaties with IPs that allow them to engage with their peoples across borders. AILA suggest: “to respect and promote”, in order to give back some of the strength from “ensure” (also ICC).

AN think that the proposal does not strengthen the text, to “promote” is not as consequential as “ensure” (also Tamaynut, Tin Hinan, AIRT, CTSFN).

SC propose to add “in consultation and cooperation with the relevant IPs” after “states shall”, this would be true for every time “states shall” is mentioned.

The African Caucus support “ensure and promote”.

ILRC propose the following unifying text: “states shall take effective measures to facilitate the exercise and ensure implementation of this right”.

[Norway, Chile, Russian Federation, USA, Mexico, Canada, Cuba]

Article 37

AILA propose to add “cooperation” after “consultation” and COICA propose to add “in conjunction” after “in cooperation” since “in conjunction” implies an active participation.

RAIPON cannot agree to the elimination of the second sentence as proposed in the CRP.1 (also AIRT, Tamaynut, Tin Hinan).

IITC state this Declaration should include effective measures such as legislative measures.

[Switzerland, Guatemala, Cuba, Bolivia, Mexico, France, Canada]

Article 38

IITC consider that the amendments of CRP.1 capture the spirit of the article, but the article is also aspirational, and somewhere in the text these aspirations should be clearly stated.

COICA declare that the original text does not limit or impede that states determine fiscal policies (also IPACC).

COICA propose to add after the last sentence of the original Sub-Commission text: “and other instruments of international human rights.”

ICSA regard “pursue freely” as more precise than “enjoyment” and do not understand the importance of “technical assistance” for the enjoyment of human rights (also IITC).

In a spirit of flexibility, IPACC could accept the amendments apart from the deletion of “adequate” (also IPNC).
For IPNC, it is vital that the word “development” remains in the article. Yatama understand that the word “adequate” refers to technical and financial assistance, a better word could be “appropriate”. Their agreement to the elimination of the second sentence is dependent on the outcomes of the debate on self-determination. [Estonia, Mexico, Guatemala]

Article 39

AN declare that one cannot presume that collective rights violate other rights, states are responsible for impeding possible conflicts, for this reason they support the original text of the Sub-Commission (also TOTSNTC, ICSA, ICC, CTT, AIRT). For ICSA article 39 is about conflict with the states, third parties are generally part of or in agreement with states, as is often the case with transnational companies. The inclusion of a third party is to the disadvantage of IPs, it creates a tripartite situation where the states and third party join forces against IPs (also CTSFN, COICA).

To include “third parties” at this late stage creates confusion, furthermore third parties rights is dealt with in national jurisprudence (also CTT, AIRT, UUSC).

For NKIKLH what is important is to avoid bloodshed and war by engaging in conflict resolution. The Russian Federation’s request is understandable, states cannot be expected to violate their own jurisprudence. However, the Australian proposal is unacceptable, it presumes that there cannot be a fair process for IPs (also AILA, SUANPA, ILRC).

NKIKLH reveal that many of the USA documents mention “human rights standards”. NKIKLH propose to end the article with “human rights standards and those included in this Declaration”. It makes sense to bring everyone together in conflict resolution, thus it is appropriate to include third parties in this article (also TF, CPA, NN, SC, ILRC).

SC propose “other parties” instead of “third parties”.

AILA clarify that the different experiences faced by IPs inevitably produce different connotations and meanings regarding “third parties”.

AN believe that the inclusion of “international human rights standards” as proposed by CRP.1 limits the scope of the article.

ICC ask Canada to revisit its position in light of its history. [New Zealand, Russian Federation, Guatemala, Canada, Australia, Mexico, USA]

Article 41

IITC quote the UN Charter regarding the mission of the UN (part 3 and 4), whereby all UN agencies and bodies are charted with the responsibility to ensure the application of this DD. The original text is appropriate and should be maintained (also CTT, RAIPON, TOTSNTC, AIRT).

TOTSNTC question the term “relevant” as it leads to a judgement call that may not be appropriate, who determines what is relevant? (also IOIRD) TOTSNTC does not think that the PF alone will be able to face all needs of IPs, therefore they oppose the changes in the CRP.1.

The uncertainties regarding the renewal or expansion of the PF’s mandate and the resources that will be made available, make it impossible to accept the CRP.1 amendment. IPs cannot limit their chances of obtaining an higher or additional body to implement the DD and deal with indigenous issues (IITC, CTT, FAIRA, IPNC, Tamaynut, RAIPON, ICC, ICSA). IOIRD remark that the adoption of the DD with the CRP.1 amendments would not automatically provide the PF with an assured future.

The language of the new PP aims to capture the concerns of states, and allow them to invoke any principle of international law, including the principle to territorial integrity, however without explicitly...
mentioning territorial integrity due to the growing abuses of this principle in different regions of the world. *Introducing this reference, could invite abuses in countries that have internal states such as USA, Russia or India. States abuse the concept of territorial integrity, and including it into the Declaration would give the states a carte blanche. Furthermore, it could also cause division amongst IPs.*

**WPC** cannot agree with the IPs’ proposal for PP 15 (also NN, TOTSNTC). **WPC** lament that the States are imposing their will, and the IPs have no alternative but than to go on hunger strike (also ICSA).

**NN** can agree to the new PP and reminds that the NN and other IPs have continued to determine freely their status as a sovereign and independent nation, and this regardless of the invasion of the colonizers (also COICA). NN can accept “internal self-determination” as proposed by the USA if it were to include their full ownership, control, and management authority over NN lands, territories and resources, including surface and subsurface resources. **WPC** declare that internal self-determination would be a second-rate right and the proposals in CRP.1 distort existing international human rights.

**HD**, CPN and **ILRC** cannot support the IPs’ proposal, because it would nullify the possibility for IPs to achieve a general and distinct right to self-determination. There is a concern that states will seize on the PP to limit the scope of self-determination, by reducing it to a meaningful participation of IPs in the government. If the amendment to PP 15 were: “exercised in conformity with principles of international law as interpreted and declared in this Declaration”, they could consider endorsing the IPs’ proposal.

**AIPP** declare that the right to self-determination should not be qualified or restricted in any manner.

**AILA** clarify that international law has long recognised that all peoples are entitled to self-determination and nowhere does it forbid self-determination for IPs. The DD can strengthen international law but not violate it, however it is not the mandate of the WGCD to strike the balance between self-determination and territorial integrity. In any event, “secession” does not apply to IPs, it is a term akin to divorce, and there can be no divorce where there has been no prior marriage. IPs seek a worthy partnership with states.

**IOIRD** and **NKIKLH** present the results of the informal sessions on self-determination held in the first two weeks of the 10th session and which is not reflected in CRP.4.

**CAPAJ** is opposed to the amendment of the first paragraph of Art 3 (CRP.4) proposed by the Russian Federation, it inappropriately confines the universal right to self-determination to domestic regulations. The language of the Sub-Commission is precisely aimed to trigger the necessary changes in national constitutions for the recognition of IPs and their unique juridical status (also **CTT, AN, SC, TF, UNIPROBA, SUANPA**). **RAIPON** support CAPAJ and regret to see that the Working Group seems to be moving backwards rather than forwards with proposals of this kind. **AIRT** inform the Russian Federation that its proposal would be inappropriate for the **Maori** since New Zealand does not have a national constitution, and the reference to positive arrangements is ambiguous (also **NKIKLH, IPNC**). **AIRT** express their disappointment in the government of New Zealand for having failed to consult them with regard to the process of the DD.

**NKIKLH** declare that taking language out of the context of international law, is to violate international law and extend it beyond its capacity. The second paragraph of Art 3 as proposed in CRP.1 does not apply to IPs that are not under colonial or alien domination.

**IWA** condemn the travesty of states that claim to be pillars of human rights whilst they block the successful achievement of the DD.

**INREDESC** and **CEUM** presented the results of the seminar on the DD, which is in the annex of the report of the Sub-Commission on the Prevention of Discrimination and Protection of Minorities.

**SC** and **TF** present their redraft of the DD, referred to as CRP.5, it has been adopted by the Saami Parliamentary Council and they consider it the most appropriate language for reaching consensus.

