

PERMANENT COUNCIL OF THE  
ORGANIZATION OF AMERICAN STATES

COMMITTEE ON JURIDICAL AND POLITICAL AFFAIRS

Working Group to Prepare the Proposed American Declaration  
on the Rights of Indigenous Populations

OEA/Ser.K/XVI  
GT/DADIN/doc.1/99 rev. 2  
6 December 2000  
Original: Spanish

PROPOSED AMERICAN DECLARATION  
ON THE RIGHTS OF INDIGENOUS POPULATIONS

(Considered at the meetings held on November 8-12, 1999;  
incorporating the observations and proposals of the representatives  
of the indigenous populations)

(Document presented by the Chair on November 29, 2000)

## PRESENTATION

In 1999, in an initiative without precedent in the history of the Americas, the Committee on Juridical and Political Affairs of the Organization of American States held two meetings at which the representatives of the States, with the participation of indigenous organizations, conducted a preliminary review of the preamble and articles of an inter-American instrument on indigenous rights based on a proposal drafted by the Inter-American Commission on Human Rights in response to a recommendation by the General Assembly. The meetings in question were the meeting of government experts held in February 1999 and chaired by the representative of El Salvador, Ambassador Mauricio Granillo, and the meeting of this working group, chaired by the distinguished representative of Mexico, Ambassador Claude Heller.

The outcome of that work was synthesized and put together in the Report of the Chair (GT/DADIN/doc.5/99) that Ambassador Heller presented to the Permanent Council in December 1999. That document includes background information and material from those meetings, including "Proceedings," in which the positions and proposals of the representatives of the indigenous organizations figure prominently, and the text of the Proposed American Declaration on the Rights of Indigenous Populations, which contains the proposals and amendments made by the States at that first reading.

The present Chair of the Group would like to take full advantage of the experience and fruits of those meetings and in particular the outcomes recorded in the document presented by Ambassador Heller, bearing in mind also the General Assembly's recommendation [AG/RES. 1708 (XXX-O/00)] with respect to "... suitable participation in its work by representatives of indigenous communities, so that their observations and suggestions may be considered" (operative paragraph 2 *in fine*) and the need to "...publicize the efforts of the Working Group as necessary and consider the necessary measures to promote more representative involvement in the Working Group by the Hemisphere's indigenous community organizations" (operative paragraph 4 *in fine*).

Based on the text of that Report of the Chair and to facilitate the preparatory work and future debates in the Working Group, this Chair has prepared the present document, which includes in each section and article of the draft being revised the suggestions made by the indigenous organizations and the original text drafted by the IACHR.

The Chair considers that this may help the Working Group to arrive at a final proposed text faithfully representing the aspirations and interests of the States, while granting due consideration to the positions of the indigenous groups and interested organs, agencies, and entities.

## PROPOSED AMERICAN DECLARATION ON THE RIGHTS OF INDIGENOUS POPULATIONS

The member states of the Organization of American States (hereafter the states),

[RECOGNIZING that the rights of indigenous [peoples/populations] constitute a fundamental and profoundly significant issue in the present and future history of the Americas];

### 1. Indigenous institutions and the strengthening of nations

[Recognizing that indigenous [peoples/populations] form an integral part of the population of the Americas and that their values and cultures are inextricably linked to the identity both of the countries they live in and of the region as a whole] [Recalling that throughout the Americas the indigenous [peoples/populations] constitute a distinctive element within society, and have a special role to play in defining the national identity, strengthening the institutions of the state and achieving national unity based on democratic principles] [Recalling that the indigenous [peoples/populations] of the Americas are preexisting, distinctive, and integral societies and that they have a right to constitute part of the national identity of the countries they inhabit];

[Recognizing the immense contribution of indigenous [peoples/populations] to the development and multicultural composition of our societies and reiterating our commitment to their economic and social well-being, as well as to the obligation to respect their rights and cultural identity];

[Recalling that the indigenous [peoples/populations] of the Americas are equal in dignity and rights to all other citizens;]

*[Asserting that indigenous [peoples/populations] are equal in dignity and rights to all other [peoples/populations], while recognizing their right to be different, to be considered different, and to be respected as such];*

Further recalling that the presence of indigenous societies enriches the cultural heritage and national identities of the American states and contributes to the intellectual, artistic, social, and economic vitality of the Americas;]

Further recalling that some of the democratic institutions and concepts embodied in the constitutions of the American states stem from institutions of the indigenous [peoples/populations], and many of their present participatory systems for decision-making and for authority contribute to improving democracies in the Americas;

*[Recalling the important contributions indigenous [societies] [peoples/populations] have made to the development of many of the political concepts and democratic principles embraced by American states;]*

[Recognizing that indigenous [societies] [peoples/populations] have a vital and continuing role to play in strengthening the institutions of American states and achieving national unity in accordance with democratic principles;]

[Mindful of the need to [develop] [strengthen] national juridical systems [and policies] in order to consolidate the multiplicity of cultures [, ethnic groups, and languages] in our societies;

2. The eradication of poverty and the right to development

(It has been proposed that this section be moved to the operative part.)

Concerned over the frequency with which indigenous [peoples/populations] are deprived of their human rights and fundamental freedoms, both within and outside their communities, as well as despoiled of their lands, territories, and resources, thus preventing them from exercising, in particular, their right to development in accordance with their own traditions, needs, and interests;

Recognizing the severe poverty afflicting indigenous [peoples/populations] in several regions of the Hemisphere and the deplorable decline in their living conditions;

Recalling that in the Declaration of Principles issued at the Summit of the Americas in December 1994, the Heads of State and Government proclaimed that in observance of the International Decade of the World's Indigenous People, they will focus their efforts on improving the exercise of democratic rights and providing indigenous [peoples/populations] and their communities with access to social services;

3. Indigenous culture and ecology

\* It has been proposed that this section be moved to the operative part.

Recognizing the respect for the environment accorded by the cultures of indigenous [peoples/populations] of the Americas, and considering the special relationship between those [peoples/populations] and the environment, the lands, the resources, and the territories in which they live;

4. Harmonious relations, respect, and the absence of discrimination

Reiterating the responsibility incumbent upon all states to combat racism and all forms of racial discrimination with a view to eliminating them [AGREED ad referendum];

5. [Territory] [cultural territory] [habitat] and indigenous survival

(\* It has been proposed that this section be moved to the operative part.

\*\* It has been proposed that the subtitle be deleted or that the word "territory" be deleted or replaced.)

Recognizing that for many indigenous [peoples/populations], their various traditional systems for the use and control of their lands and other resources are necessary conditions for their development and individual and collective well-being. [AGREED ad referendum];

*Recognizing that for many indigenous cultures their traditional collective systems for the use and control of land, territories, resources, waters, and coastal areas are necessary conditions for their survival, social organization, development, and individual and collective well-being [differ from those*

*followed by other members of the population] [and that those systems of control [and dominion] [may be] [are] varied, specific to them, and not necessarily consistent with systems protected by ordinary law in the states in which they reside];*

Further recognizing the importance for all humankind of preserving indigenous American cultures, which may include traditional collective forms of land ownership, social organization, and religious practices different from those followed by other members of the population;

6. Human rights instruments and other advances in international law

Recognizing the paramountcy of the American Declaration of the Rights and Duties of Man, the American Convention on Human Rights and other human rights instruments of inter-American and international law; and

*[Recognizing the [applicability/relevance] throughout the Americas of the American Declaration of the Rights and Duties of Man, and, where [duly ratified/appropriate], other international human rights instruments, including the American Convention on Human Rights;*

