

PERMANENT COUNCIL OF THE
ORGANIZATION OF AMERICAN STATES

COMMITTEE ON JURIDICAL AND POLITICAL AFFAIRS

Working Group to Prepare the Draft American Declaration
on the Rights of Indigenous Peoples

OEA/Ser.K/XVI
GT/DADIN/doc.23/01 rev. 1
26 July 2001
Original: Spanish

SPECIAL MEETING OF THE WORKING GROUP TO PREPARE THE DRAFT AMERICAN
DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES

Held in Washington, D.C., April 2-6, 2001

REPORT OF THE CHAIR

CONTENTS

	<u>Page</u>
I. Background.....	1
II. Preparatory Meetings.....	2
Discussion of the Work Plan	2
Discussion of the Draft Resolution.....	3
Election of the Vice Chair	3
Outside Activities of the Chair	3
III. Special Meeting	4
1. Convocation.....	4
2. Agenda.....	4
3. Proceedings.....	4
a. Opening Session	5
b. Participants	5
c. Informal Dialogue of delegations	5
d. Working Procedure.....	5
4. Consideration of the Draft Declaration.....	6
Tuesday April 3 (morning session).....	7
Tuesday April 3 (afternoon session).....	7
Wednesday April 4 (morning session).....	10
Wednesday April 4 (afternoon session).....	19
Thursday April 5 (morning session)	24
Thursday April 5 (afternoon session)	26
Friday April 6 (morning session).....	32
5. Closing Session.....	34
6. Conclusions and Recommendations	36
General Consulsions	36
Recommendations.....	37
IV. Appendices	39
Appendix I Draft American Declaration GT/DADIN/doc.1/99 rev. 3	41
Appendix II AG/RES. 1708 (XXX-O/00)	77
Appendix III Informal Meeting.....	79
Appendix IV Declaration of the Hemispheric Caucus GT/DADIN/doc.18/01 rev. 1	89
Appendix V Declaration of the Summit of Indigenous Peoples in the Americas.....	99

SPECIAL MEETING OF THE WORKING GROUP TO PREPARE THE DRAFT AMERICAN
DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES

Held in Washington, D.C., April 2-6, 2001

REPORT OF THE CHAIR

I. Background

In 1989, the General Assembly of the Organization of American States (hereinafter "OAS"), in its resolution AG/RES. 1022 (XIX-O/89), requested that the Inter-American Commission on Human Rights (IACHR) prepare a draft declaration on the rights of indigenous populations.

Pursuant to that mandate, the Committee held a number of meetings and consulted with government representatives, international experts, indigenous leaders, and jurists specializing in this topic, with a view to drawing up the preliminary draft.

In April 1997, the Permanent Council received from the Committee the "Proposed American Declaration on the Rights of Indigenous Populations," which the IACHR had approved in February of that year.

In June of that same year, the OAS General Assembly expressed the view that the text of the draft should reflect the observations and recommendations of member states as well as the opinions of specialized organizations, such as the Inter-American Juridical Committee (CJI) and the Inter-American Indian Institute (III). All of these presented comments and observations in subsequent years.

Previously from 1992 to 1997, the Inter-American Commission on Human Rights has conducted two rounds of consultations with governments, indigenous organizations, and experts, based on a questionnaire and preliminary texts. They included technical meetings in Canada, Mexico, Panama, Peru, and Venezuela; there were national consultations in 15 countries, and three regional consultation meetings were held in Guatemala (Central America and the Caribbean), Ecuador (South America), and the United States (U.S. and Canada). At a final drafting meeting between indigenous experts and commission members, the draft was defined, as approved in 1997 by the Commission. At the same time, the states participated in two meetings to study and discuss the initial draft. The first was a meeting of government experts held in February 1999. The second was held from November 8 to 12, 1999, in the context of the Working Group to Prepare the Proposed American Declaration on the Rights of Indigenous Populations.

That Working Group of the Permanent Council Committee on Juridical and Political Affairs was established in 1999 by the General Assembly, at its twenty-ninth regular session, in resolution AG/RES. 1610 (XXIX-O/99), to continue consideration of the Proposed American Declaration on the Rights of Indigenous Populations.

In 2000, the General Assembly, in resolution AG/RES. 1708 (XXX-O/00), adopted at its thirtieth regular session (Canada, June 2000), requested the Permanent Council to renew the mandate of the Working Group of the Committee on Juridical and Political Affairs (CAJP) so that it could continue to consider the Proposed American Declaration on the Rights of Indigenous Populations and hold at least a second meeting before the thirty-first regular session of the General Assembly.

In keeping with that resolution, the Permanent Council of the Organization, at a meeting on August 13, 2000, instructed the CAJP to renew the mandate of the Working Group to Prepare the Proposed American Declaration on the Rights of Indigenous Populations. The Working Group was installed at the meeting of September 9, 2001, and elected Ambassador Ronalth Ochaeta Argueta, Permanent Representative of Guatemala, as its chair.

II. Preparatory Meetings

General Information

The Working Group held a series of meetings, in compliance with resolution AG/RES. 1708 (XXX-O/00) [See Appendix III]. Nine preparatory meetings were held for the special meeting of the Working Group. These were attended by an average of 12 member states per meeting, and this slowed down the discussions. Sometimes the quorum for adopting decisions was not present. In other cases, certain delegations requested that discussion be reopened on points that had been agreed at prior meetings, which, in most cases, they had not attended. The Chair cites irregular participation in the Working Group as a shortcoming that should be addressed for future meetings.

On the positive side, it should be noted that a group of member states was always present during discussions at the preparatory meetings. This group was the force behind the progress made and provided evidence of their interest in the topics at hand.

Discussion of the Work Plan

During the first working meeting, the Chair offered a proposed work plan intended to orient the discussions. The Chair's original proposal contained a budget item to facilitate participation by both indigenous representatives and member states. This item was to be funded through appeals to sources of international cooperation and solidarity. The initial reaction was that the budget to assist government delegations should be removed from the proposal, being inconsistent with OAS practice. In February, the Chair proposed to the Working Group that the entire budget section be removed from the work plan, reasoning that there was little time in which to carry out the substantive activities successfully and because some States had serious reservations about the initiative. This outcome affected participation, since many indigenous representatives of the Hemisphere were unable to attend for lack of financial assistance.

The original proposal did not contain a working procedure for the special meeting. At the request of the Working Group members, the Chair developed a proposal that was discussed, improved, and ultimately adopted (GT/DADIN/doc.6 rev.6) [See Appendix IV].