[Norway, Canada, Guatemala, Mexico, France Brazil, France, Ecuador, New Zealand, Australia, Peru, USA, Russian Federation]

**Articles regarding lands and territories**

**Article 25**

**IHTC** express their strong objection to the deletion of “traditionally owned, or otherwise occupied” presented in CRP.1. This is to ignore the reality of IPs where in many cases their land is not recognised (also **African Caucus, CPA, WPC, IPACC, ICSA, IOIRD, GCC, NIPDISC, JOHAR**). For **ILRC**, the CRP.1 changes place this DD beneath existing international law. There is a need to recognise the existence of ownership on

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18 See page 23 for the indigenous proposal.

19 For a copy of the AILA statement in English which presents a detailed history of the right to self-determination in international law, please contact doCip.

20 For a copy of this proposal in English and Spanish please contact doCip.

21 For a copy in Spanish of the summary of the results of the studies done by **INREDESC** and **CEUM** on self-determination and on lands and territories, please contact doCip.

22 CRP. 5 is available at doCip or at: http://www.ohchr.org/english/issues/indigenous/docs/CRP5.doc
traditional occupancy and use, and to give full respect and legal protection to that form of ownership (also NIPDISC).

CAPAJ declare that for IPs, “their” has a connotation of possession, a foreign concept to the indigenous world vision since for them land cannot be owned. In this regard the land belongs to all of us, therefore the neutral form “the” is more appropriate (also CEALP, CTT, SER, KKCR, AN, CJIRA, ONPIA, WPC). CJIRA interpret Art 25 as being the recognition of the cosmos/non-material vision of IPs and Art 26 being about the practical matter of land ownership, if this is the case the changes proposed are inappropriate.

IOIRD would prefer “their traditional lands[…]”, followed by the bracketed version “[as well as other lands, territories and resources they have otherwise acquired]”, as proposed in the alternative language in CRP.4. This gives a more open interpretation of ownership.

CJIRA declare that almost all Latin American states have recognised in their constitutions the fact that IPs’ lands are established on the basis of their traditional use of the land and is adopted in international documents such as Convention 169 (also AN, CTT). AN add that it is incongruent to ask countries to sign a DD when they are held to respect a right in another convention or in their own law, reminding that Norway and Denmark (authors of the CRP.1) have ratified Convention 169 (also CPA, WPC, IPACC, ICSA).

NN declare that the language in Article 25 speaks to the relationship of IPs with the land, and do not understand why or how a state could oppose this. There are no other peoples that have demonstrated this particular spiritual connection to land (ICC). No amount of explanation, AIPP state, would be enough for the states to understand IPs’ spiritual relationship to the land, for example, in article 28 “productive capacity” actually means “restoration to health” from an indigenous perspective, land and resources are not commodities to them.

The proposal presented by Brazil can provide a common agreement, however AIPP insist on retaining the rest of the wording of the original text (also INBRAPI/ITC).

IPNC propose to add “including submerged lands and territories” after “territories” and “as colonized IPs with absolute title rights and ownership and to that which” after “resources which….”

TF amend CRP.5 by removing the word “exclusively”.

[Guatemala, Mexico, New Zealand, USA, Brazil, Chile, Bolivia, Australia]

Article 26

TOTSNTC declare that for the USA, “their” land means to recognise the Indian Reserves they have forcefully put IPs on, not their traditional land. The loss of their land for the Tetuwan Oyate means the loss of their identity as the Buffalo people. SUANPA declare that for Aboriginal people, they are part of the land, land is life (INBRAPI/ITC for IPs in Brazil). FAIRA is concerned that the inclusion of “their” (Art 25 & 26) could exclude IPs that have had to redevelop their relation to the land when they were forcibly relocated and put on reserves. NN are concerned that “their” will refer only to the present ownership, not to what has been traditionally owned or might be owned in the future. CPA is concerned that “their” makes the assumption that IPs own the land, which is not the case in many parts of the world.

RAIPON question what criteria will be used to determine IPs’ lands if only the definition “their land” is left in the CRP.1.

AIRT ask New Zealand if “their land” is meant to encompass traditionally owned land under customary law. If that is not the case, it would undermine aboriginal titles in Canada, Australia, New Zealand and USA.

COCEI ask that if in article 27, the CRP.1 recognises the restitution of “land, territories, and resources, traditionally owned”, then why is this not kept in the other articles? IITC encourage the authors of CRP.1 to remove their proposal, there is enough moral, economic, legal and historical proof to support the original language (also TOTSNTC, CTT, NN, ICC, WPC, IOIRD).

NNIKILH point out that the CRP.1 authors are not correctly quoting CERD which in fact does mention “traditionally owned or inhabited and used” (also AIRT).

AIPP disagree with the inclusion of “unwarranted” as proposed by CRP.1 (also CPA).

CEALP, CTT, SER, KKCR, AN, CJIRA and ONPIA point out that surface and subsurface resources are intricately related to IPs’ rights to lands and territories since there is no technology that can allow a company to use these resources without affecting the flora, fauna and general surroundings of IPs’ territories.

ILRC present the following redraft: “States shall give full legal recognition and protection to the lands, territories and resources that are held by indigenous peoples by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired. Such recognition shall be in accordance with the customs, traditions and land tenure systems of the indigenous peoples concerned. Indigenous peoples have the right to use, develop and control such lands, territories and resources [including both surface and subsurface resources]” (also IOIRD without the brackets). This language is to address the problem that exists in many parts of the world whereby IPs’ traditional occupation land use of the land is simply not recognised or not given legal protection, it is not equal to a patent or a land title.

23 For the full list of amendments presented by IPNC for articles 25, 26, 27, 28 and 30 together with the explanatory notes, please contact doCip.
For ICC the ILRC proposal does not address the problem of dispossession and encroachment, furthermore it is important to begin the article by establishing the right of ownership, not leaving it to the end. The term “unwarranted”, is far too subjective (also CEALP)

ONPIA hope that the DD will go beyond the current standard already established, including national constitutions and Convention 169. There are many IPs in the world that have the title to the land they are living on but not many have the title to the land they have traditionally owned. IPs are honest when they say they will never give up their land, it is a juridical statement but also a political one. IPs want the states to assume their historical responsibility and debt towards IPs.

CEALP, CTT, KKCR, AN, CJIRA believe that what is at stake here is the states’ fear of losing large areas of land to IPs, that would at the same time affect important development projects. These fears are unfounded, IPs have demonstrated that their intentions are to live in harmony and respect with the environment and in a sustainable manner with other parts of the society. The idea that only states have territories needs to evolve, IPs also have territories.

AFN declare that underlying this debate is the notion of discovery and terra nullius (“land belonging to no one”), these notions still persist and are used to justify the non-recognition of indigenous use and ownership of their territories.

[USA]

Article 27

ICC suggest the inclusion of “free, prior, informed consent” and has doubts as to whether “redress” is broader and more inclusive. ICC further propose: “where this is not possible states shall provide just, fair, and effective mechanisms and procedures for redress” (also Yatama, INBRAP/IITC, COIAC, CPA). This group of articles should be improved by including surface and sub-surface resources (also IOIRD, ILRC, IPNC, NN).

AIRT argue that “redress” has meant something far less then “compensation or restitution”, this also true for Art 30 (also FAIRA, RAIPON).

AFN do not consider trading the word “compensation” for “mechanism”, to be a fair trade. CEALP want the compensations to be fair and just, not the procedures (also AFN).

FAIRA point out that the problem in New Zealand is not the lack of mechanisms, but the lack of standards.

IOIRD draw attention to the recent UN final report Dr. Erica Daes on IPs’ permanent sovereignty over natural resources (E/CN.4/Sub.2/2004/30), this report address these articles. In light of this report, the proposals in CRP.1 and 4 are inappropriate (also ILRC, WPC).

FAIRA affirm that States declaring “no change no Declaration” is a true attack on the UN, sabre rattling is not helpful at this stage.

INBRAP/IITC declare that the sun will shine on the plenary because it is debating over sacred things such as land and nature, legal arguments may be useful but spirituality is also essential.

IITC argue that the amendments of CRP.1 give the states power over “redress”, IPs should be involved in the definition of compensation when it is not restitution (also TOTSNTC, Yatama, RAIPON). RAIPON argue that if “have the right to fair compensation” is removed, then it will no longer be a right (also IPACC).