Reiterating the universal, indivisible, and interdependent nature of the human rights and fundamental freedoms recognized by the international community. [AGREED ad referendum];

7. Advances in the provisions of national instruments and different national situations

[Bearing in mind the diversity of circumstances in different countries and the varying degrees of impact of indigenous communities in the different states, as well as the constitutional, legislative, and jurisprudential progress made in the Americas in securing the rights and institutions of indigenous [peoples/populations], in order to consolidate the multiplicity of cultures, ethnic groups, and languages in our societies [APPROVED ad referendum];

8. The situation of indigenous [peoples/populations] and specific circumstances in each country

Bearing in mind the foregoing paragraph, this Declaration should be interpreted and applied in harmony and in keeping with current legal systems in the member states and their international commitments;

*Bearing in mind that this Declaration must be consistent with legal systems in force in member states and with their international commitments;*

\* **Note: The following proposals do not belong under subheading No. 8**

Recognizing that indigenous [peoples/populations] and their societies have a vital role in [sustainable development and that their know-how and traditional practices must be respected];

Encouraging states to recognize the identity, culture, and interests of indigenous [peoples/populations] and their communities and make possible their effective participation in the achievement of sustainable development [AGREED ad referendum];

Recalling the commitment undertaken by the Heads of State and Government in the Declaration of Principles of the First Summit of the Americas, held in December 1994 in Miami, and at the Summit of the Americas on Sustainable Development, held in Santa Cruz de la Sierra in December 1996, and reaffirmed in the Plan of Action of the Second Summit of the Americas, held in April 1998 in Santiago, Chile;

Desiring to promote and strengthen international cooperation with respect to the economic, cultural, and social development of indigenous [peoples/populations]; [AGREED ad referendum]

Recognizing the severe poverty in which many indigenous people live in many parts of the Americas and the commitment made by the Heads of State and Government at the 1994 Summit of the Americas to focus their energies on improving the exercise of democratic rights and the access to social services by indigenous people and their societies;

DECLARE:

## **SECTION ONE. DEFINITIONS**

For the purposes of the present Declaration, it shall be understood that, (Guatemala)

Article I. Indigenous [peoples/populations]<sup>1</sup> are understood to be a group of individuals who, within the National State, retain basic distinctive traits from a culture that existed prior to European colonization, such as language; practices and customs; social, economic, cultural, and political institutions; and whose members consider themselves to be part of that indigenous culture. (Chair)

*Indigenous [peoples/populations] are understood to be those social and cultural groups which, within National States, retain basic distinctive traits from a culture that existed prior to the establishment and constitution of the Nation-State, such as language; normative systems; social, economic, cultural, and political institutions or a part thereof; and who self-identify and are recognized as members of that indigenous culture. (Mexico)*

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1 Several representatives of indigenous populations indicated that it would not be appropriate for states to define the concept of "indigenous populations," this being the sole province of the communities involved. Self-identification, as an essential criterion for the recognition of an indigenous people, is not subject to any obligation. No term could encompass the multiplicity and variety of such communities existing in the Hemisphere. They indicated that they were neither ethnic minorities nor racial minorities nor populations (the latter term referring to communities not necessarily invested with historical continuity). They defined themselves as peoples, or collective, autonomous entities, with age-old languages, whose organization, shaped by lands, waters, forests, and other natural resources, afforded them a special world view and a unique social structure ensuring their continuity.

The representatives of indigenous populations indicated that the progress made, both at the level of national law and in the efforts of multilateral organizations, show that discussions have focused on the content of the rights of indigenous communities rather than on attempts to arrive at some sort of definition. They said it was important here to preserve references to their collective rights, since their individual rights were already enshrined in numerous instruments of international law. They concluded that the term "people" should remain in the draft Declaration, and that, should it not, examining the subsequent articles would be meaningless.

*The use of the term “[peoples/populations]” in this Declaration shall not be construed as having any implication concerning other rights that might be associated with the term under international law. (Brazil)*

*“Indigenous people have the collective and individual right to maintain and develop their identities and specific characteristics, including the right to identify themselves as indigenous and to be recognized as such.” (National Congress of American Indians)*

## Article II

a. “Self-determination”<sup>2</sup> is understood to mean the ability of indigenous [peoples/populations] to exercise their forms of political, economic, social, and cultural organization within a framework of autonomy and self-government compatible with the national unity of the State.

*a. “Self-determination” is understood to mean the ability of indigenous [peoples/populations] to exercise their forms of political, economic, social, and cultural organization within a framework of autonomy and self-government compatible with the organizational structure of each State. (Brazil)*

*a. “Self-determination” is understood to mean the ability of indigenous [peoples/populations] to freely develop and exercise their forms of political, economic, social, and cultural organization; and to guarantee their access to the State jurisdiction, within a framework of autonomy and self-government compatible with the national unity and juridical organization of the States. (Mexico)*

*“Indigenous peoples have the right to self-determination. They may freely determine their political status and pursue their economic, social, and cultural development by virtue of this right.” (National Congress of American Indians)*

b. This framework of autonomy of self-government finds legal expression in areas and at levels where indigenous [peoples/populations], in accordance with national legislation, exercise their forms of political, economic, social, and cultural organization.

## Article III

“Territory”<sup>3</sup> is understood to mean the entire habitat, including the lands on which indigenous [peoples/populations] are settled or which they enjoy in some fashion, with the modalities established under national legislation.

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2 The representatives of indigenous populations indicated that the terms “people” and “self-determination” could not be separated, and that the latter accorded political status, as well as economic, social, and cultural rights, which the indigenous communities could not relinquish, since these constituted a historical right that had been wrested from them. They also stated that “self-determination” could not be defined by those outside the community in question, this being the exclusive province of that community. Self-determination was a right of indigenous peoples, while sovereignty pertained to the state. In no way was self-determination meant to infringe upon the territorial integrity of the state. The intent was, rather, to enhance national unity, to secure recognition of the existence of such communities, invested with a distinct and special world vision, within the context of existing states. The right to secede was not the aim. Genuine autonomy must be built upon a pluralist foundation, with due recognition of the indigenous communities' own institutions. Such autonomy was one way to exercise self-determination within a state.

*“Lands” are understood to mean the entire habitat, including the lands on which indigenous [peoples/populations] are settled or which they enjoy in some fashion, with the modalities established under national legislation. (Peru, Argentina)*

“Lands” are understood to mean those areas of land which indigenous peoples may own or have exclusive use of. (Canada)

“Territories” are understood to be those areas which indigenous peoples do not own and do not have exclusive use of, but where they may conduct their traditional lifestyles, in accordance with domestic law or agreement. (Canada)

#### Article IV<sup>4</sup>

None of these definitions shall be interpreted to have the meaning that might be attributed to them in general international law.

## **SECTION TWO. HUMAN RIGHTS**

### Article II. Full observance of human rights

1. Indigenous [peoples/populations] are entitled to the full and effective enjoyment of the human rights and fundamental freedoms recognized in the OAS Charter, the American Declaration of the Rights and Duties of Man, the American Convention on Human Rights, and other international human rights instruments; and nothing in this Declaration shall be construed as in any way limiting, restricting, or denying those rights or authorizing any action not in accordance with the principles of international law, including that of human rights.