Another point addressed during discussions of the work plan was the legitimacy of indigenous representatives participating in the special meeting. A second version of the work plan contained criteria indigenous representatives were to meet in order to participate in the special

meeting. That proposal was closely examined by the member states, who ultimately found that indigenous peoples had their own internal mechanisms for this purpose. The criteria were removed from the document.

Discussion of the Draft Declaration

Some government delegations spoke of the need to initiate discussion of the content or substantive aspects of the Draft Declaration. This proved impossible, since discussion of the work plan lasted six months (September 2000 to February 2001), occupying most of the time available and a large number of meetings.

Four preparatory meetings were held after the work plan was approved. Two were devoted to discussion of the draft notice of convocation, the list of those invited, and the agenda for the special meeting. The other two, at which the content of the Draft Declaration was considered and analyzed, were attended by experts on the topics. Speakers at these meetings were Dr. Osvaldo Kreimer of the IACHR, who gave an analysis of the original Proposed Declaration, and Dr. James Anaya, professor of international law and an expert on the rights of indigenous peoples at the Indian Law Resource Center, who gave a lecture and debated substantive issues relating to the Draft Declaration with government representatives. The Chair, with the collaboration of the IACHR, prepared document GT/DADIN/doc.1 rev. 2, which in addition to member state proposals, contained the comments of the indigenous representatives made at the November 1999 Working Group meeting. That document was adopted by the Working Group and served as a basis for discussion at the Special Meeting.

Election of the Vice Chair

At the last preparatory meeting, Minister Antonio García, Alternate Representative of Peru, was elected Vice Chair of the Working Group.

Outside Activities of the Chair

The Chair attended the Hemispheric Caucus of Representatives of Indigenous Peoples of the Americas, held in Guatemala City from January 24 to 26, 2001. This was convened by Guatemala's Presidential Commission to Coordinate Executive Policy on Human Rights (COPREDH) and by the Central American Indian Council (CICA). The event's report and preliminary conclusions were given to the Working Group members during the preparatory meetings for the special meeting. Those documents are contained in Appendix IV to this report (GT/DADIN/doc.18/01 rev. 1).

The Chair also attended the Indigenous Peoples Summit of the Americas, held in Ottawa, Canada, from March 28 to 31, 2001. This summit was convened by the Assembly of First Nations (AFN) of Canada. The event's conclusions were presented during the special meeting by the National Chief of the AFN, Mr. Matthew Coon Come. They are provided in Appendix V to this report.

The Chair's participation in these activities was funded entirely by the Government of Guatemala as a contribution to the work of the Group, and was not of an institutional nature. During these meetings, the Chair had the opportunity to exchange ideas with the indigenous representatives of the Hemisphere on matters within their purview. This exercise was significant, since it allowed the

Chair to take into consideration the concerns of the indigenous representatives on a number of subjects and convey them to the members of the Working Group.

For the Chair, these two activities represented not only an important point of encounter among indigenous representatives of the Hemisphere but also an opportunity to address doubts and concerns about the special meeting and exchange ideas on their participation.

The Chair is very pleased to note that both meetings helped to facilitate dialogue among member states and representatives of indigenous peoples and allowed indigenous representatives to reach a basic level of consensus during the special meeting. The Organization should bear this in mind and evaluate the possibility of promoting activities of this nature through its specialized agencies.

III. Special Meeting

1. Convocation

The holding of the Special Meeting of the Working Group was approved in the Working Group at its meeting of February 6, 2001 (GT/DADIN/doc.6/00 rev. 5) [see Appendix IV] and a few days later it received the consent of the Permanent Council which resolved, through resolution CP/RES. 785 (1266/01):

“1. To convene a special meeting of the Working Group to continue to consider the Proposed American Declaration on the Rights of Indigenous Populations.

2. To set April 2 to 6, 2001 as the date for holding the special meeting of the Working Group at OAS headquarters.”

2. Agenda

The draft work schedule was considered at the Working Group meeting of March 23, 2001. It contains the following agenda (see Appendix V):

- I. Presentation of working procedure
- II. Consideration of the operative section: scope of application and definitions
- III: Human rights
- IV. Cultural development
- V. Right to organize and political rights
- VI. Social, economic, and property rights
- VII. General provisions
- VIII. Other matters/general conclusions

3. Proceedings

a. Opening session

The opening session was held on April 2, 2001, in the Hall of the Americas at OAS headquarters. In attendance were the Secretary General of the Organization, César Gaviria; the Chair of the Permanent Council, Ambassador Humberto de la Calle; the Chair of the Committee on Juridical and Political Affairs, Ambassador Margarita Escobar; the Chair of the Working Group, Ambassador Ronalth Ochaeta Argueta; and a representative of the indigenous peoples, Dr. Margarita Gutiérrez Romero, President of ANIPA (National Indigenous Assembly), Mexico.

Each of these officials spoke at the opening session. The speeches given by the Secretary General of the Organization, César Gaviria; the Permanent Representative of Guatemala to the OAS and Chair of the Working Group, Ambassador Ronalth Ochaeta Argueta; and the representative of the indigenous peoples, Dr. Margarita Gutiérrez, are provided in Appendix I.

At the conclusion of the opening session, the national delegations were invited to join the indigenous representatives in a three-hour dialogue period, for which meeting rooms at OAS headquarters were provided.

b. Participants

The delegations of the member states of the OAS were composed of representatives sent by the foreign ministries and diplomats from the missions. Also present were members of the permanent observer missions to the OAS (France, Spain, Portugal, and Russia). The meeting was also attended by about 83 representatives of different indigenous peoples.

The list of participants at the special meeting is provided in document GT/DADIN/doc.21/01 rev. 2.

c. Informal dialogue of delegations

The first plenary work session enabled the delegations to address general topics. The task of presiding over the Working Group was shared with a Co-Chair representing the indigenous peoples, Aucan Huilcaman of Chile's *Consejo de Todas las Tierras Mapuches* (Council of All Mapuche Lands).

The Chair proposed focusing on examination of the conclusions and recommendations of the Hemispheric Caucus, held in Guatemala, the report of the Indigenous Peoples Summit of the Americas, held in Ottawa, and the proposals on mechanisms for participation. However, the indigenous representatives proposed the following order of business, which was ultimately adopted unanimously:

1. Comments on the report of the Chair from 1999;
2. Indigenous participation;
 - Report of the Caucus in Guatemala and its findings;
 - Explanations on participation in this special meeting, including means of financial support;
3. Methodology of the Special Meeting: some concerns about consensus and background documents.

