

Acuerdos Bilaterales

Clasificación: 17-2003

Fecha de Ingreso: 14 de febrero de 2003

Nombre de Acuerdo: Contribution Agreement for the Specific Fund to Support the Elaboration of the American Declaration on the Rights of Indigenous Peoples

Materia: Asistencia Técnica / Asistencia Financiera

Partes: SG/OEA & The Minister of Foreign Affairs of Canada (Department of Foreign Affairs and International Trade)

Referencia: DFAIT (CANADA)

Fecha de Firma: 7 de febrero de 2003

Fecha de Inicio: 7 de febrero de 2003

Fecha de Terminación: 28 de febrero de 2004

Lugar de Firma: Washington, D.C, Estados Unidos

Unidad Encargada:

Persona Encargada:

Original:

Claves:

Cierre del proceso:

CONTRIBUTION AGREEMENT
Between
The Department of Foreign Affairs and International Trade
-and-
The General Secretariat of the Organization of American States
For
The Specific Fund to Support the Elaboration of the American Declaration on the Rights
of
Indigenous Peoples

THE PARTIES to this Agreement,

THE CONTRIBUTOR: Her Majesty the Queen in Right of Canada, herein represented by the Minister of Foreign Affairs (hereinafter referred to as "Department of Foreign Affairs and International Trade" or "DFAIT"); and

THE RECIPIENT: The General Secretariat of the Organization of American States (hereinafter referred to as "GS/OAS")

WHEREAS:

By Resolution CP/RES.817 (1319/02) (copy attached as Annex "A"), the OAS Permanent Council established the Specific Fund to Support the Elaboration of the American Declaration on the Rights of Indigenous Peoples ("the Fund") for the purpose of providing financial support for participation of the representatives of indigenous peoples in the efforts of its Working Group to Prepare the Draft American Declaration on the Rights of Indigenous Peoples ("the Working Group") and other activities of that Group.

Resolution CP/RES. 817 specifies that support from the Fund shall be limited to defraying travel and per diem expenses and that the Fund shall consist of voluntary contributions from OAS member States, from Permanent Observers to the OAS, and from other persons or institutions;

Operative Paragraph 2 of Resolution CP/RES. 817 establishes the criteria for selecting beneficiaries of the Fund from among representatives of indigenous peoples,

AGREE:

1.0 THE PROJECT

1.1 Project Name: The Project funded under this Agreement is known as "Specific Fund to Support the Elaboration of the American Declaration on the Rights of Indigenous Peoples".

1.2 Objectives: The objective is to provide financial support for the participation of representatives of indigenous peoples' in the activities of the Working Group to Prepare the Draft Declaration in accordance with the terms set out in Resolution CP/RES. 817.

- 1.3 Activities: The primary activity to be financed under this Agreement is the participation in the February 24-28, 2003 Washington, D.C., Working Group Meeting of the representatives of indigenous peoples selected in accordance with the criteria set out in Operative Paragraph 2 of Resolution CP/RES. 817. As further stated in Resolution CP/RES.817, the financial support provided shall be limited to the travel and per diem expenses of those representatives. Any part of the Contribution remaining after that Meeting shall be used to pay the per diem and travel expenses of those representatives for participation in other Working Group activities during the remainder of 2003.

2.0 THE CONTRIBUTION

- 2.1 Subject to the provisions of this Contribution Agreement, DFAIT will make a contribution ("the Contribution") to the GS/OAS for deposit in its Specific Fund to finance Specific Fund to Support the Elaboration of the American Declaration on the Rights of Indigenous Peoples in the sum of C\$50,000 (fifty thousand Canadian dollars).
- 2.2 The contribution will be used by the GS/OAS to implement the Project in accordance with the provisions of this Contribution Agreement and with the terms specified in Annex "A", which forms an integral part of this Contribution Agreement.
- 2.3 The amount of this Contribution Agreement is definitive. DFAIT will not be responsible for any deficit incurred by the GS/OAS or any other person associated with the Project.
- 2.4 The GS/OAS perform and complete with care, skill, diligence and efficiency the services that are described in the Contribution Agreement and attachments hereto
- 2.5 DFAIT retains the right to conduct an audit even though an audit may not be performed.
- 2.6 This Agreement is not for the consideration of supply to the Crown, and as such, the Goods and Services Tax does not apply to any payment made under this Contribution.
- 2.7 DFAIT retains the right to hire an external monitor and/or evaluator.