CSUTC declare that article 27 is crucial, legislations are not sufficient, if all was about declarations and legislation then many problems would be resolved. IPs have to mobilize themselves to obtain these rights, it is not something that states are willing to relinquish, especially considering the economic parameters involved. (also WPC) Chirapaq made a general statement on the need for unity within diversity and the urgent adoption of the DD.

NIPDISC present how the Kirati tribe has suffered from unfair national laws concerning land and natural resources management.  

IPNC disapprove the deletion of the last sentence in Art 27 (CRP.1) since it recognises the legal status of the land that was originally taken without consent and can also establish the degree of ownership of IPS as holders of absolute title rights as colonized peoples (also CTSFN).

NN support the ILRC proposal to re-write the article so as to provide a clear separation between the recognition of 1) spiritual/material ; 2) ownership and 3) compensation.

[Guatemala, Mexico, New Zealand, USA]

Article 28

IITC declare that the CRP.1 proposal weakens the text. Human life is not separate from the “total environment”. The states propose to remove “total” so that they can decide which part of the environment they want to return or

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24 In particular recommendations that begin on page 19 as well as Add. 1 which has all the supporting international law. Paragraph 71 mentions the DD directly and states that it should include references to sub-surface resources and traditionally owned lands.

25 Please contact doCip for a copy of the statement.
restore (also ICC, ICSA). ICSA claim that this process is not a dialogue, it is an imposition that does not respect the integrity of IPs. IPs also have to restore their practices and ways of life. IPs have experienced “effective consultation” and know that it is radically different if not opposite to “freely agreed upon by the peoples concerned” (also NN, TOTSNTC, IWA).

Yatama find that “when ever consideration is being…” is understood to focus on the consideration of states and not of IPs, and is therefore unacceptable.

The inclusion of “equal rights” once more compares IPs’ rights to other rights and brings up the issue of third parties (also AN, AIRT, IPNC). IPs do not want assistance from states, they want rights. AN propose the inclusion of a clause on the transit of toxic wastes on IPs’ territories.

The Asian Caucus disagrees with the deletion of the last sentence of the first paragraph regarding military activities (also AIRT, IPNC, IWA, ICC, WPC), but could agree to the inclusion of the second paragraph (CRP.1).

IPNC support the original text (also TOTSNTC, AIRT) but can present alternative language if the CRP.1 authors insist.

NN oppose the deletion of “restoration”, often states, such as the USA, refuse to restore land they have used (also IITC, AN, AIRT, IPNC, CTT). NN prefer “all assistance” to “any assistance” (CRP.4).

IOIRD consider that the words “disposal or storage” included in the CRP.4 is an improvement from the CRP.1 text.

TF and SC have their opinions reflected in CRP.5.

[Guatemala, USA, Mexico]

Article 30

CPA and TF can agree to the amendments presented in the CRP.1 For IITC, the CRP.1 amendments remove IPs from processes of compensation, and “seek” is significantly weaker than “obtain”, it eliminates the right to “informed consent” (also AN, WPC, AILA, NN, IPNC, IOIRD, NKIKLH, CEALP, IPACC).

CTSFN insist on the significance of this article, IPs cannot accept to have their lands returned to them barren and devoid of resources.

WPC wish to keep the text as it was drafted (also AILA, RAIPON).

IPNC propose to add a new sentence “States shall take into account the treaties and agreements and provide effective mechanisms for national and international redress” and “as colonized peoples with absolute title rights and ownership” after other resources.

NKIKLH propose to add “in consultation with IPs states shall provide […]”.

IOIRD whole-heartedly support the first three lines in the CRP.4.

[Guatemala, Mexico, USA, Norway]

Group of articles presented by the Chair for discussion upon request of certain delegations

Article 12

Remedy is inherent in “restitution”, it has the meaning of making the victim whole (IITC).

In some cases it is states that have taken the artefacts and human remains from IPs, thus the proposal of CRP.1 would provide no effective mechanism to have redress. This article is about a right, so writing “states shall” intrudes upon the right (TOTSNTC).

Taungya are concerned since it sounds like “their” refers to the states.

NN would like states to address the fact that their artefacts are often sold across international boundaries.

[New Zealand, Chile, Australia, Guatemala, USA, Bolivia]

Article 13

JOHAR could accept the changes in CRP.1 if they are broadly interpreted, the question this article has to answer is who do the artefacts belong to? (also IITC, TOTSNTC)

[Chile, Canada]

Article 20

Taungya state that the first paragraph deals with devising legislative measures and the second is about adopting them, it would be logical to use the same language in both.

For IPACC the lack of IPs’ full participation is the source of all their problems.

WPC remind the states that the Vienna Declaration encourages states to ensure the full participation of all sectors of society.

[USA, New Zealand, Guatemala, Canada]
Article 21

IITC declare that in no case may peoples be deprived from their right to subsistence, this is valid for the past, present and future (also ICSA, WPC). Since redress does not exist in international law, it is difficult to see how it could create effective mechanisms.

Due to their experience, Taungya prefer “having been”. CPA propose to combine “having been and are deprived” (also NN).

ILRC suggest to add “subsistence resources”.

[Guatemala, USA, South Africa, Mexico, New Zealand]

Article 23

IITC wonder what New Zealand has in mind for self-determination in view of the proposal in CRP.1.

IPACC consider the expression added to CRP.1 ambiguous and prefer the text in its original drafting (also ICSA, NKIKLH).

CPA can live with the change, especially since the text is left intact in the first sentence.

ICSA declare that one can be actively involved without having any impact.

NKIKLH state that the right to development is a well established human right in international law.

SC understand the logic behind the CRP.1 since it is not possible for IPs to determine all programmes that affect them, there are programmes that might affect both IPs and non-IPs.

[New Zealand, Guatemala, USA, Mexico]

Article 29

WPC protest against on insufficient amount of discussion time spent on this crucial article (also FAIRA).

AN, CTT, CAPAJ, SER and KKCR believe it is unnecessary to depend on the outcomes of current discussions on intellectual property, the WGCD should set the tone and influence the debates that are taking place in other bodies (also ICSA, IITC, IWA). SC add that other UN bodies will not deal with this matter from a human rights perspective (also IPNC). SC find the term “intellectual property” (Sub-Commission text) inappropriate in this context but the CRP.1 text as a whole is unacceptable (also NKIKLH). As stated in SR Erica Daes’ report on IPs’ permanent sovereignty over natural resources (E/CN.4/Sub.2/2004/30), occidental property rights cannot be applied to traditional uses of the land (NKIKLH, also COICA).

SC consider the word “tangible” to be is unclear.

FAIRA cannot accept wording that is less than the Sub-Commission text, this is a minimum requirement (also CTT, CTSFN). In fact an even stronger text would be preferred, also stronger than CRP.5.

SC, NKIKLH, TF, Asian Caucus, SUANPA and ICC find the language in CRP.5 more congruent with the goal of this article.

AIRT question how IPs are to defend their intellectual property if they do not have legal ownership of the latter? In relation to CRP.5. AIRT think that intellectual and cultural property is preferable since they are legal language and are enforceable. The proposed CRP.5 text however, is not consistent with Art 12.

NN support the second alternative in CRP.4 but would like stronger language by changing “should” to “shall” in the last paragraph.

The amended texts are too generic and do not address the specificities of the IPs’ creations (COICA).

[New Zealand, Brazil, Guatemala, Mexico]

Abbreviations

AFN: Assembly of First Nations
AILA: American Indian Law Alliance
AIPP: Asian Indigenous Peoples Pact
AIRT: Aotearoa Indigenous Rights Trust
AIWN: Asia Indigenous Women’s Network
AN: Asociación Napguana
AWN: Aukin Wallampu Ngulam
CAPAJ: Comisión Jurídica para el Autodesarrollo de los Pueblos Originarios Andinos
CEALP: Centro de Asistencia Legal Popular
CEUM: Corporación Educacional Universidad Mapuche
Chirapaq: Centro de Culturas Indígenas del Perú
CIDOB: Confederación de Pueblos Indígenas de Bolivia
CIP: Congress of Indigenous Peoples
CJIRA: Comisión de Juristas Indígenas de la República Argentina
COCEI: Coordinadora Obrera Campesina Estudiantil Independiente
IPs’ Proposed Amendments relating to the Right of Self-Determination, of September 20, 2004

Proposed amendments

Preambular Paragraph 15 *Bearing in mind* that nothing in this Declaration may be used to deny any peoples their right of self-determination, exercised in accordance with principles of international law, including the principles contained in this Declaration.