A text on details of the informal dialogue is provided in Appendix III. The Chair emphasized that this was a highly positive forum and applauded the openness of the government and indigenous representatives present. Unfortunately, however, not all the governmental delegations participated in this dialogue.

d. Working procedure

The working procedure to be used during the special meeting was approved by the Working Group at its meeting of February 6, 2001. To that end, the content of the proposed 2000-2001 Work Plan was noted (GT/DADIN/doc.6/00 rev. 5.) (Appendix IV).

The Working Group Chair felt that the procedure followed during the November 1999 meeting should serve as the basis for the special meeting. It is also advisable to embrace some aspects of the request issued by representatives of indigenous organizations, so as to foster participation by these groups in the discussion of a subject that directly affects them. The procedure proposed by the Chair of the Working Group and approved by the member states is as follows:

- a. There is a background document that includes the remarks made during the meeting of November 1999. That document should be used as a guide for the discussions;
- b. The document contains two types of text:
 - Text on which consensus has been reached;
 - Text on which consensus has not been reached, enclosed in square brackets.
- c. Discussion of the document will be based on points of disagreement. Articles already agreed upon will not be discussed.
- d. Discussion will proceed chapter by chapter, according to their sequence. Government representatives will be invited to speak during the discussion of each article. Representatives of indigenous populations will intervene at the start of the discussion of each chapter and will present, in writing, alternative drafts of any articles they might wish to amend, so that their proposals may be included in the debate among states and, if considered appropriate, incorporated into the texts in question.
- e. So as to avoid the fragmentation of discussions, representatives of governments and of indigenous populations will be asked to make their statements specific and to focus on clearly defined proposals. As the consideration of each article concludes, text upon which consensus has been reached will be read aloud. If any points of disagreement remain, these will be indicated.

- f. As the discussion of each chapter concludes, the representatives of indigenous populations will be offered the floor for any comments on points arising during the discussion of each article. During discussion of the articles, representatives of indigenous populations may intervene only when clarification of specific points is required.

4. Consideration of the Draft Declaration

Tuesday, April 3 (morning session)

Scope of Application and Definitions

The Chair proposed changing the order of business so that the work session would begin with discussion of changing the term “populations” to “peoples” in the title of the Draft Declaration and hence throughout the declaration. This change was considered necessary in view of precedents embracing the use of this term, such as the United Nations Regional Preparatory Meeting for the Americas on the preparations for the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, the final document of the Summit of the Americas held in Santiago, Chile, and the meetings to prepare for the Summit of the Americas to be held in Quebec City. The comments of the states and the indigenous representatives on this proposal were presented.

The proposal received the backing of most of the member states (Venezuela, Peru, Ecuador, Mexico, Colombia, Honduras, United States, Canada, Guatemala, Brazil, Panama, and Argentina). Argentina clarified that the meaning of the term “peoples” should not be disconnected from its definition; hence, the title and the definition in the text should be linked. Mexico noted that the term should be defined.

The Chair established that there was consensus on changing the term in the title. The change was adopted. The title should now read Draft Declaration on the Rights of Indigenous Peoples.

Indigenous Representatives

The indigenous representatives expressed appreciation for the change in the title. They then presented their arguments against provisions defining the concepts “people,” “self-determination,” and “territory.” According to Dr. Littlechild of the International Organization of Indigenous Resources Development, on the one hand, international law does not provide definitions for the terms in question; on the other, any attempt to define them is considered an act of discrimination. These arguments are supported by resolutions of the United Nations Commission on Human Rights. Ms. Nimiana Pasa, indigenous representative of Argentina, expressed her agreement, noting that such a definition would have the effect of restricting rights. Dr. Hector Huerta, indigenous representative of Panama, supported the use of the term without any definition. Ms. Victoria Wright of the National Congress of American Indians expressed dissatisfaction with the version contained in the Draft Declaration with respect to the document presented by her organization in 1999 and requested that this report appropriately reflect the definitions of “indigenous peoples” and “self-determination.” Ms. Jean La Rose, Amerindian Peoples Association, stated that the definition of “peoples” was the exclusive province of the indigenous peoples. On behalf of the CARICOM countries, she referred to the instruments signed by member states of that organization on the use of the term “indigenous

peoples.” Mr. Antonio Vargas, indigenous representative of Ecuador (CONAIE), referred to the recognition of the term “peoples” by the national legal systems. Ms. Mirna Cunningham, indigenous representative of Nicaragua, presented the historical considerations and specific criteria meeting those cited by a number of writers to define the use of the term “people” (such as ancestral lands, development of their own culture according to their cosmovision, reliance on their own resources etc). She also referred to the Nicaraguan legal system (constitution of 1995 and Statute of Autonomy of the Peoples of the Atlantic Coast). She concluded by stating her view that the use of the term “peoples” would contribute to greater consistency with international law. Mr. Tomás Alarcón, indigenous representative of Peru, stated that the terms should not be delimited in a declaration such as this, since it should serve as a framework providing the greatest latitude for the states to make their decisions without encumbrance. He proposed that this part of the Draft Declaration be omitted. Lastly, Mr. Aucan Huilcaman, indigenous representative of Chile, noted that the use of the term “peoples” is a non-negotiable principle that has been enshrined in the constitutional and legal provisions of several states of the Americas. It is a concept tied to self-determination. It is not a legal definition but a practice of indigenous peoples. He concluded by noting that the term is now used less frequently than in the initial draft.

The States

Peru: Presented a summary of national legislation and its proximity to international instruments in other systems. Peru is a signatory of Convention No. 169 and, pursuant to that Convention has carried out consultations and devised institutional policies and structures to foster dialogue and participation in this field. Peru had been very active at the U.N. It supported the use of the term “peoples”, as well as the right to self-determination, both of which had been recognized by the Peruvian Constitution.

Guatemala: Would prefer to see a definition accepted by the indigenous peoples, since the idea was to find an application of the term that benefited them, rather than one that was imposed on them. Certainly, Guatemala was in favor of looking for a term for which there is a consensus regarding its inclusion in the Draft Declaration so as to encourage uniform usage. It could be an element of a definition.

Mexico: The Mexican delegate considered that a definition was needed, given the importance of incorporating a legal framework. He said this was a Declaration that sought to establish standards and rules capable of inducing States to pass laws. Accordingly, an effort should be made to find a definition that acknowledged the specific identity of the beneficiaries. It was also a matter of recognizing rights, in a Declaration that first addresses States. It would be unacceptable for a definition to curtail rights.