3.0 PAYMENTS AND REPORTING

- 3.1 Subject to the provision of Annex B of this Agreement the DFAIT shall provide the contribution of C\$50,000 (fifty thousand Canadian dollars) to the GS/OAS, based on the GS/OAS projected cash forecast requirement. An initial advance of C\$45,000 (forty five thousand Canadian dollars) will be provided after the signature of this Agreement. DFAIT shall retain the final payment of this amount of C\$5,000.00 (five thousand Canadian dollars) until receipt of a financial and narrative report for this project.
- 3.2 GS/OAS shall provide a final narrative report and a final financial report, both dated and signed by GS/OAS, no later than the 31st day of March 2003.
- a. The final narrative report will include, but not be limited to, a description analysis of: all work undertaken under this Agreement; the activities and achievements of the project; a comparison of planned versus actual activities, including an explanation of variances; successes and failures of the project in terms of meeting its objectives;

problems encountered, actions taken, results and lessons learned; and conclusions and recommendations.

- b. The final financial report will provide a complete list of funds spent as compared to the original project budget line items. A request for payment of the final amount due, less any undisbursed funds should be included.

3.3 Income derived from investment of the Contribution by the GS/OAS shall be used solely for the purposes of the proposed project as defined above.

3.4 The GS/OAS will return to the Receiver General of Canada via DFAIT, funds which are not disbursed or accounted for, under the terms of the Project agreed to by DFAIT, and overpayments and disallowed expenses shall constitute debts to the Crown.

4.0 ACCOUNTING AND AUDITING

4.1 GS/OAS shall keep proper accounts and records of the cost to GS/OAS of the Work and of all expenditures or commitments made by the GS/OAS in connection therewith, and shall keep invoices, receipts and vouchers relating thereto. GS/OAS shall not, without the prior written consent of DFAIT, dispose of any such accounts, records, invoices, receipts or vouchers until the expiration of five (5) years after final payment under this Agreement, or until the settlement of all outstanding claims and disputes, whichever is later.

4.2 All such accounts and records as well as any invoices, receipts and vouchers shall at all times during the retention period referred to in clause 4.1 be open to audit, inspection and examination by the authorized representatives of DFAIT, who may make copies and take extracts thereof.

4.3 GS/OAS shall provide all facilities for such audits and inspections and shall furnish all such information as the representatives of DFAIT may from time to time require with respect to such accounts, records, invoices, receipts and vouchers.

5.0 ANNOUNCEMENTS AND CEREMONIES

5.1 Where appropriate, the GS/OAS will acknowledge the Contribution in any reference made by it with respect to the program in publications, speeches, press releases or other similar matters.

6.0 TERMINATION OR SUSPENSION

6.1 DFAIT may, by giving notice to GS/OAS, terminate or suspend the work with respect to all or any part or parts of the work not completed. More particularly, DFAIT may withhold or cancel any payments under this Contribution Agreement if the GS/OAS does not use the Contribution in accordance with the provisions of the Agreement. GS/OAS shall proceed to complete parts of the work not affected by the termination notice. Additional notices for different parts of the Agreement may be given subsequently.