[Referred to as the “AILA/Guatemala” proposal made at the WGCD, Ninth Session, September 2003]

New Preambular Paragraph *Encouraging* harmonious and cooperative relations between States and indigenous peoples based on principles of justice, democracy, respect for human rights, non-discrimination and good faith.
[Proposal made by an overwhelming majority of Indigenous peoples at the WGCD, Tenth Session, September 2004]

**Article 3**

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.

[Original text as adopted by the Sub-Commission, 1994]

NOTE: The above amendments are to be read together. They are being made in order to achieve an acceptable alternative to the amendment to Art. 3 suggested by the authors of CRP.1. An essential purpose is to preserve the original language of Art. 3 of the Sub-Commission text. The present proposal requires deletion of the two paragraphs added to Art. 3 in CRP.1.

**Explanatory Note**

This Note explains further the spirit and intent of the proposed amendments to the Sub-Commission text of the draft *U.N. Declaration on the Rights of Indigenous Peoples*. These amendments were submitted by an overwhelming majority of Indigenous Peoples participating at the 10th session of the WGCD. The purposes of these amendments, which are to be read together, include:

- to achieve consensus among States and Indigenous peoples, by accommodating both States and Indigenous concerns in regard to the fundamental human right of self-determination
- to retain the original language of Article 3, as provided in the Sub-Commission text, consistent with principles of equality and non-discrimination
- to affirm that, to the extent provided in international law, States will continue to have the freedom to invoke any principle of international law, including the principle of territorial integrity, in relation to the exercise of the right of self-determination
- to avoid any explicit reference to the principle of territorial integrity in the draft *U.N. Declaration*, in view of the growing abuses of this principle in different regions of the world
- to encourage harmonious and cooperative relations between States and Indigenous peoples, based on universal and mutually reinforcing principles and values of international law.

As proposed in **PP15**, the right of self-determination of Indigenous peoples would be exercised “in accordance with principles of international law…” In any given circumstance, States could freely invoke any principle of international law, including territorial integrity, to the full extent permitted under international law. This unequivocally addresses a key concern of many States.

As indicated in the *Charter of the United Nations*, the 1970 *Declaration Concerning Friendly Relations* and other international instruments, “territorial integrity” is one of the existing principles of international law. Article 45 of the Sub-Commission text gives even further assurance to States that they would retain their existing capacity to invoke territorial integrity, by explicitly providing:

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

In regard to the **new preambular paragraph**, it provides a further positive dynamic by encouraging harmonious and cooperative relations between Indigenous peoples and States in a manner that strengthens the international human rights system as a whole. This provision would foster dialogue, mutual understanding and constructive arrangements, without imposing any unjust or excessive preconditions to the exercise of the right of self-determination.

Submitted by:

Reports on the Informal Working Groups[^26]

Land rights and resources (articles 26 to 30)

Facilitated by Guatemala and Mexico

All actors such as NGOs, the indigenous caucus and States participated in the consultations with a constructive attitude, thus the facilitators could recognize the general wish to work towards a Declaration. For IPs’ the expression “traditional lands” reflects their spiritual and temporal relationship with their lands or territories but some governments are concerned that it could lead to claims, which would be extremely difficult for them to fulfill. Another difficulty for some delegations, linked to self-determination, is the use of the word “territory”.

Cluster of articles on self-determination

Facilitated by Canada and Miliiani Trask, Caucus representative

At the outset, it is important to acknowledge that all representatives of IPs and some States support Article 3 of the Sub-Commission text. The following proposals were submitted with multiple sponsors: CRP.1, CRP.5 and the Indigenous proposal with explanatory notes.

In addition, proposals were submitted by the following individual organizations and states: WPC, IOIRD, USA, France and the Russian Federation.

A general positive intent and genuine commitment to achieving consensus is expressed in all the proposals received. Most the proposals adopted a comprehensive or “package deal” approach to addressing the right of self-determination. In several of the proposals, the original text for the first paragraph of Article 3 is unchanged.

Article 36 related to treaties and agreements between states and IPs

Facilitated by Canada and Willie Littlechild, Caucus representative

The following proposals were submitted for discussion: Sub-Commission text, CRP.1, Canada proposal based on Sub-Commission text and CRP.1, USA proposal, and proposal by the Indigenous Caucus at the Organization of American States. Based on these proposals, the facilitators drafted the following working text:

[indigenous peoples have the right to the recognition, observance and enforcement of treaties, agreements and other constructive arrangements concluded with States or their successors, taking into account, among other things, the original spirit and intent of the indigenous peoples/party concerned, and to have States honor and respect such treaties, agreements and other constructive arrangements.] [States should/shall take all necessary steps under domestic law to implement obligations to indigenous peoples under treaties and other agreements negotiated with them.] Disputes should be submitted to competent domestic bodies or processes for timely resolution. Where such [submission] [resolution] is not possible [and the concerned parties agree], disputes may be submitted to competent international bodies.

Articles that could be adopted on a provisional basis

Facilitated by Norway and the Indigenous Caucus representatives

Norway conducted informal consultations, in collaboration with the co-facilitators of the Indigenous Caucus (which encompassed results of consultations from each of the seven regions). There is a broad agreement on a large number of articles, and even potential consensus on many of them. However, Norway is of the opinion that it would be difficult to move to provisional adoption of this package before the Working Group has solved other outstanding questions, including the right of self-determination, lands and resources and collective rights in general. Norway submitted a package, containing 13 preambular paragraphs and 14 operative articles, and proposed that it be set aside for final consideration at an appropriate time. This package includes the following:

1. PPs 2, 3, 4, 5, 7, 9, 12, 17 and 18 from the Sub-Commission text
2. PP 11 and 10 from CRP.1 text
3. PP 6 and 16 from CRP.4 text
4. Art 40 from the Sub-Commission text
5. Art 4, 6, 9 and 17 from CRP.1 text
6. Art 14 (2nd option), 16, 18, 22, 33 (1st option), 34, 41, 44 and 45 from CRP.4 text

[^26]: Each working group provided extensive documents with alternative language for each article discussed, for the complete reports (E/CN.4/2004/WG.15/CRP.7) please contact doCip or go to:
http://www.ohchr.org/english/issues/indigenous/docs/crp7.doc
Cross-cutting issues in the Declaration
Facilitated by SPAIN and Les Malezer, Caucus representative

The cross-cutting issues that were raised during the consultations were: collective rights, self-identification, third party rights, international obligation of states, national security and responsibility of individuals. The facilitators decided to focus the discussions on collective rights and self-identification. Two proposals were made by the UK and PORTUGAL on collective rights and a third by GCC on the principles of interpretation of the rights of IPs in the event of a dispute.

In conclusion, these consultations facilitated an approximation of the conflicting positions. However, the debates demonstrated that more time is needed to discuss transversal issues if a consensus is to be achieved in the future.

President Chavez’s Draft Report of the Working Group on the Draft Declaration

To this point three draft reports can be found on the OHCHR website, in English only (http://www.ohchr.org/english/issues/indigenous/groups/groups-02.htm). The CRP.3 gives a somewhat detailed overview of the last session. CRP.6 presents the results and recommendations of the President, there was not enough time for the Working Group to reach a consensus on this text during the last week of session. The President has asked participants to send their comments for the final draft of CRP.6. The CRP.7 presents the results of the informal working groups that took place during the three weeks of the 10th session (for a summary of this report please see page 25) The final version of the Chair’s report will be submitted to the Commission on Human Rights during its next session (14 March-22 April 2005 in Geneva, Switzerland).