1. Indigenous individuals have the right to the full and effective enjoyment of the human rights and fundamental freedoms recognized in the Charter of the OAS, the American Declaration of the Rights and Duties of Man, and, where duly ratified, other international human rights instruments, including the American Convention on Human Rights; nothing in this Declaration shall be construed as in any way limiting, [restricting,] or denying those rights or authorizing any

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3 On the concept of "territory," the representatives of indigenous populations said this was deeply connected with their spirituality, their culture, their language, their way of life, and their relationship with the environment, and thus it was important that the term remain in the draft Declaration. Land, in Western culture, was something to be worked, a source of wealth subjugated to commerce. For the indigenous peoples, it was an element of their very lives, a factor in their existence as a group or community within an integrated world view that included their traditional approaches to political representation. The concept of territory was vital to defining all the rights of indigenous peoples. Moreover, the term "lands" could not sufficiently express that reality. However, since the populations had developed such a diverse range of approaches to territorial relations, any attempt to define the word "territory" would impose limitations on the traditional rights of indigenous communities.

4 The representatives of indigenous populations also called upon governments to include in their domestic legislation the three concepts discussed in this section, that is, “peoples,” “territory,” and “self-determination,” recognizing thereby the diversity of these communities.

action not in accordance with the relevant instruments of international law, including human rights law. (United States)

2. Indigenous [peoples/populations] have the collective rights that are indispensable for full enjoyment of the individual human rights of their members. Accordingly, the states recognize the right of indigenous [peoples/populations] *inter alia* to collective action; (to their social, political, and economic organization;) (to recognition of their sets of rules;) to their own cultures; to profess and practice their spiritual beliefs, and to use their languages.

2. *Indigenous individuals may exercise their rights, including those as set forth in this Declaration, individually as well as in community with others, without discrimination. Indigenous individuals have a right to be free from discrimination based upon their asserted [Tr. Spanish text says “established”] indigenous status or membership in an indigenous society. (United States)*

*“States shall therefore recognize the basic social, economic, political, and cultural rights of indigenous peoples, and in particular, the collective right to lands, territories, and resources, and the right of indigenous peoples to self-determination.” (National Congress of American Indians)*

3. The states shall guarantee all indigenous [peoples/populations] the full exercise of their rights, and shall adopt—in accordance with their constitutional provisions—such legislative or other measures as may be necessary to give effect to the rights recognized in this Declaration (, in accordance with their practices and customs).

3. *States should, in accordance with international law, take concerted positive steps to ensure respect for all human rights and fundamental freedoms of indigenous individuals, on the basis of equality and non-discrimination, and recognize the value and diversity of their distinct identities and culture. (United States)*

4. States are encouraged to remove any impediments to the free exercise and full enjoyment of these rights. (United States)

### Article III. Right to belong to indigenous [peoples/populations]

Indigenous persons and communities have the right to belong to indigenous [peoples/populations], in accordance with the traditions and customs of the [peoples/populations] or nation concerned.

*States should recognize the authority of indigenous [peoples/populations] to exercise autonomy in determining membership, consistent with international human rights. (United States)*

### Article IV. Legal status

Indigenous [peoples/populations] have the right to have their legal status fully recognized by the states within their legal systems.

*States should provide appropriate mechanisms to extend legal status to [recognize the legal status of] indigenous entities [peoples/populations], enabling such [peoples/populations] to operate corporately, or in other comparable effective form, under State law. (United States)*

*Subject to the specific provisions of each country's legislation, states shall ensure that legal status is granted to indigenous [peoples/populations], communities, and organizations. (Brazil, Chile, Argentina)*

*The traditional authorities of indigenous peoples, elected according to their practices and customs, shall have the power to represent these [peoples/populations] and to act in a legal capacity on their behalf. (Bolivia)*

*"States shall recognize the right of indigenous peoples in law in keeping with their traditional forms of representation or such legal norms as these peoples may develop. States shall adopt the necessary legislative measures for the recognition of this right." (Hector Huertas from Panama)*

Mr. Juan León, indigenous representative of the Mayan people of Guatemala, suggested that the title of Article 4 be "Legal recognition of indigenous peoples" (which includes existence, identity, and law), which distinguishes between the right of an entity in law and its legal capacity. Mr. Margarito Ruiz of Mexico requested that reference to "traditions" be included in the article.

Article V. Rejection of forced assimilation

1. Indigenous [peoples/populations] have the right to freely maintain, express and develop all aspects of their cultural identity, untrammelled by any attempt at assimilation.

*1. Indigenous people [people/populations] have the right to maintain their distinct cultures, beliefs, religions, and languages, subject to reasonable regulation consistent with international standards. (United States)*

2. The states shall not (undertake, support, or favor) (should not adopt, support, or favor) any policy of artificial or forced assimilation of indigenous [peoples/populations], destruction of (their) (a) culture or possibly of the extermination of an indigenous [people/population](and its heritage).

*2. States shall refrain from adopting any measure that would result in the forced assimilation of indigenous [people/populations], and from supporting theories or taking actions that entail discrimination, destruction of a culture, or the possibility of genocide. (Brazil)*

*2. States repudiate any attempt at artificial or forced assimilation, and the destruction, of an autochthonous culture, and shall guarantee effective exercise of the previously mentioned right. (Paraguay)*

The National Congress of American Indians also proposed replacing the present wording of Article 5 of the proposed declaration with the following:<sup>5/</sup>

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5 Translator's note: No original English available for this section.

*“Indigenous peoples have the collective and individual right not to be subjected to ethnocide or cultural genocide, including the right to prevention of and reparation for:*

- a. Any act whose purpose or effect is to deprive indigenous peoples of their integrity as unique peoples, or their cultural values, or their ethnic identity;*
- b. Any act whose purpose or effect is to deprive them of their territories or natural resources;*
- c. Any type of displacement whose purpose or effect is the violation or prejudice of any of their rights;*
- d. Any type of assimilation by or integration into other cultures or lifestyles imposed through legislative, administrative, or other measures;*
- e. Any type of propaganda directed against them.”*

Finally, regarding Article 6 of the proposed declaration, the National Congress of American Indians proposed replacing the phrase “special guarantees” with “special measures.”

Article VI. Special guarantees against discrimination

1. Indigenous [peoples/populations] have the right to such (special guarantees) (have recourse to the guarantees contemplated under domestic legislation) against discrimination as may be required for full enjoyment of internationally and nationally recognized human rights, and to any measures necessary to enable indigenous women, men and children to exercise their civil, political, economic, social, cultural and (religious) (spiritual) rights (and their cosmovisions) (without any discrimination). The states recognize that violence used against persons because of their (race, creed) gender or age (or political or religious affiliation) obstructs and nullifies the exercise of those rights.

*1. Where circumstances warrant, States should take measures to enable indigenous individuals to exercise fully and effectively all their human rights and fundamental freedoms without any discrimination. States are encouraged to take “special measures” aimed at the immediate, effective, and continuing improvement of indigenous economic and social conditions. (United States)*

*“The states shall adopt the measures necessary to prevent discrimination, ethnocide, and cultural genocide in indigenous populations.” (Altepetls Nahuas, A.C./Seminario Indígena)*

2. Indigenous [peoples/populations] have the right to full participation in the prescription (and exercise) of such guarantees.

*2. All rights and freedoms herein are equally guaranteed to indigenous women and men. States recognize that gender-based violence impedes and undermines the exercise of those rights. (United States)*

### SECTION THREE. CULTURAL DEVELOPMENT

#### Article VII. Right to cultural integrity

1. Indigenous [peoples/populations] have the right to their cultural integrity, [and their historical and archeological heritage,] which are important both for their (continuity as a society) (survival) and for the identity of their members.

*1. States should respect the cultural integrity of indigenous [peoples/populations], their relationship with their own lands and environment, as well as their historical and archaeological heritage, which are important to the identity of the members of their groups and their ethnic survival. (United States)*

[2. Indigenous [peoples/populations] are entitled to the restitution of property of which they have been dispossessed, [or, when that is not possible, to compensation on a basis no less favorable than the standard recognized by international law.]]