- 6.2 All work not completed before the giving of such notice shall be paid by DFAIT to GS/OAS to the satisfaction of DFAIT before the giving of such notice shall be paid for by DFAIT in accordance with the provisions of the Contribution Agreement.
- 6.3 All work not completed before the giving of such notice shall be paid by DFAIT to GS/OAS on the following terms:
- (a) The amount of any capital expenditures actually incurred only if they were specifically authorized under the Agreement or approved in writing by DFAIT for the purpose of the Agreement, less any depreciation in respect thereof already taken into account in determining Cost, to the extent that the capital expenditures are properly apportionable to the performance of the Agreement;
 - (b) All Costs of, and incidental to, the termination of the Work or part thereof, including the Cost of cancellation of obligations incurred by GS/OAS with respect to the terminated work or part thereof; but not including the cost of severance payments or damages to employees whose services are no longer required by reason of the termination;
 - (c) Where DFAIT pays for costs for inventory under clause 6, this inventory shall vest with DFAIT.
- 6.4 Payment and reimbursement under these provisions of clause 6 shall be made only to the extent that it is established to the satisfaction of DFAIT that the costs and expenses were actually incurred by the GS/OAS and that the same are fair and reasonable and are properly attributable to the termination or suspension of the work or the part thereof so terminated.
- 6.5 GS/OAS shall not be entitled to be reimbursed any amount which, taken together with any amounts paid or becoming due to the GS/OAS under this Contribution Agreement, exceeds the Agreement price applicable to the work or the particular part thereof.
- 6.6 GS/OAS shall have no claim for damages, compensation, loss of profit, allowance or otherwise by reason of or directly or indirectly arising out of any action taken or notice given by DFAIT under the provisions of clause 6 except as expressly provided therein.
- 6.7 If at the time of termination of the work the Institution has been paid an amount that, in the opinion of DFAIT exceeds the value of the work performed by the Institution, to the date of termination, the Institution shall forthwith, upon demand by DFAIT, refund the excess to Her Majesty.
- 7.0 COMPLIANCE
- 7.1 DFAIT may withhold or cancel any or all payments to be made by DFAIT if the GS/OAS fails to use the Contribution exclusively for the Project and in accordance with the provisions of this Contribution Agreement.

8.0 BUDGET REVIEW

- 8.1 If the Government of Canada directs DFAIT to proceed with a re-examination of its budget for the purpose of effecting reductions for specific financial years, this Contribution Agreement will be reviewed accordingly.

9.0 INDEMNIFICATION

- 9.1 GS/OAS shall indemnify and save harmless Her Majesty and DFAIT from and against all claims, losses, damages, costs, expenses, actions and other proceedings, made, sustained, brought, prosecuted, threatened to be brought or prosecuted, in any manner based upon, occasioned by or attributable to any injury to or death of a person or damage to or loss of property arising from any willful or negligent act, omission or delay on the part of the SG/OAS, GS/OAS' servants or agents in performing the work or as a result of the work.
- 9.2 GS/OAS shall indemnify Her Majesty and DFAIT from all costs, charges and expenses whatsoever that Her Majesty sustains or incurs in or about all claims, actions, suits and proceedings for the use of any copyright resulting from the performance of the SG/OAS' obligations under the Agreement, and in respect of the use of, or disposal by, DFAIT of anything furnished pursuant to the Agreement.
- 9.3 GS/OAS' liability to indemnify or reimburse Her Majesty under the Agreement shall not affect or prejudice Her Majesty from exercising any other rights under law.
- 9.4 GS/OAS acknowledges that it is not a servant or agent of Her Majesty and will not represent or hold itself out to third parties in that capacity. To the extent that any third party, in reliance upon representations by GS/OAS, considers the GS/OAS to be an agent of DFAIT, the GS/OAS agrees to indemnify DFAIT for any loss or damages and costs occasioned thereby by such third party.
- 9.5 Nothing in this Agreement constitutes a waiver, express or implied, of the privileges and immunities of the Parties.

10.0 REPRESENTATIVES/NOTICE

- 10.1 For purposes of the Contribution Agreement and any notices hereto, DFAIT hereby designates its Director of the Aboriginal and Circumpolar Affairs Division. Any notice or communication shall be addressed to:

AGA/Wayne Lord
Director of the Aboriginal and Circumpolar Affairs Division
Patrick Brennan
Ph: (613) 992-0386
Fax: (613) 944-0758.

- 10.2 For the purposes of this Agreement and any notices hereto, the GS/OAS hereby designates its Executive Secretary of the Secretariat for the Summit Process. Any notice or communication shall be addressed to:

The Executive Secretary
Secretariat for the Summit Process
Attention: Jorge Sanín, Senior Specialist
1889 F Street NW
Washington DC, 20006
Ph: (202) 458-6905
Fax: (202)458-3665.