Provisional Adoption of Articles

An Indigenous Peoples’ Caucus Statement, expressing the consensus reached after discussions in and among regional caucuses, could not be delivered orally due to lack of time and some confusion on protocol during the last meeting of this 10th session of the WGCD. This statement was then submitted in writing by the American Indian Law Alliance on behalf of the Caucus Chairpersons to the WGCD Chairman. The Caucus Statement was submitted with a request to include a supplemental paragraph in his Report along with his comments about Norway’s statement on provisional adoption. It was also requested that the entire Caucus statement on provisional adoption be included as an Annex to the Report. The Norwegian delegation, who co-facilitated the informal consultations on provisional adoption with members of the Indigenous Caucus, supported the inclusion of this statement in the Chair’s Report. We publish here the proposed supplemental paragraph to this Report, followed by the IPs’ Caucus Statement.

Proposed supplemental paragraph to the Chair’s Report

“Supplementing Norway's report to the Chair on the Informal Consultation on Provisional Adoption of Articles, the Indigenous Caucus facilitators reported that the Indigenous Caucus, after much deliberation, wished to demonstrate its commitment to progress by supporting provisional adoption of PP 1, PP 3, PP 4, PP 5, PP 9, PP 18, and Articles 2, 42, and 44. Additionally, the Indigenous Caucus would support provisional adoption of PP 1, PP 6, PP 7, PP 8, PP 12, PP 16, PP 17, and Articles 8, 9, 10, 14, 19, 22, 34, and 40, after further discussion if necessary.”

Statement on behalf of the IPs’ Caucus on Provisional Adoption of Articles

Being strongly encouraged by the Resolution of the 3rd Committee of the General Assembly of the United Nations calling for the proclamation of the Second International Decade of the World’s Indigenous People, to commence on 1 January, 2005, and urging for the adoption, as soon as possible, of a final draft United Nations Declaration on the Rights of Indigenous Peoples,

Considering that the provisional adoption of preambular paragraphs and articles is an important means of facilitating progress towards the adoption of a United Nations Declaration on the Rights of Indigenous Peoples,
The Indigenous Peoples Caucus, consisting of Indigenous Delegations from all the seven regions of the world, meeting in Geneva on 3 December 2004, discussed the issue of provisional adoption of articles, and reached the following consensus:

1. That the preambular paragraphs and articles mentioned below in Subset 1A may be provisionally adopted without any further discussion, since informal discussions at this session, and the reports of previous sessions, indicate that there is consensus on these paragraphs and articles.

Subset 1A: PP 2, PP 3, PP 4, PP 5, PP 9 and PP 18; Articles 2, 42 and 44.

That the preambular paragraphs and articles mentioned below in Subset 1 B may likewise be provisionally adopted, if necessary after further discussion, since informal discussions at this session, and the reports of previous sessions, indicate that there is consensus on these paragraphs and articles, some of which are the result of the facilitation process involving both governmental and indigenous delegations.

Subset 1B: PP 1, PP 6, PP 7, PP 12; Articles 8, 9, and 40.

That the preambular paragraphs and articles mentioned below in Subset 2 may be considered for provisional adoption after discussion, if needed.

Subset 2: PP 8, PP 16, PP 17; Articles 10, 14, 19, 22 and 34.

2. It is important for all delegations participating in this Working Group to appreciate the difficulties of certain indigenous delegations in accepting changes to the sub-commission text. However, in the greater interest of attaining progress, and maintaining unity, they have decided not to object to this consensus. We sincerely hope that this significant and constructive gesture of goodwill will be reciprocated by governmental delegations.

3. The Indigenous Peoples’ Caucus wishes to thank the Norwegian Delegation for its efforts to identify preambular paragraphs and articles that are acceptable to both governmental and indigenous delegations for provisional adoption. Indigenous delegations from all the seven regions of the world have deliberated on the paragraphs and articles so identified by the Norwegian delegation as communicated to the Indigenous Caucus through the Co-Chairpersons of the Caucus. A number of provisions that were included within the Norwegian proposals for provisional adoption, such as preambular paragraph 10 and articles 4, 6 and 45, do not coincide with the proposed list for adoption as prepared by the Indigenous Peoples Indigenous Caucus (Subsets 1A, 1B and 2). However, it appears that several of the provisions proposed by Norway for provisional adoption are common in both the Norwegian and the Indigenous delegations’ lists. In addition, we also note that many more provisions on these two lists are close to agreement. It is unfortunate that due to scarcity of time, and logistical difficulties, all the indigenous delegations could not conclude their consultations on these additional provisions. Nevertheless, the Indigenous Peoples Caucus feels that the Norwegian suggestions and the Indigenous Caucus’ Consensus List can serve as sound bases for further discussion at an appropriate time.

Mr. Chairperson, we strongly urge you to consider these views and to have them fully reflected in your report on this session, and to include this statement as an annexe to the report.

Thank you.
Hunger strike by Indigenous Peoples' representatives at the United Nations

The third week of the 10th session opened with six indigenous representatives attending the Working Group declaring themselves on hunger strike and spiritual fast. The strikers were namely: Adelard Blackman, Buffalo River Dene Nation, Canada; Andrea Carmen, Yaqui Nation, Arizona, USA; Alexis Tiouka, Kaliña, French Guyana; Charmaine White Face, Oglala Tetuwan, Sioux Nation Territory, North America; Danny Billie, Traditional Independent Seminole Nation of Florida, USA; and Saul Vicente, Zapoteca, Mexico. Through this action, which had the support and solidarity of IPs and organizations from around the world (over 120 organizations signed on to their declaration in support of their action), the strikers wanted to call the world's attention on the WGCD process and how several states continue to undermine and weaken the DD. After ten years of debates, delegates at the Working Group were being presented in this last week of session with a text amended by some states in such a manner that seriously undermines the rights that the Declaration drafted by the Sub-Commission is aimed to defend and protect. The strikers wanted to send a clear message to the UN Commission on Human Rights and the High Commissioner herself that these amendments were unacceptable to the indigenous representatives present at the WGCD but also to a great number of IPs from around the world. Consequently, they called upon the Chairperson to reflect this reality in his report, and not give the impression in his final "consolidated report" that the WGCD was nearing a consensus.

The strikers strongly affirmed: "We will not allow our rights to be negotiated, compromised or diminished in this UN process, which was initiated more than 20 years ago by Indigenous Peoples. The United Nations itself says that human rights are inherent and inalienable, and must be applied to all Peoples without discrimination".

After discussions with the UN Security and despite the opposition of the Russian Federation, they were allowed to remain in the plenary room during the sessions and spend the night within the UN Geneva Headquarters for the duration of the hunger strike. They received hundreds of messages of support and sympathy from around the world.

After three days of fasting, the six indigenous representatives participated in a traditional Lakota ceremony to end their fast. Through this ceremony they offered their profound thanks for the many positive outcomes of this action, which far exceeded their expectations. They also offered their prayers and gratitude for the many peoples, organizations and individuals that supported them, listened to them and provided assistance throughout the strike.

They were encouraged to end their action after meeting with the representative of the UN High Commissioner on Human Rights (Mr. Dzidek Kedzia,) and the Vice President of the UN Commission on Human Rights (Ambassador Gordan Markotic) who listened "with open minds and hearts", and responded to their concerns with proposals that offered concrete and encouraging steps forward. As an outcome of this meeting, they were given the assurance that nothing other than the Sub-Commission text will be adopted by the Commission on Human Rights if it is not produced with the consensus of the IPs. Furthermore, their concerns will be presented in writing to the High Commissioner, to the Chair of the Commission on Human Rights and to all the Chairs of its regional groups, so they can be fully aware of what took place in the Working Group.

They were also offered the possibility of having a meeting between the Office of the Commission on Human Rights and IPs' representatives, prior to the Commission on Human Rights session in March of 2005, since at that session the future of the WGCD will be determined. It was made clear that if the Working Group's mandate is extended, it will be necessary to establish new procedures to guarantee that the voice of IPs and organizations who cannot be present in Geneva are also taken into account.

In their final declaration during the plenary session the six strikers stated:

"Brothers and sisters, we are in this great house but it is not our house. We are in a palace where documents are written for Peoples but not for our Indigenous Peoples. They open doors for us to enter but they close their ears and hearts. What can we do? We can do many things, even a hunger strike. But there is one thing we should never do - we should never, never give up our rights."