Brazil: The Brazilian government supported the creation of a legal instrument with which to promote and safeguard the rights of indigenous peoples. It was necessary to embrace fundamental definitions in collaboration with the indigenous peoples for the purpose of defending and protecting common interests, all of which required a basic set of benchmarks.

Argentina: Considered that a frame of reference was not just necessary for governments, but also because of the importance of the subject matter. The idea was not to impose but to work on the basis of consensus. The Delegation’s stance on the use of the word “peoples” was based on the Santiago Summit and coincided with Article 1, paragraph 3, of Convention No. 169, which was

included in the draft to be presented at the Summit of the Americas in Quebec. Argentina stressed the need for a clear definition, one that did not require any explanatory note.

Venezuela: The delegate said that Venezuela's Bolivarian constitution was written by way of a constitutional process involving comprehensive, probing discussions held in an open forum. The discussions involved every sector of Venezuelan society, and in that context the rights of indigenous peoples were fully recognized. In its constitution, Venezuela uses the term "indigenous peoples" despite the opposition of some sectors to this recognition. Indigenous rights were enshrined in our basic charter as a result of the discussions, and in this the leading role taken by indigenous representatives was vital. We might also mention that the national consensus resulted in guaranteed political participation for indigenous people through representation in the National Assembly and in the policy-making bodies of federal and local jurisdictions having indigenous constituencies."

United States: The U.S. agreed with delegates' comments regarding efforts to arrive at definitions aimed at consensus-building. It accepted the use of the terms "peoples" and "internal self-determination" in the context of this draft Declaration. In Practice, this means the right to negotiate political status within the national framework and the right to autonomy in internal affairs, as well as the capacity to exercise certain collective rights that are normally not acknowledged to be group rights.

Canada: Was not convinced of the need for definitions, because if a definition were restrictive it could exclude certain groups. There should be a relation between documents adopted at the OAS and those adopted at the United Nations. Moreover, national institutions had to be taken into account. Canada suggested the need to analyze topics and principles, especially self-identification of peoples and community acceptance.

Ecuador: Cited Ecuador's Constitution as an example of progress and had no objection to including definitions that served to characterize, not restrict.

Panama: Rather than look for an all-encompassing definition, it would be better to seek general principles to put to the indigenous representatives. The notion of "peoples" implied the concept of self-determination, autonomy, and other collective rights.

Paraguay: Cited examples from national legislation and referred to advances made. Paraguay was in favor of including definitions on basic principles, such as the terms "peoples" and "self-determination." Definitions should be found if the meeting was to make progress and move on to substantive matters.

Colombia: The delegate said that what was needed was a broad legal and constitutional framework to serve as a benchmark.

The Chair: Offered the floor to Dr. Osvaldo Kreimer to address the topic.

Osvaldo Kreimer (Lawyer from the Executive Secretariat of the Inter-American Commission): The Commission did not define "indigenous," since it was incumbent on the domestic law of each state to do so. The limitation concerning implications of the use of the term "peoples" appearing in paragraph 3 of Article I and in Convention 169 makes clear that its use did not have any implications in terms of external self-determination. That was reinforced in Articles 25 and 26 of the

Draft Declaration. In summary, two points should be distinguished: the first corresponded to the restriction that might be made regarding the term “people,” and the second had to do with the definition of the term “indigenous.”

Mexico: The delegate proposed that the dialogue be kept open, with representatives allowed to comment on whether that definition covered all points.

The Chair: Indicated that it was apparent that the states were all speaking the same language, since the self-determination of peoples was respected. However, it was necessary to refer to the principles that would guide that recognition. On the basis of the Mexican proposal, it was suggested that a working group be established, consisting of government delegates and indigenous representatives from the four regions (North America, Central America, South America, and the Caribbean) to discuss the matter and work on a general framework of principles. He asked the States and indigenous representatives to consider this proposal.

Indigenous Representatives

The indigenous representatives did not think it was appropriate to include a definition and asked for sufficient time to consider the question within the group. Mr. Marcial Colín, indigenous representative of Chile, reiterated the position against a definition since it was exclusive. Likewise, he insisted that said definition was absent from international law. Mr. Aucan Huilcaman, indigenous representative of Chile, said that it was necessary to examine the principle of self-determination. He was opposed to any definition because it was clearly discriminatory and he considered that no process should be initiated that might pose a risk for the future. Dr. Willie Littlechild, International Organization of Indigenous Resource Development, noted that some concepts were discriminatory in various indigenous languages in view of the diversity of definitions. Mr. Brooklyn Rivera, indigenous representative of Nicaragua, shared the notion that the Meeting should move forward on the basis of a consensus and called for an inclusive definition that would prevent a narrow scope of application.

The States

Belize: The delegate requested that the Meeting work constructively. It was clear that definitions posed problems. However, the special context of the people concerned must be taken into account. It was important to be familiar with the scope of application of the Declaration. It was not only a matter of refuting any negative connotation. Consequently, definitions should be sought that included the concepts deemed important by the peoples.

Venezuela: The delegate reiterated that the process of establishing definitions should be endorsed, not as an exclusive course of action but as something necessary in the context of recognizing rights. It was proposed that representatives meet to build consensus and move forward on the basis of consensus.

The Chair: The Chair thanked the indigenous delegations and representatives for their candid and constructive discussion. He asked them to meet and to present their position during the afternoon session.

Tuesday, April 3 (afternoon session)

In response to the proposal by the Chair, the indigenous delegates presented their position in writing. In it they “*suggest proceeding with the discussion of other important matters and later on taking up the problem of whether a definition is needed, delving into the various arguments at that point if appropriate. The discussion of the scope of the draft declaration calls for clarification regarding the holders of the collective rights to which it refers. Therefore, in addition to the use of the term ‘indigenous peoples,’ discussion of a preliminary framework of principles is essential, since it will help to establish clearly the contributions to which we indigenous peoples are referring in the context of this process.*”

The Chair: Lauded the positive approach taken by the indigenous representatives and requested the delegates to present their views.

The States

Brazil: Proposed accepting the suggestion of the indigenous representatives and continuing with analysis of the next chapter.

Mexico: Wished to clarify its view on this point. It considered it essential to clarify concepts so that the rights established in the draft can be exercised. Mexico believed thought should be given to concepts that are not intended to define or to set a time limit on a definition. In this context, it proposed a possible solution: identifying the characteristics of the parties who will benefit from the application of the Declaration.