- 10.3 Where in the Contribution Agreement any notice, request, direction, or other communication is required to be given or made by either party, it shall be in writing and is effective if delivered in person, sent by registered mail, by telegram, or by telex/facsimile addressed to the party for whom it is intended at the address mentioned in the Contribution Agreement and any notice, request, direction or other communication shall be deemed to have been given if by registered mail, when the postal receipt is acknowledged by the other party; by telegram, when transmitted by the carrier; and, by telex/facsimile when transmitted. The address of either party may be changed by notice in the manner set out in this provision.

11.0 EVALUATION

- 11.1 Results of all evaluations carried out under the terms of this Agreement will be communicated to DFAIT.

12.0 AMENDMENT

- 12.1 No amendment to this Contribution Agreement will be deemed valid unless it is affected in writing and it is signed and dated by the duly authorized representatives of both Parties. No waiver of any terms and conditions shall be valid unless signed and dated by the duly authorized representative of the waiving party.

13.0 DISPUTE RESOLUTION

- 13.1 The Parties share the objective of quickly identifying any disputes arising out of or in connection with this contract and of resolving them in the most efficient and effective manner possible. The parties therefore agree that if such a dispute arises, they will meet to pursue resolution through negotiation or other appropriate dispute resolution procedure.
- 13.2 All Information exchanged during this meeting or any subsequent dispute resolution procedure shall be regarded as "without prejudice" communications for the purpose of settlement negotiations and shall be treated as confidential by the parties and their representatives unless otherwise required by law.

14.0 COPYRIGHT LICENSES

- 14.1 Subject to applicable confidentiality agreements between GS/OAS and the Member States participating in the Project, DFAIT shall have a non-exclusive perpetual, irrevocable, world/wide, gratuitous copyright license to publish, distribute, or use for any public purpose the financial and narrative reports provided to DFAIT under this Agreement.
- 14.2 The copyright arising from any translation of the Report made by or for Canada shall vest in DFAIT or in such person as DFAIT shall decide; provided, however, that copyright shall not infringe upon GS/OAS' right to translate the Report into its four official languages for its official purposes.

15.0 CONFLICT OF INTEREST

- 15.1 No Canadian public office holder who is not in compliance with the post-employment provisions of the *Conflict of Interest and Post-Employment Code for Public Office Holders* shall derive a direct benefit from this Agreement;
- 15.2 During the term of the Agreement any Canadian persons engaged in the course of carrying out this Agreement shall conduct themselves in compliance with the principles of the *Conflict of interest and Post-Employment Code of Public Office Holders*. Should an interest be acquired during the life of the Agreement that would cause a conflict of interest or seem to cause a departure from the principles, the Public Office Holder shall declare it immediately to the Departmental Representative.
- 15.3 GS/OAS shall not be deemed by DFAIT to have participated in the breach of the foregoing provisions if, after having exercised due diligence, it has not Knowingly and intentionally provided a Canadian office holder with a direct benefit under this Agreement or Knowingly and intentionally assisted a Canadian person breach the Conflict of Interest and Post Employment Code of Public Office Holders with respect to this Agreement.

16.0 INTEREST ON ADVANCES

- 16.1 All advances paid under this Agreement shall be deposited in an interest-bearing bank account of a commercial banking establishment and accounted for separately by the GS/OAS. Interest on outstanding balances in these accounts shall be accrued at rates set by the commercial banks according to the standard practices in respect of such accounts. The interest so accrued shall be reported to DFAIT in the final financial report as required by section 3.2. The decision on disposition of such interest shall be solely the responsibility of DFAIT.

17.0 LOBBYING

- 17.1 Any person lobbying at the request of GS/OAS in Canada pursuant to this Agreement shall register with the appropriate governmental authority in accordance with the requirements under Section 5(1)(a)(v) of the Lobbyist Registration Act of Canada.