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27 For a copy of the declarations made during the plenary sessions by the indigenous representatives that went on hunger strike please contact doCip (available in English, Spanish and French).
3. ECOSOC SUBSTANTIVE SESSION, July 2004

During its substantive session in July 2004, the ECOSOC adopted the following decisions, based on the reports of the CHR’s 60th session (2004) and the PF’s third session (2004). Two of them have been adopted with recorded votes.

**ECOSOC Decision 2004/264**

**Working Group on Indigenous Populations of the Sub-Commission on the Promotion and Protection of Human Rights, and the International Decade of the World’s Indigenous People**

At its 48th plenary meeting, on 22 July 2004, the Economic and Social Council (ECOSOC) took note of Commission on Human Rights (CHR) resolution 2004/58 of 20 April 2004 and endorsed the Commission’s recommendation that the Working Group be authorized to meet for five working days prior to the 56th session [2004] of the Sub-Commission on the Promotion and Protection of Human Rights.

**Decision 2004/264 was adopted by a recorded vote of 35 in favour to 2 against, with 17 abstentions, as follows:**

**In favour:** Armenia, Azerbaijan, Belize, Benin, Bhutan, Burundi, Canada, Chile, China, Colombia, Congo, Cuba, Ecuador, El Salvador, Ghana, Guatemala, India, Indonesia, Jamaica, Kenya, Libya, Mauritius, Mozambique, Namibia, Nicaragua, Panama, Qatar, Russian Federation, Saudi Arabia, Senegal, Tunisia, Ukraine, United Arab Emirates, United Republic of Tanzania, Zimbabwe.

**Against:** Australia, United States.

**Abstaining:** Bangladesh, Belgium, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Japan, Malaysia, Nigeria, Poland, Republic of Korea, Sweden, Turkey, United Kingdom.

**ECOSOC Decision 2004/265**

**Working group of the CHR to elaborate a draft declaration**

At its 48th plenary meeting, on 22 July 2004, the ECOSOC took note of CHR resolution 2004/59 of 20 April 2004 and authorized the working group established in accordance with Commission resolution 1995/32 of 3 March 1995 to meet for a period of 10 working days prior to the 61st session [2005] of the Commission, the costs of the meeting to be met from within existing resources.

**ECOSOC Decision 2004/267**

**Human rights and indigenous issues**

At its 48th plenary meeting, on 22 July 2004, the ECOSOC took note of CHR resolution 2004/62 of 21 April 2004 and approved the decision of the Commission to extend the mandate of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people (SR) for a further period of three years, and the request to the SR to submit a report on his activities to the General Assembly at its 59th session [2004] and to the Commission at its 61st session [2005]. The Council also endorsed the Commission’s request to the Secretary-General and the UN High Commissioner for Human Rights to provide all the necessary human, technical and financial assistance to the SR for the effective fulfillment of his mandate.

**ECOSOC Decision 2004/286**

**Pre-sessional meeting of the Permanent Forum on Indigenous Issues**

At its 49th plenary meeting, on 22 July 2004, the ECOSOC decided to authorize, on an exceptional basis, a three-day pre-sessional meeting of the Permanent Forum on Indigenous Issues (PF) in 2005 to prepare for the fourth annual session of the Forum with the support of the Inter-Agency Support Group on Indigenous Issues.

**Decision 2004/286 was adopted by a recorded vote of 42 in favour to 6 against, with 5 abstentions, as follows:**

**In favour:** Armenia, Australia, Azerbaijan, Belgium, Belize, Benin, Bhutan, Burundi, Canada, Chile, Congo, Ecuador, El Salvador, Finland, France, Germany, Ghana, Greece, Guatemala, Hungary, Ireland, Italy, Jamaica, Japan, Kenya, Libya, Mauritius, Mozambique, Namibia, Nicaragua, Nigeria, Panama, Poland, Republic of Korea, Russian Federation, Sweden, Tunisia, Turkey, Ukraine, United Kingdom, United Republic of Tanzania, Zimbabwe.
Against: Bangladesh, Colombia, India, Indonesia, Malaysia, United States.
Abstaining: China, Qatar, Saudi Arabia, Senegal, United Arab Emirates.
Absent: Cuba.

ECOSOC Decision 2004/287
Workshop on free, prior and informed consent

At its 49th plenary meeting, on 22 July 2004, the ECOSOC decided to authorize a technical three-day workshop on free, prior and informed consent, with the participation of representatives of the UN system and other interested intergovernmental organizations, experts from indigenous organizations, interested States and three members of the PF, and requested the workshop to report to the Forum at its fourth session, under the special theme of the session.

ECOSOC Decision 2004/288
Venue and dates for the fourth session of the PF

At its 49th plenary meeting, on 22 July 2004, the ECOSOC decided that the fourth session of the PF would be held at UN Headquarters in New York, from 16 to 27 May 2005.

ECOSOC Decision 2004/289
Provisional agenda for the fourth session of the PF

At its 49th plenary meeting, on 22 July 2004, the ECOSOC approved the following provisional agenda and documentation for the fourth session of the PF:

1. Election of officers.
2. Adoption of the agenda and organization of work.
3. Special theme: Millennium Development Goals and IPs:
   (a) Goal 1 of the Millennium Development Goals: “Eradicate extreme poverty and hunger”, to be addressed under the following thematic approach of combating poverty: good practices and barriers to implementation;
   (b) Goal 2 of the Millennium Development Goals: “Achieve universal primary education”, to be addressed under the thematic approaches of language, cultural perspectives and traditional knowledge.
4. Ongoing priorities and themes:
   (a) Human rights, with special emphasis on an interactive dialogue with the Special Rapporteur of the Commission on Human Rights on the situation of the human rights and fundamental freedoms of indigenous people;
   (b) Data collection and the desegregation of data on indigenous peoples;
   (c) Follow-up to previous special themes: “Indigenous children and youth” (2003) and “Indigenous women” (2004).
5. Future work of the Forum.
7. Adoption of the report of the Forum on its fourth session.

ECOSOC Decision 2004/290
Proposal for a second international decade of the world’s indigenous people

At its 49th plenary meeting, on 22 July 2004, the ECOSOC decided to transmit to the General Assembly for its consideration the recommendation contained in draft decision V of the PF on the proclamation of a second international decade of the world’s IPs, to begin in January 2005, and further recommended that, in its consideration, the General Assembly, inter alia: (a) Identify goals for a second decade, taking into account the achievements of the first decade; (b) Identify a coordinator that would coordinate the programme of activities of a second decade; and (c) Address the question of human and financial resources to be made available in support of the activities undertaken in the framework of the decade, including the possible continuation of the Voluntary Fund established by General Assembly resolution 49/214 of 23 December 1994.

29 See General Assembly resolution A/RES/59/174 on page 31.
ECOSOC Decision 2004/291
Report of the third session of the PF

At its 49th plenary meeting, on 22 July 2004, the ECOSOC took note of the report of the third session of the PF and took note of the serious concerns and reservations on paragraph 52 contained in document E/2004/SR.48. The ECOSOC decided to transmit those concerns and reservations to the PF and requested the PF to take them into account in its work, in accordance with its mandate as contained in Council resolution 2000/22.