Panama: Welcomed the conciliatory position taken by the representatives of indigenous peoples. It insisted on the need to establish a prior framework of principles that will allow the group to be characterized rather than defined. In terms of identification of the beneficiary, considered this to be present now in the title of the Draft Declaration. Finally, it referred to the first preambular section under “recognizing.”

The Chair: In keeping with the positions stated, and in the interest of guiding the dialogue, he called attention to Article. I of the Draft Declaration in the original version, which refers to the scope of application, without discussing definitions.

Colombia: Considered it necessary to define the basic concepts at the outset, since in the case of Colombia linguistic imprecision has caused certain problems. Respectfully requested that discussions begin with the definitions so that a clear understanding of what is being discussed may be reached.

United States: Felt that the purpose of terminology is to facilitate comprehension. The proposal made by the representatives seemed positive. However, questioned the need for the Declaration to determine who is a group or an indigenous people.

Guatemala: Proposed identification of certain essential elements without the need for a formal definition, such as “self-determination” and “acceptance.”

Brazil, Argentina, and Peru: Saw no problem with deciding later on the consideration of this section.

The Chair: Stated that he felt there was agreement on the need to continue advancing in the dialogue and to return later to Section 1. By way of summary, he noted that the proposal by the Mexican delegation seeks a scope of applicability without necessarily defining. Also retained is the idea of organizing a *petit comité* to decide whether to opt for a definition and/or seek elements that would enter into a scope of application (following the suggestions of Canada, Mexico, Guatemala, and Panama). Finally, requested that the proposal on human rights be taken up at that point, postponing discussion of Section 1 until later.

Section II. Human Rights

Indigenous Representatives

Héctor Huertas, indigenous representative of Panama: Noted Panamanian law's recognition of the collective rights of peoples and the consequences in terms of self-determination, development, and their use of and rights to their resources. In relation to Article II (2), suggested broadening the concept of individual human rights by adding "the rights of indigenous peoples." In terms of Article II (3), noted a contradiction between international and national law, and that national law prevails. Therefore, proposed the following text:

"The states shall guarantee to all indigenous peoples the full exercise of their rights and, in keeping with their domestic systems, shall adopt the necessary constitutional, legislative, and other measures to ensure the effective exercise of the rights recognized in this declaration."

Finally, the representative considered it important to include the right of self-determination as an inalienable right of peoples.

Mirna Cunningham, indigenous representative of Nicaragua: Agreed on the need to include the right of self-determination, as well as a reference to the individual and collective rights of peoples.

Marcelo Calfuquier, indigenous representative of Argentina: Proposed that the matter of self-determination be addressed in this section and proposed adopting, in Art. II of the draft, the proposal of the National Congress of American Indians presented in 1999.

Victoria Wright, National Congress of American Indians: Noted that collective rights have been recognized by the United Nations. In her written proposal, she requested that the following definition relating to the concept of self-determination be added to Article II: "Indigenous peoples have the collective and individual right to maintain and develop their particular identities and characteristics, as well as the right to identify themselves as indigenous and be recognized as such" and "Indigenous peoples have the right of self-determination. By virtue of that right, they freely define their own political situation and freely pursue their economic, social, and cultural development."

Marcial Colín, indigenous representative of Chile: Requested that the translators use the term "libre determinación" rather than "auto determinación" in Spanish.

The States

Guatemala: Has doubts regarding the title of the second section.

Article II (1) should remain unchanged.

Article II (2) should be changed, since collective rights cannot be recognized on the basis of individual rights.

Article II (3) should not refer to the Constitution “in keeping with their constitutional provisions,” since this reference is redundant.

Brazil:

Article II (1): Sees no problem with the reference to other international instruments.

Article II (2) presents no problems for Brazil, since collective rights have been recognized by its domestic law (such as freedom of belief and the right of indigenous communities). Therefore, it has no problem with these rights.

Article II (3): The reference to constitutional provisions could be deleted, in the understanding that naturally the legislation will respect the constitutional provisions.

Peru: Endorsed the proposal by Guatemala on Article II (3).

Ecuador: Opposed changing Article II (3), since it considers it important to maintain adherence to the Constitution.

Costa Rica: Supported the proposal of Guatemala on Article II (3), but would have no objection to leaving it as is.

Mexico: Insisted on the need to define terms in order to proceed with discussion of the rest of the draft.

As for the title, suggested calling this section “Fundamental Human Rights of Indigenous Peoples.”

Article II (1) could refer to the ILO’s Convention No. 169, whether or not the OAS member states have ratified it.

Article II (3) should not refer to constitutional provisions, since this requires sizeable amendments. A moderate approach would be “in keeping with their fundamental constitutional principles.” However, a reference to national constitutions should be retained, since in certain legal or social contexts a court could not recognize their rights.

Panama: Agreed with changing the title of the section.

Article II (1): Proposed adding “as well as fundamental indigenous rights” after “and other international instruments.”

Article II (3): Replace “in keeping with their constitutional provisions” with “in keeping with their domestic systems, shall adopt the necessary legislative and other measures to ensure the effective exercise of the rights recognized in this declaration.”

Finally, felt that self-determination should be included, as well as the right to territory.

Chile: Agreed with the change in the title, since the subject is the fundamental rights of indigenous peoples. Also felt that the text of paragraphs 1 and 3 poses no problems and should be left as is.

Canada: The change in the title should be made later.

Article II (1) should not refer to instruments necessarily, since not all the countries are parties to them.

Article II (2): Suggested clarifying the difference between individual and collective rights, since a number of collective rights have been recognized in Canada, such as fishing and hunting rights. In this sense, collective rights that are considered essential should be defined.

Article II (3) should not set forth an obligation, since this is a declaration, an expression of aspirations, not a convention.

Colombia: Favored considering the change in the title at the conclusion of this section's examination. Regarding Art. II (1), supported Canada's position that references to international instruments should be avoided. Requested that the other two paragraphs be left as they are.

United States: Seeks more precise and proactive wording for the draft overall.

Article II (1): Emphasis should be placed on the importance of preventing individual and collective rights from obstructing one another--individual rights should not be lost in collective rights.

Article II (2): The second paragraph proposed by the United States in 1999 can be withdrawn in favor of the original paragraph.

Article II (3): Considering the comments made by Canada on the aspirational nature of the Draft Declaration, proposed withdrawing the proposal introduced by the United States in 1999 in paragraphs 3 and 4 and, in the English version, changing the modal auxiliary verb from *shall* to *should* in paragraph 3.