18.0 EQUIPMENT AND MATERIAL PURCHASES

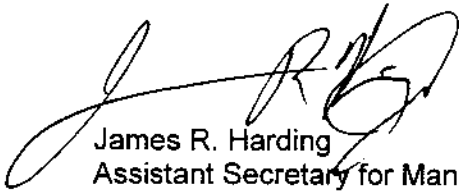
- 18.1 Equipment and materials purchases with project funds will be vested in the project, the care and security of which is the responsibility of the GS/OAS, and will become the property of the project beneficiaries at the conclusion of the project or, should an alternate disposition be warranted, such disposition shall be approved by DFAIT.

19.0 GENERAL TERMS AND CONDITIONS

- 19.1 Unless otherwise specifically provided, nothing in this Contribution Agreement shall imply the assumption of any responsibility by DFAIT or the Departmental Representative of the Project. Notwithstanding anything in this Agreement, DFAIT does not by financial assistance to the GS/OAS undertake any responsibility for errors, negligence, or mismanagement incurred by the GS/OAS or any other person, group, or agent associated with it.
- 19.2 Payment of any monies by DFAIT under the terms of this Contribution Agreement is subject to there being an appropriation for the particular service from the fiscal year in which any commitment under this Contribution Agreement would come in the course of payment.
- 19.3 This Contribution Agreement shall enure to the benefit of and be binding upon the Parties hereto and their lawful heirs, executors, administrators, successors and assigns.
- 19.4 No Canadian Member of Parliament shall be admitted to any share or part of this Contribution Agreement or to any benefits that may arise therefrom.
- 19.5 The Contribution Agreement shall not be assigned in whole or in part by the GS/OAS without the prior written consent of DFAIT, and any assignment made without the consent will be void and of no effect. No assignment of the Contribution Agreement shall relieve the GS/OAS from any obligation under the Contribution Agreement or impose any liability on Her Majesty or DFAIT unless otherwise agreed to in writing by DFAIT.
- 19.6 The effective date of this Agreement shall be the date on which it is signed by the last of the two parties to sign it.
- 19.7 The termination date of this Agreement shall be the sooner of sixty days following the date upon which the Contribution is fully expended or December 31, 2003.
- 19.8 This Agreement together with Annexes constitute the entire Agreement between the Parties with respect to the Project.

IN WITNESS WHEREOF, the duly authorized representatives of the Parties have executed this Agreement in duplicate originals on the date and at the place indicated below.

FOR THE GS/OAS



James R. Harding
Assistant Secretary for Management

Witness By

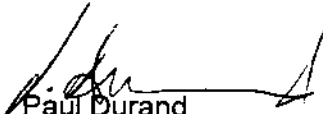
2/6/2003

Date

Washington

Place

FOR HER MAJESTY



Paul Durand
Ambassador, Permanent Representative
Of Canada to the OAS



Witness By

7/II/03

Date

Washington

Place

Issued under Treasury Board Authority:

Annex A

CP/RES. 817 (1319/02)

SPECIFIC FUND TO SUPPORT THE ELABORATION OF THE AMERICAN DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES

THE PERMANENT COUNCIL OF THE ORGANIZATION OF AMERICAN STATES,

NOTING resolution AG/RES. 1610 (XXIX-O/99), in which it was decided to establish a working group of the Permanent Council to continue consideration of the Proposed American Declaration on the Rights of Indigenous Peoples (hereinafter the Draft Declaration);

CONSIDERING operative paragraph 4 of resolution AG/RES. 1780 (XXXI-O/01), which recommended to the Permanent Council the establishment of a specific fund consisting of voluntary contributions to support the participation of representatives of indigenous peoples in meetings related to the Draft Declaration and stated that mechanisms should be sought to ensure indigenous participation in the utilization of the fund;

CONSIDERING the importance of indigenous participation in the process of elaborating the Draft Declaration and of indigenous cooperation in carrying out and publicizing the activities of the Working Group;

TAKING INTO CONSIDERATION the proposals received from member state representatives and from representatives of indigenous peoples on the establishment of the specific fund, in particular document GT/DADIN/doc.75/02; and

CONVINCED that establishing a specific fund of voluntary contributions will constitute a mechanism within the inter-American system to facilitate participation by representatives of indigenous peoples in the process of elaborating the Draft American Declaration,

RESOLVES:

1. To establish the Specific Fund to Support the Elaboration of the American Declaration on the Rights of Indigenous Peoples, hereinafter "the Fund," the purpose of which shall be to provide financial support for participation by indigenous peoples' representatives in the efforts by the Working Group to Prepare the Draft American Declaration on the Rights of Indigenous Peoples, as well as in other activities of the Group. This financial support shall be limited to defraying travel and per diem expenses.