Second International Decade of the World’s Indigenous People


The General Assembly,

Bearing in mind that, in the Vienna Declaration and Programme of Action, the 1993 World Conference on Human Rights recognized the inherent dignity and the unique contribution of indigenous people to the development and plurality of society and strongly reaffirmed the commitment of the international community to their economic, social and cultural well-being and their enjoyment of the fruits of sustainable development,

Reaffirming that States should, in accordance with international law, take concerted positive steps to ensure respect for all human rights and fundamental freedoms of indigenous people, on the basis of equality and non-discrimination, and recognizing the value and diversity of their distinctive identities, cultures and social organization,

Recalling its resolution 48/163 of 21 December 1993, in which it proclaimed the International Decade of the World’s Indigenous People, commencing on 10 December 1994, with the goal to strengthening of international cooperation for the solution of problems faced by indigenous people in such areas as human rights, the environment, development, education and health,

Recalling also its resolution 58/158 of 22 December 2003 and all previous resolutions on the International Decade of the World’s Indigenous People,

Welcoming all achievements during the Decade, in particular the establishment of the PF, and the contributions to the realization of the goals of the Decade made by the PF, the Working Group on Indigenous Populations of the Sub-Commission on the Promotion and Protection of Human Rights and the Special Rapporteur of the CHR on the situation of human rights and fundamental freedoms of indigenous people, such as the comprehensive work programme that the PF is carrying out for the benefit of IPs in the areas of culture, education, environment, health, human rights and social and economic development,

Taking due note of CHR resolution 2004/62 of 21 April 2004, in which the Commission expressed its deep concern about the precarious economic and social situation that indigenous people continue to endure in many parts of the world in comparison to the overall population and the persistence of grave violations of their human rights, and reaffirmed the urgent need to recognize, promote and protect more effectively their rights and freedoms,

Recalling that, in its resolution 49/214 of 23 December 1994, it expressly put on record its expectation to achieve the adoption of a declaration on indigenous rights within the International Decade, that in resolution 50/157 of 21 December 1995 it decided that the adoption by the General Assembly of a declaration on the rights of indigenous people constituted a major objective of the Decade, and noting the progress made in the recent rounds of negotiations in the open-ended intersessional working group of the CHR charged with elaborating a draft declaration on the rights of indigenous people, established pursuant to Commission resolution 1995/32 of 3 March 1995,

Recognizing the importance of consultation and cooperation with indigenous people in planning and implementing the programme of activities for the Decade and the need for adequate financial support from the international community,
1. **Proclaims** the Second International Decade of the World’s Indigenous People, commencing on 1 January 2005;

2. **Decides** that the goal of the Second Decade should be the further strengthening of international cooperation for the solution of problems faced by indigenous people in such areas as culture, education, health, human rights, the environment and social and economic development, by means of action-oriented programmes and specific projects, increased technical assistance and relevant standard-setting activities;

3. **Requests** the Secretary-General to appoint the Under-Secretary-General for Economic and Social Affairs as the Coordinator for the Second Decade;

4. **Requests** the Coordinator to fulfill the mandate in full cooperation and consultation with Governments, the PF and other relevant bodies and mechanisms of the UN system, the Office of the UN High Commissioner for Human Rights, other members of the Inter-agency Support Group on Indigenous Issues and indigenous and nongovernmental organizations;

5. **Invites** Governments to ensure that activities and objectives for the Second Decade are planned and implemented on the basis of full consultation and collaboration with indigenous people;

6. **Appeals** to the specialized agencies, regional commissions, financial and development institutions and other relevant organizations of the UN system to increase their efforts to take into special account the needs of indigenous people in their budgeting and in their programming;

7. **Requests** the Secretary-General to establish a voluntary fund for the Second Decade, which to all juridical purposes and effects should be set up and discharge its functions as a successor of the already existing Voluntary Fund established for the present Decade pursuant to General Assembly resolutions 48/163, 49/214 and 50/157;

8. **Authorizes** the Secretary-General to accept and administer voluntary contributions from Governments, intergovernmental and non-governmental organizations, indigenous organizations and private institutions and individuals for the purpose of funding projects and programmes during the Second Decade;

9. **Urges** Governments, intergovernmental and non-governmental organizations to contribute to the Voluntary Fund for the Second Decade established by the Secretary-General, and invites indigenous organizations and private institutions and individuals to do likewise;

10. **Urges** the competent UN organs, programmes and specialized agencies, in planning activities for the Second Decade, to examine how existing programmes and resources might be utilized to benefit indigenous people more effectively, including through the explorations of ways in which indigenous perspectives and activities can be included or enhanced;

11. **Decides** to continue observing in New York, Geneva and other offices of the UN every year during the Second Decade the International Day of Indigenous People, to request the Secretary-General to support the observance of the Day from within existing resources, and to encourage Governments to observe the Day at the national level;

12. **Urges** all parties involved in the process of negotiation to do their utmost to successfully carry out the mandate of the open-ended intersessional working group established by the CHR in its resolution 1995/32 and to present for adoption as soon as possible a final draft UN declaration on the rights of IPs;

13. **Requests** the Secretary-General to give all the assistance necessary to ensure the success of the Second Decade;

14. **Also requests** the Secretary-General to submit a report to the General Assembly at its 60th session on a comprehensive programme of action for the Second Decade based on the achievements of the first Decade;

15. **Decides** to include in the provisional agenda of its 60th session an item entitled “Indigenous issues”.
4. UPCOMING MEETINGS AND DEADLINES FOR INDIGENOUS PEOPLES FROM FEBRUARY-JUNE 2005

7-11 February 2005 (Bangkok, Thailand)  
10th meeting of the Subsidiary Body on Scientific, Technical and Technological Advice (SBSTTA 10)  
Convention on Biological Diversity Secretariat  
Phone: +1 514 288 2220 Fax: +1 514 288 6588  
Email: secretariat@biodiv.org  
For info. on outcomes: http://www.biodiv.org/doc/meeting.aspx?mtg=SBSTTA-10

14-18 February 2005 (Bangkok, Thailand)  
Third meeting of the Ad Hoc Open-ended Working Group on Access and Benefit-Sharing  
Convention on Biological Diversity Secretariat  
Contact: Mr. Hamdallah Zedan, Executive Secretary  
Phone: +1 514 288 2220 Fax: +1 514 288 6588  
Email: secretariat@biodiv.org  
For info. on outcomes: http://www.biodiv.org/doc/meeting.aspx?mtg=ABSWG-03

15-20 February 2005 (Rio de Janeiro and Fortaleza, Brazil)  
RIO 05 Congress: World Climate and Energy Event  
Contact: Mr. Vanessa Espi, Organizing Committee  
Phone: 55 21 22 33 5184 Fax: 55 21 25 18 2220  
Email: info@rio5.com  
For info. on outcomes: http://www.rio5.com/

16 February 2005  
Kyoto Protocol enters into force  
UN Framework Convention on Climate Change Secretariat  
For list of worldwide events: http://unfccc.int/2860.php

17-25 February 2005 (Geneva, Switzerland)  
Prepcom 2 of the Tunis Phase of the WSIS  
World Summit on Information Society Secretariat  
Phone: +41-22-730-6316 Fax: +41-22-730-6393  
E-mail for civil society entities: wsis.csd@ties.itu.int  
E-mail for general inquiries: wsis@itu.int  
For info. & outcomes: http://www.itu.int/wsis/preparatory2/index.html

21 February- 11 March 2005 (Geneva, Switzerland)  
66th session of the United Nations Committee on the Elimination of Racial Discrimination (CERD)  
Contact: Ms. N. Prouvez, Secretary of CERD Committee  
Phone: +41 22 917 9309 Fax: +41 22 917 9022  
E-mail: nprouvez@ohchr.org  
For info. & outcomes: http://www.ohchr.org/english/bodies/ced/cerd66.htm

28 February-5 March 2005 (Beirut, Lebanon)  
Regional Training Workshop on Gender, Citizenship and Governance  
Collective on Research and Training on Development Action (CRTD-A)  
Fax: +961-1-611079 or +961-1-612924  
Email: gcp@crtd.org or info@crtd.org  
For info. & outcomes: http://www.macmag-glip.org/events&workshop_nov04.htm

28 February-5 March 2005 (Colombo, Sri Lanka)  
17th Commonwealth Forestry Conference: Forestry's Contribution to Poverty Reduction  
Commonwealth Forestry Association  
Phone: +94 11 2300 589/590, +94 11 2434295 Fax: +94 11 2331816  
Email: atc@atkinspence.lk or info@commonwealthforestry.org  
28 February-11 March 2005 (New York, USA)
49th Session of the Commission on the Status of Women:
Review & Appraisal of the Beijing Platform for Action (+10)
UN – Division for Advancement of Women (DAW)
Fax: + 1-(212)-963-3463
For email go to: http://www.un.org/womenwatch/daw/Review/english/contact.htm

16-18 March 2005 (Johannesburg, South Africa)
Global Conference on Indigenous Knowledge and Traditional Medicine
Contact: Mr. William Danquah, President & Chief Executive Officer
Phone: + 1 651 646 4721 Fax: + 1 651 644 3235
Email: info@africa-first.com