Finally, supported including the concept of "internal self-determination" and the standing to negotiate their domestic statutes within the national framework. This definition has been included as a new paragraph in Article II in the second section of the Draft Declaration, paragraph 4.

"Indigenous peoples have the internal right to self-determination. By virtue of that right, they may negotiate their political status within the framework of the existing nation-state and are free to pursue their economic, social and cultural development. Indigenous peoples, in exercising their right of internal self-determination, have the internal right to autonomy or self-government in matters relating to their local affairs, including determination of membership, culture, language, religion, education, information, media, health, housing, employment, social welfare, maintenance of community safety, family relations, economics activities, lands and resources management, environment and entry by non-members, as well as ways and means for financing these autonomous functions."

The Chair: To summarize, he indicated that note has been taken of the following proposals:

- Concerning the title of Section II, the delegation of Guatemala proposed a change, and this proposal was supported by most of the states. However, the delegation of Canada proposed that the change be postponed. Consequently, the new title proposed by Mexico and Peru has been added in square brackets.
- Regarding Article II (1), the consensus is not to mention certain international instruments that have not been signed or ratified by the member states; for this reason, references to the instruments in question have been placed in square brackets.
- Concerning Article II (2), the consensus is to keep the original paragraph, but better wording is hoped for. In this connection, Guatemala offered to draft a new article that addresses the comments on the three paragraphs.

- Finally, it must be noted that Canada, the United States, and Guatemala supported inclusion of the right of self-determination. Therefore, the definition of this right proposed by Guatemala and the United States has been included in Article II (4).

Mexico: Supported Guatemala, but considers it necessary to draft a new paragraph recognizing the right of self-determination, or to include it in “Section One: Definitions,” since it is not clearly specified in this section.

Ecuador: Requested that Article II (1) remain as is, since the enumeration of international instruments is customary within the OAS; however in Article II (3), everything that relates to constitutional provisions should be placed in square brackets.

Venezuela: Supported the proposal of Mexico on the title “Fundamental Rights of Indigenous Peoples.” Concerning Article II (3), it favored keeping the reference to the States’ constitutional and legislative systems in the text.

Brazil: Suggested that Article II (3) remain as is. The square brackets proposed by Ecuador should not be used.

Chile: Did not understand the discussion, since commitments must be approved under constitutional procedures. The phrase “in keeping with constitutional provisions” should be retained.

United States: Agreed with the Guatemalan delegate and believed that the text “in keeping with constitutional provisions” was unnecessary.

Colombia: Considered it important to retain the wording referring to adherence to the constitution.

Costa Rica: Considered the phrase unnecessary, but would have no problem with keeping it.

Canada: Concerning the expression “in keeping with its constitutional provisions,” did not want an unnecessary limitation in Article II (3), since Article XXVI provides special protection for the “sovereign equality, territorial integrity and political independence of states.”

The Chair: Requested the indigenous representatives to present their positions the following day on the topics discussed.

Wednesday, April 4 (morning session)

The Chair asked the representatives of indigenous peoples to make final comments on the proposals put forward by the governments with respect to Article II.

Indigenous Representatives

Héctor Huerta, indigenous representative of Panama: Welcomed the adoption of the term “peoples.” He requested a more continuous and direct debate to explore the concepts concerned in greater depth. He also suggested the participation of an indigenous representative in the drafting of the report of the Chair.

Victoria Wright, National Congress of American Indians: Asked for more time to discuss the contents of Article II. Nevertheless, she expressed the following views:

With regard to Article II.1, she concurred with the original text of the Inter-American Commission on Human Rights. However, she would like to add some instruments on the environment to the list of international instruments. As for Article II (3), Dr. Wright considered that the reference to the Constitution was redundant, but did not object to leaving it in to the extent that the Constitution is applied. She said the right to self-determination was considered pertinent and fundamental for the free exercise of rights. To that end, she suggested inserting a new paragraph after paragraph 2, moving down paragraph 3. In this context, she mentioned the United Nations Human Rights Committee, as well as the reports of the IACHR of the OAS, which refer to the self-determination of peoples. Finally, in response to government concerns regarding the right to self-determination, she suggested considering the protections provided for in both Article XXVI and I (2) of the Draft Declaration. In short, the right to self-determination must be included unreservedly and without amendments.

Mirna Cunningham, indigenous representative of Nicaragua: Suggested the following amendments:

Title: Basic Human Rights of Indigenous Peoples

Article II.1. International instruments on the environment such as the Convention on Biological Diversity, Agenda 21 of the United Nations and the Declaration of Rio de Janeiro should be included. The phrase “oportunidad de ejercerlos efectivamente” [effective enjoyment] should be inserted after the phrase “del pleno goce de los derechos humanos fundamentales” [full observance of fundamental human rights].

Article II.2. The following text is suggested:

“Indigenous peoples have the collective rights that are indispensable for their survival, welfare, and development as peoples, and for the exercise of the individual rights of their members. Accordingly, the states shall recognize, observe, and protect the fundamental civil, political, economic, social, spiritual, and cultural rights of the indigenous peoples and, *inter alia*, the collective rights to lands, territories, and resources, and the right of indigenous peoples to self-determination.”

Article II.3. The following text is suggested:

“The states shall ensure all indigenous peoples the full exercise of their rights, and shall adopt, with the participation and informed consent of the indigenous peoples, and in accordance with their constitutional processes, such legislative or other measures as may be necessary to give effect to the rights recognized in this Declaration.”

Article II.4. Finally, Ms. Cunningham proposed incorporating a new paragraph on the right to self-determination that reads as follows:

“The indigenous peoples are entitled to self-determination. By virtue of that right, they shall freely determine their political status and freely pursue their economic, social, spiritual, and cultural development.”

Willie Littlechild, International Organization of Indigenous Resources Development: Suggested including the word “spiritual” in Article II.2.

Aucan Huilcaman, indigenous representative of Chile: Considered that the phrase “in accordance with their constitutional processes” in Article II.3 was redundant. Moreover, there was no such reference in other international instruments. Finally, he requested that the right to self-determination be included in Section II on human rights, bearing in mind the stance taken by Canada and the United States.

Marcelo Calfuquir, indigenous representative of Chile: Suggested that the collective rights of peoples who are in different States be dealt with in Article II.2.

Indigenous representative of Peru: Said mention should be made of the right of peoples not to depend on organizations such as trade unions to defend their rights. Their collective rights needed to be understood as a prerogative of peoples.