2. That beneficiaries of the Fund shall be chosen on the basis of the following criteria:

- a. They must be representatives of indigenous organizations and communities. To facilitate selection, applicants must submit a letter from their respective organization or community designating them as their representatives. The same letter must include information supporting the request for financial assistance.
- b. The representatives appointed by the indigenous organizations and communities may submit their communications to the Selection Board in any of the official languages of the Organization (English, French, Portuguese, and Spanish).

c. No more than two representatives from each indigenous organization or community shall receive financial support to participate in a single event, subject to the availability of funds.

d. The Selection Board shall take into account the equitable geographic representation of beneficiaries.

e. The Selection Board shall take gender equity and equality into account, and indigenous organizations and communities should consider this recommendation in selecting their representatives.

3. The Specific Fund shall consist of voluntary contributions by OAS member states and permanent observers to the Organization, as well as contributions by persons or institutions, whether public or private, national or international, wishing to finance achievement of the aim set forth in Article 1. Contributors to the Fund may specify that their contributions may also be used to finance other activities of the Working Group or participation in its meetings by experts on indigenous issues.

4. To instruct the Secretary General to administer the Fund in accordance with the General Standards to Govern the Operations of the General Secretariat and other rules and regulations of the Organization, with the support of a Selection Board composed of five members, who shall be: the present chair of the Working Group, the previous chair of the Working Group or, in his or her absence, the previous vice chair, and, in their personal capacity, three indigenous representatives—one from South America, one from Central America or the Caribbean, and one from North America. The indigenous members of the Selection Board shall be elected by the representatives of the indigenous peoples present at the last special meeting of the Working Group prior to the regular session of the General Assembly. Members of the Selection Board shall serve for a one-year term and shall perform their functions *ad honorem*. The Selection Board shall establish, by consensus, specific criteria for the selection of the beneficiaries, pursuant to the general criteria established in operative paragraph 2.

5. To invite all member states, permanent observers, and other donors, as defined in Article 68 of the General Standards to Govern the Operations of the General Secretariat and other rules and regulations of the Organization, to contribute to this Specific Fund.

6. The expenses of administering the Fund shall be covered by the Fund itself. Consultations among members of the Selection Board shall preferably take place by electronic or similar means so that the Fund will not have to cover the costs of its own meetings.

7. These guidelines in respect of the Fund shall take effect following their adoption by the Permanent Council and may be amended by the Council itself, on its own initiative or at the recommendation of the Secretary General or of the Selection Board mentioned in paragraph 4.

8. The viability and efficacy of the Fund shall be reviewed by the Permanent Council two years from the date of its establishment, or earlier if the Secretary General reports that there are insufficient resources in the Fund to carry out or maintain the selection process.

9. The Specific Fund's accounts shall be audited by the General Secretariat's external auditing firm and its financial statements published in the annual report of the Board of External Auditors.

ANNEX B – CANADIAN CONTRIBUTION

BUDGET
CAN\$50,000.00(*)

CONCEPT	CANADIAN CONTRIBUTION
Air Fare	18,000.00
Cost estimated for 18 round trip tickets @ US\$1,000.00 each from any destination within Latin America to Miami and then to Washington, D.C.	18,000.00
Per diem	7,560.00
18 participants x 6 days @ US\$70 per day (Transportation + two meals)	420.00
Hotels ^	4,806.00
9 double room x 6 nights (Each room will be occupied by two representatives)	534.00
Total Estimate	30,366.00
TOTAL	32,793.81

(*) Canadian contribution estimated at US\$32,793.81

(^) It does not include Hotel taxes and District of Columbia Taxes