14 March-1 April 2005 (New York, USA)
83rd Session of the Human Rights Committee
Countries scheduled for consideration: Barbados, Greece, Iceland, Kenya, Mauritius, Thailand, Uzbekistan
Office of High Commissioner on Human Rights
1211 Geneva 10, Switzerland
Phone: +41 22 917 90 00 Fax: +41 22 917 90 11
Web: http://www.ohchr.org/english/bodies/hrc/brc83.htm

14 March-22 April 2005 (Geneva, Switzerland)
61st Session of the Commission on Human Rights
Office of the High Commissioner on Human Rights
1211 Geneva 10, Switzerland
Fax: + 41 22 917 9011 E-mail: 1503@ohchr.org
Web: http://www.ohchr.org/english/bodies/chr/sessions/61/

4-8 April 2005 (Nairobi, Kenya)
20th Session of the Governing Council of UN-HABITAT
Contact: Mr. Joseph Mungai, Secretary to the Governing Council & Chief
Phone: +254 20 623 133/623 132/623 131 Fax: +254 20 624 175/624 250
Email: joseph.mungai@unhabitat.org
Web: http://hq.unhabitat.org/events/calendar.asp

11-22 April 2005 (New York, USA)
13th Session of the Commission on Sustainable Development
Contact: Ms. Frederica Pietracci, CSD Secretariat
Phone: + 1 212 963 2803 Fax: + 1 212 963 4260
Email: pietracci@un.org

23-25 April 2005 (Tunis, Tunisia)
Preparatory NGO/Civil Society Forum: “For an Inclusive, People Catered, Development Oriented and Knowledge Information Society for All”
UN Department on Economic and Social Affairs & Tunisian Mothers Association (ATM)
Contact (to obtain questionnaire and inscription): Ms Najet Karaborni
Email: Karaborni@un.org

25 April-13 May 2005 (Geneva, Switzerland)
34th Committee on Economic, Social and Cultural Rights (CESCR)
Countries scheduled for consideration: Zambia, China, Hong Kong, Macau Sar, Serbia and Montenegro and Norway.
Contact: Alexandre Tikhonov, Secretary to the CESCR
Tel. +41 22 917 9321 Fax. +41 22 917 9046/9022
E-mail: atikhonov@ohchr.org
Web: http://www.ohchr.org/english/bodies/cescr/cescrs34.htm
26 - 28 April 2005 (dates and location to be confirmed)
Latin America Regional Workshop on the Composite Report on Traditional Knowledge: Article 8 (j)
Traditional Knowledge, Innovations and Practices
Convention on Biological Diversity Secretariat
Contact: Mr. Hamdallah Zedan, Executive Secretary
Phone: +1 514 288 2220 Fax: +1 514 288 6588
Email: secretariat@biodiv.org
Web: http://www.biodiv.org/events/Default.aspx

May (dates to be determined) (Helsinki, Finland)
Ad Hoc Technical Expert Group on Biodiversity and Climate Change
Convention on Biological Diversity Secretariat
Phone: +1 514 288 2220 Fax: +1 514 288 6588
Email: secretariat@biodiv.org
Web: http://www.biodiv.org/meetings/default.asp

16-27 May 2005 (New York, USA)
Fourth session of the Permanent Forum on Indigenous Issues
“Millennium Development Goals and indigenous peoples”, with special emphasis on Goal 1: “Eradicate extreme poverty and Hunger” and Goal 2: “Achieve universal primary education”.
Secretariat of the Permanent Forum on Indigenous Issues
Phone: +1 917-367-5100 Email: IndigenousPermanentForum@un.org

16-27 May 2005 (New York, USA)
Fifth Session of the United Nations Forum on Forests
Contact: Ms. Luz Aragon, UNFF Secretariat
Phone: +1 212 963 3160/3401 Fax: +1 917 367 3186
Email: aragonmm@un.org
Web: http://www.un.org/esa/forests/session.html

16-27 May 2005 (Bonn, Germany)
22nd session of the Subsidiary bodies of the UN Convention on Climate Change
UN Framework Convention on Climate Change Secretariat
Contact: Ms. Hanna Hoffmann, Programme Officer
Phone: +49 228 815 1527 Fax: +49 228 815 1999
E-Mail: lhoffmann@unfccc.int
Web: http://unfccc.int/meetings/sb22/items/3369.php

16-25 May 2005 (Geneva, Switzerland)
58th World Health Assembly
World Health Organisation
Avenue Appia 20
1211 Geneva 27, Switzerland
Phone: +41 22 791 2111 Fax: +41 22 791 0746

17-19 May 2005, (dates and location to be confirmed)
Asia and Pacific Regional Workshop on the Composite Report on Traditional Knowledge: Article 8 (j):
Traditional Knowledge, Innovations and Practices
Convention on Biological Diversity Secretariat
Contact: Mr. Hamdallah Zedan, Executive Secretary
Phone: +1 514 288 2220 Fax: +1 514 288 6588
Email: secretariat@biodiv.org
Web: http://www.biodiv.org/events/Default.aspx

17 May-04 June 2004 (Geneva, Switzerland)
39th Committee on the Rights of the Child
Countries scheduled for consideration: Bosnia and Herzegovina, Costa Rica, Ecuador, Mongolia, Nepal,
Norway, Nicaragua, Philippines, Saint Lucia, Yemen,
Phone/Fax: +41 22 917-9022 E-mail: crc@ohchr.org
Web: http://www.ohchr.org/eng/ bodies/crc/crcs38.htm
29 May-2 June 2005 (Tokyo, Japan)
Conserving Cultural and Biological Diversity: "The Role of Sacred Natural Sites and Cultural Landscapes"
UNESCO
Contact: Mr. Francesco Bandarin, Director World Heritage Centre
Phone: + 33 (0) 1 45 681571 Fax: + 33 (0) 1 45 685570
Email: f.bandarin@unesco.org

30 May-2 June 2005 (Geneva, Switzerland)
11th session of the Standing Committee on the Law of Patents
World Intellectual Property Organisation (WIPO)
PO Box 18, CH-1211 Geneva 20, Switzerland
Telephone: +41-22 338 9111 Fax: +41-22 733 54 28
For email go to: http://www.wipo.int/tools/en/contacts/index.jsp

31 May – 16 June 2005 (Geneva, Switzerland)
93rd International Labour Conference
International Labour Organisation
Contact: Official Relations Branch
Phone: +41 22 799 7732 Fax: +41 22 799 8944
Email: reloff@ilo.org Web: www.ilo.org/ilc

5 June 2005 (main celebration in San Francisco, USA)
World Environment Day: “Green Cities: Plan for the Planet!”
United Nations Environment Programme (UNEP)
Contact: Ms. Elisabeth Guilbaud-Cox, Head, Outreach and Special Events, Phone: +254 20 623401/623128 Fax: +254 20 623692/623927 (Nairobi, Kenya)
Email: elisabeth.guilbaud-cox@unep.org

7-9 June 2005 (dates and location to be confirmed)
Africa Regional Workshop on the Composite Report on Traditional Knowledge: Article 8 (j): Traditional Knowledge, Innovations and Practices
Convention on Biological Diversity Secretariat
Contact: Mr. Hamdallah Zedan, Executive Secretary
Phone: +1 514 288 2220 Fax: +1 514 288 6588
Email: secretariat@biodiv.org
Web: http://www.biodiv.org/events/Default.aspx

6-10 June 2005 (Geneva, Switzerland)
Eighth session of the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore
World Intellectual Property Organisation (WIPO)
Phone: +41 22 338 9111 Fax: +41 22 733 54 28
Web: http://www.wipo.int/meetings/en/topic.jsp?group_id=110

13-17 June 2005 (Montecatini, Italy)
Ad Hoc Open-ended Working Group on Protected Areas
Convention on Biological Diversity Secretariat
Contact: Mr. Hamdallah Zedan, Executive Secretary
Phone: +1 514 288 2220 Fax: +1 514 288 6588
Email: secretariat@biodiv.org

20-24 June 2005 (Geneva, Switzerland)
Meeting of Special Rapporteurs, Representatives, Independent Experts & Chairpersons of the Working Groups of the Commission on Human Rights
Office of High Commissioner on Human Rights
1211 Geneva 10, Switzerland
Phone: +41 22 917 90 00 Fax: +41 22 917 90 11
Web: http://www.ohchr.org/english/events/2005.htm#jun
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