The States

Guatemala: Submitted a new proposal regarding Article II.

To prevent collective rights from being curtailed, the collective rights inherent in their status as peoples, including the right to self-determination and the right to development, must be provided for in Article II.1.

Article II.2: Adopted the proposal made by the United States in 1999.

Article II.3: Defined the scope of recognized rights.

This section covers the right to self-determination. To that end, a new paragraph was added with the definition proposed by Guatemala.

Guatemala’s proposal on Article II reads:

1. Indigenous peoples have intrinsic collective rights as a people, including the right to self-determination and to development.
2. Indigenous peoples 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 instruments, as well as essential indigenous rights; 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 which pertains to human rights (proposal of the United States).

Note: The current paragraph 2 is deleted and a separate Article on self-determination is added.

3. The precise scope of the individual and collective rights acknowledged in this Declaration must be developed in the national legal systems and in international instruments to that end.

Argentina: The Delegate for Argentina took a preliminary stand, pending consultations with the Argentine government. The delegate said it was difficult to work without clear definitions of the fundamental concepts. As for the third paragraph proposed by Guatemala, Argentina considered that it should be the other way around because in no negotiations can national laws come before international laws.

Brazil: The delegate said the proposal was being evaluated. On the one hand, Brazil had not expected the right to self-determination to be transferred to this section, given that in Brazil such rights are considered to be political rights. On the other hand, Brazil feels there is indeed a need to protect the individual rights of indigenous peoples and collective property.

Ecuador: The delegate of Ecuador had doubts about the implications of the right to self-determination, as it was not recognized under Ecuadorian law. Said a chapter making clear distinction was needed.

Guatemala: In reply to the concerns expressed by Argentina and Ecuador, the delegate for Guatemala explained that the object of this exercise was to acknowledge the already recognized rights of peoples. The scope and significance of those rights would be defined in due course in a Convention or whenever required in national legislation.

The lack of domestic laws should not hinder progress.

Mexico: The Mexican Delegate agreed with Argentina on the need to make headway with a set of definitions. In Mexico, self-determination is construed as conducting internal affairs in a way compatible with the integrity of States and not the reverse. The Mexican Government would have to be consulted regarding Guatemala's proposal.

Colombia and Honduras: Said more profound analysis was needed, along with time to consult their respective governments and develop clear definitions.

Canada: The Canadian delegation said this text had to be studied and that time was needed for internal consultations with its government and with the indigenous peoples. Furthermore, the delegation considered that a new section, rather than the addition of new words, was needed. Collective and individual rights had to be considered. With respect to the wording, uniformity with UN texts should be sought.

Peru: The Peruvian delegation suggested adding the words "individual and collective" to the title "Full Observance ofHuman Rights."

Panama: The Panamanian delegation congratulated the OAS on its efforts and said it understood the States' concern regarding definitions. Nevertheless, this should not be an obstacle to progress.

Nicaragua: The Nicaraguan delegate urged participants to address this issue from a global, rather than an isolated, perspective given the major repercussions of a project of this magnitude.

United States: The United States proposed an amendment to Article II.1 of the Guatemalan proposal. The phrase “including their right to self-determination and right to development” should be deleted.

Venezuela: The Venezuelan delegation welcomed the idea of creating a glossary of terms.

The Chair: The Chair thanked the delegation of Guatemala for its proposal and said it would be included in the document. With respect to the desire expressed by some delegates to discuss definitions, the Chair insisted on the agreement to continue analyzing the other sections, leaving the discussion of definitions until the end.

Guatemala: The Guatemalan delegate explained that the lack of agreed-upon definitions should not preclude a continuation of the debate.

Wednesday, April 4 (afternoon session)

The Chair: Continued analysis of Articles III and IV was proposed.

Indigenous Representatives

Brooklyn Rivera, indigenous representative of Nicaragua: Urged the States to make further progress and, in response to the position of the delegate of Nicaragua, believed it was necessary to emphasize that ensuring the right of self-determination could be effective in combating poverty.

Serafín Thaayrohyadí Bermúdez, indigenous representative of Mexico: In regard to Article III, the representative proposed that actual political-administrative structures and institutions be established as a means of guaranteeing the inalienable right of persons to constitute themselves as peoples.

The Chair: Explained that such rights are included in Article XIV of the section regarding Organizational and Political Rights (Section IV).

The States

Mexico: With regard to Article III, an explanation was requested from the IACHR attorney on the right to belong, the validity of this right, and its implementation.

Oswaldo Kreimer (IACHR): Indicated that the Commission’s intention was to respect two principles whose inclusion was of concern to indigenous populations, namely: the possibility of self-identification and recognition from their peers. In practice, the role of the State is to ensure that, in the process of identification, principles of due process and of indigenous law are respected.

Brazil: Indicated that Article III fails to consider certain important practical aspects, particularly the actual practice of identification. In the case of Brazil, there is a law that establishes three criteria that have been respected by the indigenous representatives regarding membership: precolonial origin of the person; whether the individual considers himself as such; and whether the individual is identified as such by the community.

United States: Questions were raised regarding the original text of Article III, in regard to the meaning; it is therefore proposed that an addendum follow the first paragraph, which should read: “States should recognize the authority of indigenous peoples to exercise autonomy in determining membership, consistent with international human rights.” Suggested that the 1999 United States proposal be eliminated. (The chair noted the presence of an Indian chief on the U.S. delegation during this presentation).

Mexico: Mexico restated its concern and indicated that something more should be added to Article III, establishing more clearly the role of the State and how groups can be identified. This provision should be contemplated, particularly, in countries where there has been a greater degree of mixing of peoples, making it more difficult to establish membership in a given group. It therefore called attention to the need to consider practical criteria.

Chile: Chile felt that language was needed that clarifies the idea of this article, since it appears that what is being enshrined is the right of the respective peoples to accept or reject an individual or community, which would be contrary to the principle of self-determination. It requested that the Secretariat explain who would be the beneficiaries of this language.

Ecuador: Requested including the following phrase after “indigenous peoples”: “who define themselves as nationalities with ancestral roots.”

Colombia: Colombia maintained that the term should be specified and proposed the following text to replace Article III: “Indigenous persons and communities have the right to belong to pre-Columbian indigenous peoples from which are descendents by their practice and customs.”

Peru: Clarification of the article is necessary. There should be reference to the right of individual and collective self-identification; thus, the following text was proposed:

“States should ensure that the right of self-identification as an indigenous person—individually or collectively—is respected, in accordance with the respective institutions of each indigenous people.”