Brazil suggests eliminating paragraph 2.

*2. Indigenous [peoples/populations] have the right to own their heritage and to restitution if they have been dispossessed of it.(Mexico)*

*2. States should provide an effective legal framework for the protection of indigenous culture, including, where appropriate, mechanisms for the repatriation of cultural property. (United States)*

3. The states recognize and (respect) (promote respect for) indigenous lifestyles, customs, traditions, forms of social organization, institutions, practices, (beliefs, values), (cosmovisions) clothing, and languages.

*3. States should take appropriate measures to prevent discrimination based on indigenous lifestyles, customs, traditions, forms of social organization, use of dress, languages, and dialects, and other cultural practices. (United States)*

#### Article VIII. (Logical conceptions and language) (Linguistic rights)

1. Indigenous [peoples/populations] have the right to their own languages, philosophy, and (cosmovision) [logical conceptions] as a component of national and universal culture, and as such, the states shall recognize, respect, and promote them, (in consultation with the [peoples/populations] involved.)

*1. States recognize that indigenous languages, philosophy, and outlook are a component of national and universal culture, and, as such, states should respect them and, where appropriate, facilitate their dissemination. (United States)*

*“Indigenous peoples and individuals have the right to preserve and practice their indigenous language, philosophy, and outlook as a necessary expression of their distinct culture. The states shall take appropriate measures to protect the exercise of this right.” (Indian Law Resource Center)*

*“Indigenous peoples have the right to revitalize, use, develop, and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems, and literature, and to designate and retain their own names for communities, places, and persons.” (National Congress of American Indians)*

2. The states shall take measures to promote [and ensure] that radio and television programs are broadcast in the indigenous languages in areas having a strong indigenous presence, and to support the creation of indigenous radio stations and other means of indigenous communications.

*2. To encourage diversity of voices and viewpoints, states should take appropriate measures under their national systems wherever possible to facilitate radio and television broadcasts in indigenous languages in regions having large indigenous populations, and to encourage the development of indigenous radio stations and other media. (United States)*

*2. The states shall take measures to promote and ensure that indigenous languages are used by radio and television stations in areas having a strong indigenous presence, and to support the creation of indigenous means of communication. (Mexico)*

*“Where there is a strong indigenous presence, the states shall take measures to ensure that broadcast radio and television programs are broadcast in the appropriate indigenous languages. The state shall also support the creation of indigenous radio stations and other media.” (Indian Law Resource Center)*

3. The states shall take effective measures to enable indigenous [peoples/populations] to understand administrative, legal and political rules and procedures, and to be understood in relation to these matters. In areas where indigenous languages predominate, states shall expend the necessary efforts to have them established as official languages [and to grant them the same status that is accorded to non-indigenous official languages].

*3. States should take measures to enable indigenous [peoples/populations] to understand and to be understood when dealing with laws and administrative, legal, and political procedures. (United States)*

*3. The states shall take effective measures to enable indigenous [peoples/populations] to have full access to state jurisdiction in their own languages. (Mexico)*

4. Indigenous [peoples/populations] have the right to use their indigenous names, and to have the states recognize them as such.

## Article IX. Education

1. (Taking into consideration the minimum standards set by the competent state authority, (in countries in which national curricula are in force,) for the national education system,) Indigenous

[peoples/populations] shall be entitled: (a) to establish and set in motion their own educational programs, institutions and facilities; (b) to prepare and implement their own educational plans, programs, curricula, and teaching materials; and (c) to train, educate, and accredit their teachers and administrators, (in consultation with the competent state authorities and in accordance with applicable education laws and standards). [The states shall take steps to ensure that such systems guarantee equal educational and teaching opportunities for the general population as well as complementarity with the national educational systems.]

1. *States should recognize the authority of indigenous [peoples/populations] to (a) establish and operate their own educational programs, institutions, and facilities; (b) to prepare and apply their own educational plans, programs, curricula, and materials; and (c) to train and accredit their own teachers and administrators, provided that indigenous educational programs meet generally applicable minimum state requirements in the field of education. (United States)*

2. When indigenous [peoples/populations] so desire, educational systems shall be conducted (where practicable) in the indigenous languages and shall incorporate indigenous content, and they shall also be given the necessary training and means for complete mastery of the official language or languages.

2. *Non-discriminatory access to public education is a right that should be enjoyed by indigenous individuals in common with other citizens of the State. State-funded education should respect indigenous cultures. (United States)*

3. The states shall ensure that those educational systems are equal in quality, efficiency, accessibility and in all other respects to that provided to the general population.

3. *States should take appropriate measures so that, wherever possible, indigenous individuals have adequate opportunities to learn their native indigenous language or to receive instruction in that language. (United States)*

Proposal by Canada for a new paragraph:

Indigenous children living outside their communities should, where practicable, have access to education in their own culture and language.

4. The states shall include in national general educational systems content reflecting the pluricultural nature of their societies.

[5. The states shall provide financial and any other type of assistance needed to implement the provisions of this article, (without prejudice to support for the rest of the population).]

5. *States should take appropriate measures to provide resources for these purposes (United States)*

Argentina suggests deleting paragraph 5.

Commentary: Canada suggests merging paragraphs 3 and 5 into a single paragraph, which would then read as follows:

“States [shall/should] take effective measures to provide appropriate resources for these purposes.”

Article X. Spiritual and religious freedom

1. Indigenous [peoples/populations] have (shall have) the right to freedom of conscience, freedom of religion and spiritual practice, [and to exercise them both publicly and privately].

1. *Indigenous individuals have the right to freedom of thought, conscience, and religion. (United States)*

*“Indigenous peoples and individuals have the right to freedom of thought, conscience and religion; this right includes freedom to change one’s religion or belief, and freedom in public or private, to manifest their religion or belief in teaching, practice, worship and observance.” (Indian Law Resource Center)*

2. The states shall take the necessary measures to prohibit attempts to forcibly convert indigenous [peoples/populations] or to impose on them beliefs against their will.

2. *This right shall include freedom to have or adopt a religion or belief of her or his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice, and teaching. (United States)*

2. *Indigenous [peoples/populations] have the right to preserve and practice their religious or philosophical beliefs, the only condition being respect for public order and the full and effective enjoyment by the persons making up those [peoples/populations] of their internationally recognized human rights. States must take the necessary measures to prohibit any attempt to forcibly convert an indigenous [people/population] or to impose on it beliefs or religious practices against its will. (Inter-American Juridical Committee, with amendment by Mexico. English re-translated.)*

It also proposed that in paragraph 2 the words “forcibly convert” be replaced by the words “to convert indigenous peoples without their free and informed consent”. (Indian Law Resource Center)

3. In collaboration with the indigenous [peoples/populations] concerned, the states shall (make best efforts to) adopt effective measures to ensure that their sacred places, including burial sites, are preserved, respected and protected. [When sacred graves and relics have been appropriated by state institutions (or private entities), they shall be returned.]

3. *States shall take appropriate measures, in consultation with the indigenous [peoples/populations] concerned, to preserve and protect sites that are sacred to them, including burial sites. States should provide an effective legal framework for the return of sacred objects, relics, and human remains taken from graves or sacred sites.(United States)*

*“Indigenous peoples and individuals have the right to maintain and protect their cultural and religious properties including sacred sites, relics, graves and the human remains and articles found within graves. This includes the right to restitution of religious and cultural property taken without their free and informed consent or in violation of their laws, traditions and customs. In collaboration*

*with the indigenous peoples concerned, the states shall adopt effective measures to ensure that such properties are preserved, respected and protected. Where appropriated by state institutions, they shall be returned.” (National Congress of American Indians)*

[4. The states shall ensure respect from society as a whole (and from institutions) for the integrity of indigenous spiritual symbols, practices, sacred ceremonies, expressions and protocols.]

Mexico suggests deleting this paragraph.

*4. States are encouraged to respect the use of sacred and ceremonial areas and to provide for indigenous access to and use of such sites as may be under the management or control of a State. (United States)*

#### Article XI. Family relations and family ties

1. The family is the natural and basic unit of societies and must be respected and protected by the state. [Consequently, the state shall recognize and respect the various forms of the indigenous (family), (parental systems), marriage, (assignment of name) family name and filiation.]

*1. The family in all its forms is the natural and fundamental group unit of society and is entitled to protection by society and the State. (United States)*

2. In determining the child’s best interests in matters relating to the protection and adoption of children of members of indigenous [peoples/populations], and in the severance of ties and other similar circumstances, consideration shall be given by courts and other relevant institutions to the views of the [peoples/populations], including individual, family and community views.

*2. Consistent with international human rights instruments, States should accord appropriate recognition to indigenous institutions, laws, and traditions concerning the family and the integrity of family relations. (United States)*

*“In all actions concerning children, the state has a duty to respect the responsibilities, rights, and duties of parents, or where applicable, the members of the extended family or community as provided for by local customs”. (Indian Law Resource Center)*

3. Proposal by Mexico regarding indigenous women pending.

#### Article XII. Health and well-being

1. Indigenous [peoples/populations] have the right to [legal] [recognition and practice of their traditional medicine, treatment, pharmacology, health practices and promotion], including preventive measures and rehabilitation], (subject to national laws).

Argentina suggests that no reference should be made to legal recognition of the practice of their traditional medicine, treatment, pharmacology, health practices and promotion, including preventive measures and rehabilitation.

1. *Indigenous [peoples/populations] have the right to practice their traditional medicine, treatment, pharmacology, practical notions, and health promotion, within the framework of existing legislation and the general public health policies of the State. (Mexico and Peru)*

1. *Indigenous [peoples/populations] are entitled to State recognition of their traditional medical practices, treatment, pharmacology, practical notions and health promotion. (Venezuela)*

1. *States should take appropriate measures to protect the freedom of indigenous individuals to use, maintain, develop, and manage their own health services, provided such services meet the standards of generally applicable laws adopted in the interest of public health and welfare. In addition, indigenous individuals have the right to non-discriminatory access to health services available to the general public. (Unites States)*

1. *Indigenous peoples preserving traditional forms of social organization, communal governance system, or traditional practices and customs with respect to family, health, education, property, commercial or productive activities, or the prevention and punishment of criminal activities, have the right to preserve and freely exercise such rights, the only condition being respect for public order and the full and effective enjoyment by the persons making up those [peoples/populations] of their internationally recognized human rights. The State must make every reasonable effort, in consultation with the parties concerned, to harmonize and reconcile the effect of these customs with the overall legal system.(Inter-American Juridical Committee)*

Proposal by Chile for a new paragraph:

States undertake to seek, in accordance their domestic legislation, ways to make traditional medicine compatible with scientific medicine.

2. *Indigenous [peoples/populations] have the right to protection of (live organisms and) (medicinal plants, animals, and) minerals (used for medicinal purposes) that are vital for survival in their traditional territories.*

2. *States should take reasonable measures to protect from endangerment or extinction medicinal plants and animals that are vital to indigenous medicine. (United States)*

2. *States shall endeavor to protect medicinal plants, animals, and minerals of indigenous [peoples/populations] in their traditional territories. (Canada)*

3. *Indigenous [peoples/populations] shall be entitled to use, maintain, develop and manage their own health services, (in accordance with national standards and, on the same footing as other members of society, indigenous individuals shall also have access)and they shall also have access to all health institutions and services and medical care (accessible to the general population).*

3. *Where circumstances so warrant, states, in consultation with indigenous [peoples/populations], should take measures to improve health conditions in indigenous societies and assist them to maintain health conditions in accordance with nationally and internationally accepted standards. (United States)*

4. The states shall (make best efforts to) provide the necessary means for indigenous [peoples/populations] to (eliminate) (improve) any health conditions in their communities that fall below the standards accepted for the general population.

Proposal by Brazil for a new paragraph:

Indigenous peoples shall be entitled to fair and equitable distribution of the profits generated by commercial exploitation of their traditional know-how. (Brazil)

New paragraph proposed by Bolivia:

Indigenous [peoples/populations] have the right to participate in the use and exploitation of the renewable natural resources in their traditional territories. (Bolivia)

Article XIII. The right to environmental protection

1. (States shall make best efforts to provide) Indigenous [peoples/populations] (have the right to) (with) a safe and healthy environment, which is an essential condition for enjoyment of the right to life and collective well-being, (and indigenous [peoples/populations] shall also enjoy possession and use of resources that are not of strategic importance to the State).

*1. States should take reasonable measures to ensure that regions inhabited by indigenous [peoples/populations] enjoy the same measure of protection under environmental legislation and through enforcement action as others within the national territory. (United States)*

2. Indigenous [peoples/populations] have the right to be informed (and consulted) of (regarding) measures which could affect their environment, including information ensuring their effective participation in acts and policies which might affect it.

*2. Indigenous individuals are entitled to nondiscriminatory access to information on environmental hazards and participation in the development of public policy with respect to the environment. (United States)*

3. Indigenous [peoples/populations] shall have the right to conserve, restore, (exploit) and protect their environment and the productive capacity of their [lands], [territories] and resources.

*3. As part of the management of their own lands, indigenous [peoples/populations] may regulate environmental conditions consistent with applicable State standards and may participate in the formulation and implementation of governmental conservation programs undertaken with respect to those lands. (United States)*

4. Indigenous [peoples/populations] have the right to full participation in formulating, planning, managing, and applying governmental programs (and policies) for the conservation (and exploitation) of their [lands], [territories], and resources.

*4. States are encouraged to take measures to help indigenous [peoples/populations] preserve the environment and should provide them with nondiscriminatory access to generally available programs for purposes of environmental protection. (United States)*

4. *States shall make best efforts to eliminate such health conditions in indigenous communities which fall below internationally accepted minimum standards. (Canada)*

5. Indigenous [peoples/populations] shall have the right to assistance from their states for purposes of environmental protection, and shall be allowed to receive assistance from international organizations, (in accordance with procedures established in national legislation).

6. The states shall prohibit and punish, and in conjunction with the indigenous [peoples/populations], shall impede the introduction, abandonment, or deposit of radioactive materials or residues, toxic substances and waste material in contravention of legal provisions; as well as the production, introduction, transportation, possession or use of chemical, biological and nuclear weapons in indigenous areas. (The Chair proposes including a reference to drug trafficking, and the passing on, holding of, or trafficking in chemical precursors.)

The National Congress of American Indians proposed amending Article 13, paragraph 6 of the proposed declaration by replacing the phrase “in contravention of legal provisions” with “*unless the free and informed consent of the affected peoples has been obtained.*”

7. When a state declares an indigenous territory to be a protected area, and in the case of any [lands], [territories] [under potential or actual claim] by indigenous [peoples/populations], as well as [lands] used as natural biopreserves, conservation areas shall not be subject to any natural resource development without the [informed consent and] (informed) participation of the [peoples/populations] concerned.

*“When the state is giving consideration to establishing a protected area on or near to an indigenous territory, legally recognized or under claim, the state shall obtain the free and informed consent of the affected indigenous peoples prior to authorizing or implementing such a proposal. Protected areas shall not be subject to natural resource development without the free and informed consent of the affected indigenous peoples. (National Congress of American Indians)*

*Indigenous peoples have the right to declare, wholly or in part, their territories as indigenous-owned and managed protected areas and the state shall recognize and respect such decision.” (National Congress of American Indians)*

#### **SECTION FOUR. ORGANIZATIONAL AND POLITICAL RIGHTS**

##### **Article XIV. The rights of association, assembly, freedom of expression, and freedom of thought**

1. Indigenous [peoples/populations] have the right of association, assembly, and expression pursuant to their values, usages, customs, ancestral traditions, beliefs, and religions (, in keeping with national law) (and bearing in mind the international instruments on the matter).

Regarding specific proposals for modifying articles of the proposed declaration, the National Congress of American Indians, the Amerindian Peoples Association of Guyana and the Toledo Maya Cultural Council, and the Upper Sioux Community by Poi Co proposed changing the first phrase of paragraph 1 of Article 14 to read, “*Indigenous peoples and individuals.*”

1. *Indigenous individuals have the right to freedom of association, assembly, opinion, and expression. (United States)*

2. Indigenous [peoples/populations] have the right of assembly and to the use of their sacred and ceremonial areas, as well as the right to full contact and common activities with their members living in the territory of neighboring states (, in keeping with state border control regulations).

2. In those cases where a single indigenous population is established in the territory of two or more states, the latter shall spare no reasonable effort—without prejudice to their public policy, to their security and defense, or to measures necessary to prevent criminal or illicit activities—to preserve communication, cooperation, and traditional exchanges among individuals belonging to that indigenous population. (CJI)

2. *Indigenous peoples have the right of assembly and to the use of their sacred and ceremonial areas, subject to the existing rights of third parties. They also have the right to maintain and develop contacts, relations and undertake activities with their members, and with other indigenous peoples, across borders, which may be subject to reasonable and non-discriminatory customs and immigration regulation. (Canada)*

2. Indigenous individuals have the right to full contact and common activities with sectors and members of their ethnic groups living in the territory of neighboring states, subject to the nondiscriminatory enforcement of customs and immigration laws. (United States)

*“Indigenous peoples and individuals have the right to the use of their sacred and ceremonial areas as well as the right to establish and maintain without any discrimination, free and peaceful contacts with other indigenous peoples and individuals that live in the territories of neighboring states or across state borders.”* (National Congress of American Indians, Amerindian Peoples Association of Guyana and the Toledo Maya Cultural Council, and the Upper Sioux Community)

Article XV. [The right to self government]

1. [Indigenous [peoples/populations] have the right to freely determine (their traditional forms of communal association) (their political status) and freely pursue their economic, social, spiritual, and cultural development, and are therefore entitled to (participate in managing their specific institutions) [autonomy or self-government] with regard, *inter alia*, to culture, religion, education, information, media, health, housing, employment, social welfare, economic activities, land and resource management, the environment and entry by nonmembers; and to determine ways and means for financing these autonomous functions.]

1. *States should recognize, where appropriate and on the basis of a fair and open process, a broad range of autonomy for indigenous [peoples/populations] to manage their local and internal affairs, including social, economic, and cultural matters. States are encouraged to utilize indigenous [peoples/populations] to deliver social and economic services to indigenous societies. (United States)*

*“Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social, spiritual and cultural development. As a specific form of exercising their right to self-determination, have the right to autonomy and self-government with regard to inter alia culture, religion, education, information, media, health, housing, employment, social welfare, economic activities, land and resources management, the environment and entry by non-members; and to determine ways and means for financing these autonomous functions.” (National Congress of American Indians, Amerindian Peoples Association of Guyana and the Toledo Maya Cultural Council, and the Upper Sioux Community)*

\* Note from the Chair: This question (paragraph 1) depends upon what is decided regarding the section on definitions.

2. Indigenous [peoples/populations] have the right to participate without discrimination, if they so decide, in decision-making, at all levels, concerning matters which might affect their rights, lives, and destiny. They may do so directly or through representatives chosen by them pursuant to their own procedures. They shall also have the right to maintain and develop their own indigenous decision-making institutions, as well as equal opportunities to gain access to, and participate in, all national institutions and fora.

2. *Indigenous individuals have the right to participate on an equal basis with other citizens in all national fora, including local, provincial, and national elections. Where a state’s policy, decision, or action will have a direct effect on indigenous property, rights, or other interests, states are encouraged to provide indigenous people [peoples/populations] or their representatives the opportunity to be heard on the subject. (United States)*

#### Article XVI. Indigenous law

1. Indigenous law shall be recognized as a part of [the states’ legal systems and] the framework in which the states’ social and economic development takes place.

1. *The law of indigenous [peoples/populations] shall be recognized as part of the legal systems, framework for social and economic development, and pluralism of states. (Mexico)*

1. *Indigenous law shall be recognized as an integral part of state legal systems and the framework for social and economic development of indigenous [peoples/populations]. (United States)*

1. *Indigenous law shall be taken into account when decisions involving indigenous [peoples/populations] are adopted. (Argentina)*

1. *The law of indigenous [peoples/populations] shall be recognized as part of the legal system and framework for economic and social development of each state, as long as that system and that framework are not incompatible with the fundamental rights defined by the national legal system or with internationally recognized human rights. (Guatemala)*

2. Indigenous [peoples/populations] have the right to maintain and reinforce their (legal) (regulatory) systems and to apply them to affairs within their communities, including systems addressing such matters as conflict resolution, crime prevention, and the maintenance of peace and harmony.

2. *States, where appropriate, should take measures to enhance the capacity of indigenous [peoples/populations] to maintain and strengthen their own legal systems with respect to internal matters, including control of real property and natural resources, resolution of disputes within and between indigenous [peoples/populations], law enforcement, and maintenance of internal peace and harmony. (United States)*

“The official decisions, rulings and actions of indigenous institutions shall be fully recognized, honored and enforced by the institutions of the state.” (*National Congress of American Indians, Amerindian Peoples Association of Guyana and the Toledo Maya Cultural Council, and the Upper Sioux Community*)

\* Note: The United States proposal is intended to consolidate paragraphs 2 and 3.

3. In the jurisdiction of each state, procedures involving indigenous persons or their interests shall be conducted in such a way as to ensure the right of indigenous [peoples/populations] to full representation with dignity and equality before the law. [This (may) (shall) include observance of indigenous law and customs and, where necessary, (in criminal proceedings,) (the use of) their language (through interpretation). Venezuela proposes that the second part of the paragraph be deleted.

Article XVII. (National incorporation of indigenous legal and organizational systems) (Right of access of indigenous peoples to state jurisdiction) (Incorporation of traditional practices of indigenous populations in national institutions)

1. The states shall facilitate the (incorporation) (inclusion), where practicable, of the institutions and traditional practices of indigenous [peoples/populations] in their (national) (organizational) structures, in consultation with, and subject to the consent of, the [peoples/populations] concerned.

1. *The states should facilitate inclusion within their national organizational structures, wherever appropriate, of institutions and traditional practices of indigenous [peoples/populations]. (United States)*

2. The relevant institutions in each state which serve indigenous [peoples/populations] should be designed in consultation with, and with the participation of, the [peoples/populations] concerned, so as to reinforce and promote the identity, cultures, traditions, organization, and values of those [peoples/populations].

2. *The institutions of each state shall be designed or updated in consultation with indigenous [people/populations], thereby guaranteeing their access to state jurisdiction. (Mexico)*

2. States are encouraged in predominantly indigenous areas to facilitate the design and establishment of institutions that reflect and reinforce the identity, culture, and organization of those populations, to promote indigenous participation. (*United States*)

*Finally, regarding Article 17, they noted that paragraph 2 should also ensure that “no decisions directly relating to their rights and interests are taken without their free and informed consent.” (.” (National Congress of American Indians, Amerindian Peoples Association of Guyana and the Toledo Maya Cultural Council, and the Upper Sioux Community)*

## **SECTION FIVE. SOCIAL, ECONOMIC, AND PROPERTY RIGHTS**

### **Article XVIII. Traditional forms of property ownership [and cultural survival]. The rights to land and territories**

1. Indigenous [peoples/populations] have the right to legal recognition of their varied and specific forms and modes of possession, control, and enjoyment of [territories and] property (, on the basis of each state’s legal system).

*1. States should respect the culture and values of indigenous [peoples/populations] and the special relationship between indigenous societies and their lands and interests in their lands, including traditional uses such as subsistence farming. (USA)*

*1. Indigenous [peoples/populations] have the right to legal recognition of their collective and individual possession, their control, and their enjoyment of their lands, as provided under the law of each state, as well as the use of those to which they also have had access for their traditional activities and livelihood. (Mexico; this text would combine paragraphs 1 and 2.)*

2. (In accordance with applicable national law,) Indigenous [peoples/populations] are entitled to recognition of their property and ownership rights with respect to lands, territories, and resources they have (traditionally) (historically) occupied, and to the use of those to which they also have had access for their traditional activities and livelihood.

*2. States should recognize forms of corporate ownership of land that reflect indigenous land tenure systems. (USA)*

*2. In accordance with specific national law, indigenous [peoples/populations] have the permanent, exclusive, inalienable, imprescriptible, indefeasible, and nontransferrable right of possession, ownership, and use of lands they traditionally occupy and of lands to which they traditionally have had access for their traditional activities and livelihood. (Brazil; this text would combine paragraphs 2 and 3)*

3. i. Subject to the contents of 3.ii., when property and user rights of indigenous [peoples/populations] arise from rights existing prior to the creation of those states, the states shall recognize the titles of indigenous [peoples/populations] relative thereto as permanent, exclusive, inalienable, imprescriptible, and indefeasible.

ii. Such titles may be changed only by mutual consent between the state and the indigenous [peoples/populations] involved and when the latter have full knowledge and understanding of the nature or attributes of such property.

iii. Nothing in 3.i. shall be construed as limiting the right of indigenous [peoples/populations] to attribute ownership within the community in accordance with their customs, traditions, usages, and traditional practices, nor shall it affect any collective community rights thereto.

4. Indigenous [peoples/populations] have the right to an effective legal framework for the protection of their rights with respect to the natural resources on their lands, including the ability to use, manage, and conserve such resources, and with respect to traditional uses of their lands and their interest in lands and resources, such as subsistence items.

4. *States should provide an effective legal framework for the protection of the rights of indigenous [peoples/populations] with respect to their natural resources on their lands, including the ability to use, manage, and conserve such resources, ... such as subsistence. (USA)*

*“Their lands, territories and natural resources [delete ‘on their lands’] including the ability to use, develop, manage and conserve such lands, territories and resources; and with respect to traditional uses of their lands, territories and resources such as subsistence.” (National Congress of American Indians, Upper Sioux Community, Ameridian People Association of Guyana and the Toledo Maya Cultural Council)*

5. [In the event that subsoil minerals or subsoil resources belong to the state, or that the state has rights to other resources on the lands, the states shall establish or maintain procedures for the participation of the [peoples/populations] concerned in determining whether their own interests would be adversely affected, and to what extent, before undertaking or authorizing any program for prospecting, planning, or exploiting the resources existing on their lands. The [peoples/populations] concerned shall participate in the benefits of such activities[, and shall receive compensation, on a basis no less favorable than the standard sum under international law,] for any loss they may sustain as a result of such activities]]. Argentina proposes that the last part of the paragraph be deleted. Venezuela proposes that the entire paragraph be deleted. Brazil proposes that the reference to compensation on a basis no less favorable than the standard sum under international law be deleted.

5. *In situations in which the state retains the ownership of mineral or subsurface resources or rights to other resources pertaining to lands held by indigenous societies, states should establish procedures to consult with them before undertaking or authorizing any program for exploiting such resources. Where possible, indigenous [peoples/populations] should benefit from these activities and receive just compensation for any damages sustained as a result. (USA)*

*“Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands. Territories and other resources, including the right to require that states obtain their free and informed consent prior to the approval of any project affecting their lands, territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources, compensation shall be provided for any such activities and measures taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.” (National Congress of American Indians, Upper Sioux Community, Ameridian People Association of Guyana and the Toledo Maya Cultural Council)*

6. Unless exceptional circumstances so warrant in the public interest, the states shall not transfer or relocate indigenous [peoples/populations] without the free, genuine, public, and informed consent of those [peoples/populations]; [and in all cases with prior compensation and] prompt replacement of lands appropriated, which must be of similar or better quality and have the same legal status; and guaranteeing the right to its return if the causes that gave rise to the displacement cease to exist.

*6. States are encouraged to avoid relocation of indigenous societies. As a general matter, the free and informed consent of indigenous [peoples/populations] should be obtained before they are removed from their lands. Where such consent cannot be obtained, such removals should take place only in exceptional circumstances following appropriate procedures established by national laws and regulations. When indigenous [peoples/populations] have been removed from their lands, they should be given the opportunity to return should the reasons for their relocation cease to exist. (USA)*

*“Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free and informed consent of the indigenous people concerned and after agreement on just and fair compensation and, where possible, with the option of return.” (National Congress of American Indians, Upper Sioux Community, Amerindian People Association of Guyana and the Toledo Maya Cultural Council)*

7. [Indigenous [peoples/populations] have the right to restitution of the lands, territories, and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, occupied, used, or damaged; or, when restitution is not possible, the right to compensation on a basis no less favorable than the standard set by international law .] Argentina, seconded by Venezuela, and Brazil proposes that this paragraph be deleted.

*“They shall be provided with lands of equal value and quality, and if this is not possible, the affected people (s) has the right to compensation on a basis not less favorable than the standard of International Law.” (National Congress of American Indians, Upper Sioux Community, Amerindian People Association of Guyana and the Toledo Maya Cultural Council)*

The United States proposes four new paragraphs:

*States should respect the physical security of indigenous [peoples/populations]. During periods of armed conflict, states may require the total or partial evacuation of indigenous people if the security of the population or imperative military reasons so demand.*

*States should protect the right of indigenous individuals to own, develop and enjoy land, and interests in land, to the same extent as other individuals.*

*States should protect indigenous individuals and [peoples/populations] in the use and occupancy of their land. If their land is taken by the state, it should be for a public purpose and just compensation should be provided. States should consider the possibility of negotiated settlements, including the return of land as appropriate, when not otherwise required by law.*

*States should establish penalties and enforcement mechanisms to protect the lands of indigenous individuals and [peoples/populations] from unauthorized intrusions and uses.*

8. The states shall take all possible measures[, including the use of law enforcement mechanisms,] to avert, prevent, and punish, when applicable, any intrusion on or use of those lands by unauthorized persons in order to take possession or make use thereof. [The states shall place maximum priority on the demarcation and recognition of properties and areas of indigenous use.]

Article XIX. Workers' rights

1. Indigenous [peoples/populations] shall be entitled to full enjoyment of the rights and guarantees recognized under international labor law and domestic labor law (which have been recognized by the states); and to special measures to correct, redress, and prevent the discrimination to which they (might be subjected) (have historically been subjected).

*1. Indigenous individuals have the right not to be subjected to any discriminatory conditions of labor, employment, salary, or other related benefits. (USA)*

Proposal by Canada:

*Indigenous individuals shall enjoy fully all rights established under applicable international and national labor law. States should take immediate and effective measures to ensure that indigenous children are protected from the worst forms of child labor.*

*Indigenous individuals have the right not to be subjected to any discriminatory conditions of labor, employment, or salary.*

2. To the extent to which they are not effectively protected by laws applicable to workers in general, the states shall take such special measures as may be necessary to:

a. effectively protect workers and employees who are members of indigenous communities in regard to fair and equal hiring and terms of employment;

b. improve the labor inspection and enforcement service in regions, companies, or paid activities involving indigenous workers or employees;

c. ensure that indigenous workers:

i. enjoy equal opportunity and treatment as regards all conditions of employment, job promotion and advancement; and other conditions as stipulated under international law;

ii. enjoy the right of association (for lawful purposes), the freedom to engage in all (lawful) trade union activities, and the right to enter into collective agreements with employers or with workers' organizations;

iii. are not subjected to racial, sexual, or other forms of harassment;

iv. are not subjected to coercive hiring practices, including servitude for debts or any other form of servitude, even if they are based on law, custom, or an individual or collective arrangement, which shall be deemed absolutely null and void in each instance;

v. are not subjected to working conditions that endanger their health and personal safety; and

vi. receive special protection when they serve as seasonal, casual, or migrant workers, and also when they are hired by labor contractors, so that they will benefit from national law and practice, which must itself be consistent with established international human rights standards for this type of worker; and

vii. that their employers are also made fully aware of the rights of indigenous workers, pursuant to national law and international standards, and of the resources and means available to them for the protection of those rights.

2. *Indigenous individuals should have the right to special measures, where circumstances so warrant, to correct, redress, and prevent the discrimination to which they may have been subject historically. (USA)*

Article XX. Intellectual property rights

1. Indigenous [peoples/populations] have the right to the recognition and full ownership, control, and protection of their cultural, artistic, spiritual, technological, and scientific (and biogenetic) heritage, and legal protection of their intellectual property through patents, trademarks, copyright, and other such procedures as established under domestic law; [as well as to special measures which ensure them legal status and institutional capacity to develop, use, share, market, and bequeath that heritage to future generations]. Venezuela proposes that the last section be deleted; Mexico seconds the motion.

1. *Indigenous individuals are entitled to apply for and receive, on a non-discriminatory basis, legal protection for their intellectual property through trademarks, patents, copyright, and other such procedures as established under domestic law. (USA)*

1. *Indigenous populations and their members shall have the right to benefit from the intellectual property rights system under the same terms as the general population. The state shall spare no reasonable effort to protect the intellectual property rights of the indigenous population and its members and to prevent third parties from using an indigenous population's lack of familiarity with intellectual property rights to their own advantage. (CJI)*

2. Indigenous [peoples/populations] have the right to control and develop their sciences (and) technologies (and genetic resources), including their human and genetic resources [in general, seeds, medicine, knowledge of plant and animal life, and original designs and procedures](in keeping with applicable national law). Mexico proposes that all the text in square brackets be deleted.

3. The states shall take appropriate measures to ensure the participation of indigenous [peoples/populations] in determining the rights cited in paragraphs 1 and 2.

Article XXI. (The right to development) (Economic development)

1. The states recognize the right of indigenous [peoples/populations] to decide (autonomously) [democratically] what values, objectives, priorities, and strategies will (guide) (govern

and orient) the course of their development[, even when these differ from those adopted by the state at the national level or by other segments of society]. Indigenous [peoples/populations] shall be entitled to obtain, without discrimination of any kind, appropriate means for their own development [according to their preferences and values; and to contribute in their own ways, as distinct societies, to national development and international cooperation.]

1. *States should take reasonable measures to consult with indigenous [peoples/populations] when considering public policies for the economic development of indigenous lands or regions, or programs that will affect the living conditions or other legitimate interests of such societies. (USA)*

2. Unless exceptional circumstances so warrant in the public interest, the states shall take the necessary measures to ensure that decisions regarding any plan, program, or proposal affecting the rights or living conditions of indigenous [peoples/populations] are not made without the free and informed [consent and] participation of those [peoples/populations]; that their preferences are recognized; and that no provision which might have negative effects on those [peoples/populations] is adopted.

3. [Indigenous [peoples/populations] have the right to restitution or compensation, no less favorable than the standard under international law, for any loss caused them by the execution of those plans or proposals despite the foregoing precautions; and to the adoption of measures to mitigate adverse ecological, economic, social, cultural, or spiritual effects.] Argentina proposes that this paragraph be deleted; Brazil seconds the motion.

## **SECTION SIX. GENERAL PROVISIONS**

Mexico suggests deleting the whole of this section.

[Article XXII. Treaties, acts, agreements and constructive arrangements

Indigenous [peoples/populations] have the right to the recognition, observance, and enforcement of valid treaties, agreements, and other arrangements that may have been concluded with states or their successors, as well as [historical acts], according to their spirit and intent; and to have states honor and respect such treaties, agreements, and constructive arrangements as well as the [historical rights] emanating from those instruments. [Conflicts and disputes which cannot otherwise be settled shall be submitted to the competent domestic bodies.]]

*“Indigenous peoples have the right to the recognition, observance, and enforcement of treaties, agreements, and other constructive arrangements that may have been concluded with states or their successors, according to their spirit and original intent; and to have states honor and respect such treaties, agreements, and arrangements. [Conflicts and disputes which cannot otherwise be settled shall be submitted to the international competent bodies by all the parties involved.” (Darwin Hall, a representative of indigenous populations)*

*States should take all necessary steps under domestic law to implement obligations to indigenous [peoples/populations] under treaties and other agreements negotiated with them and, where appropriate, to establish procedures for resolving grievances arising under such treaties and agreements in accordance with principles of equity and justice. (United States)*

*Indigenous [peoples/populations] are entitled to recognition, respect, and application of the treaties, agreements, and any other arrangements they might have made with the States or their successors, in the spirit and intention with which they were concluded, and to take steps to ensure that they are respected and complied with by the States. (Brazil. Original text: Portuguese)*

#### Article XXIII

Nothing in this instrument shall be construed as excluding or limiting existing or future rights which indigenous [peoples/populations] may have or acquire.

*Nothing in this declaration should be construed as diminishing or extinguishing rights of indigenous individuals or [peoples/populations]. (United States)*

#### Article XXIV

The rights recognized herein constitute the minimum standards for the survival, dignity and well-being of the indigenous [peoples/populations] of the Americas.

#### Article XXV

Nothing in this instrument shall be construed as granting any rights to ignore boundaries between states.

#### [Article XXVI

Nothing in this Declaration implies or may be construed as permitting any activity contrary to the purposes and principles of the Organization of American States, including sovereign equality, territorial integrity and political independence of states.]

Brazil and Mexico suggest deleting Article XXVI.

#### [Article XXVII. Implementation

The Organization of American States and its organs, agencies, and entities—in particular the Inter-American Indian Institute, the Inter-American Commission of Human Rights—shall promote respect for, and full application of, the provisions of this Declaration.]]

Argentina, Brazil, and Mexico suggest eliminating this article.

New paragraph proposed by Brazil:

“The nature and scope of the measures to be taken to comply with this Declaration shall be determined flexibly, taking into account the particular circumstances of each country.”