Indigenous Representatives

Aucán Huilcaman, indigenous representative of Chile: This article should be more specific: tradition and customs are not sufficient. There are non-indigenous criteria that need to be considered and should therefore be strengthened. The sense of belonging should also be strengthened.

Mirna Cunningham, indigenous representative of Nicaragua: The following amendment is proposed: “Indigenous peoples, in accordance with their legal standards, customs and traditions, have the right and the authority to determine their own membership.”

Willie Littlechild, International Organization of Indigenous Resource Development: A new proposal was presented:

“Indigenous individuals and peoples have the right to belong to an indigenous nation or community, according to the traditions and customs of the relevant nation or community. No disadvantage may accrue from the exercise of this right.”

The States

Mexico: Mexico underscored the importance of characterizing the beneficiaries of the Draft, which should not attempt to be comprehensive in a manner that offers a guide to national authorities.

The Chair: Requested a specific proposal from the Mexico delegation.

Brazil: Stated that this delegation respects the opinion of the peoples who express the need for self-definition.

Panama: Article III should allude to traditions and customs. A new proposal is presented: Indigenous peoples, according to their legal standards and indigenous customs, have the right and the authority to determine their own membership and shall, according to these criteria, define the membership of individuals and communities.”

Panama considered that Article IV should be more categorical and broader. It proposed the following alternative:

“States shall recognize the juridical personality of indigenous peoples, respecting their forms of organization, decision-making venues, traditional authorities, and forms of governance, pursuant to the administration of justice within the framework of indigenous law.”

Argentina: In regard to Article IV, requested maintaining the proposal of Brazil, Chile, and Argentina that appears in the Draft Declaration.

Chile: Regarding Article IV, indicated the need for a simple redaction to accord rights holders juridical personality. It therefore supported the language proposed by Chile, Brazil, and Argentina at the 1999 meeting.

Guatemala: Guatemala supported Panama’s proposal regarding Article III and in reference to Article IV. It also endorsed the proposal of the Mexico delegation to develop a definition.

Venezuela: Venezuela proposed a new draft of Article IV, to read:

“States shall recognize the existence of indigenous peoples and communities, their social, political and economic organization, their cultures, practices and customs, their languages and their religions, in accordance with the characteristics of the respective laws.”

Colombia: Colombia abstained from expressing an opinion regarding juridical personality, since domestic laws on this matter already exist.

The Chair: The Chair read the proposals related to the two articles analyzed. With regard to Article III, he indicated that proposals had been obtained from the United States, Ecuador, Peru, Colombia, and Panama, as well as from indigenous representatives. At the same time, proposals

regarding Article IV had been received from Venezuela, the United States, Chile, Argentina, Guatemala, and Panama. Next, the Chair invited participants to examine Articles V and VI.

Indigenous Representatives

Willie Littlechild, International Organization of Indigenous Resource Development: Cited a model that combines Article V (1) (2):

“The States shall not take any action which forces indigenous peoples to assimilate and shall not endorse any theory, or engage in any practice, that imports discrimination, destruction of a culture or the possibility of the extermination or limits the membership of peoples concerned.”

The States

United States: The U.S. requested that paragraph 1 of Article V, proposed by the U.S. in 1999, be withdrawn, since the text of the current paragraph is adequate. However, it suggests that the phrase “mandatory and involuntary” be added to the end of the original paragraph.

Mexico: Mexico considered that the provisions being drafted are fundamental. It suggested adding to the title, “Rejection of forced or coercive assimilation.” With regard to paragraph 1 of Article V, it supported the proposal by the United States. As regards paragraph 2 of Article V, it insisted that the objective is for States to abstain from supporting or implementing policies of forced or coercive assimilation. Lastly, in regard to Article VI (1), it requested an explanation from Dr. Kreimer on the concept of guarantees in this context, and not simply in the context of human rights.

Oswaldo Kreimer (IACHR): Indicated that the intention to introduce the concept of a guarantee allows for greater protection, given that it involves mechanisms that are not necessarily part of the machinery of the State, i.e., third parties.

Chile: Chile supported Mexico’s proposal on using “forced” in the title of Article V, and for the same reason proposed eliminating such reference in paragraph 1 (which should read up to the word “aspects”) and leaving it in paragraph 2, since the principal idea is the rejection of forced assimilation. Finally, it questioned the use of the term “extermination” in this paragraph, since it construes the term to allude to grave situations against persons.

Oswaldo Kreimer (IACHR): With regard to the absence of the term “forced,” Mr. Kreimer explained that, in his view, any assimilation is forced. He also considered that this qualifier could increase the burden on potential victims to present legal proof. In regard to the term “extermination,” it is noted that, in this instance, the term refers primarily to the policy of the State, not to cultural and/or physical extermination.

Brazil: Brazil considered that the current paragraph 2 of Article V does not cover the possibility that members of society may adopt policies contrary to the welfare of indigenous communities. It therefore presented the following proposal to replace the original text:

“The States shall guarantee peoples against any policy, measures, or acts that involve artificial or forced assimilation of a culture or that involve any possibility of the extermination of a people.”

United States: The U.S. maintained its position regarding paragraph 1 of Article V. In regard to paragraph 2 of Article V, it requested that the term “artificial” be changed in the English version in favor of something more appropriate.

Mexico: Mexico supported the proposal of Chile and the United States, since paragraph 1 of Article V should express the right to maintain cultural identity, while paragraph 2 requires that the States abstain from formulating policies against this.

Colombia: Colombia considered that the title should conform to the Mexican proposal. In relation to paragraph 2, it considers that the proposal presented by Paraguay in 1999 best represents the position of its country.

Chile and Venezuela: Supported the statements of Colombia regarding paragraph 2 of Article V, in relation to acceptance of Paraguay’s 1999 proposal.

Canada: Canada considered paragraph 1 of Article V to be a right, while paragraph 2 must consolidate the effect of the intention. There may therefore be merit in establishing a distinction between cultural and physical extermination.

Ecuador: Ecuador supported the proposal of including the term “forced” in the title.

Brazil: Brazil considered that its proposal is more inclusive than that of the indigenous representative, Mr. Littlechild, since in the latter, only the States, and not individuals, would be held responsible. It added the possibility of making use of the terms expressed in Paraguay’s 1999 proposal.

The Chair: The Chair requested the preparation of a single text that brings together the proposals of Brazil and of the indigenous representative.

Indigenous Representatives

Aucan Huilcaman, indigenous representative of Chile: “Forced” need not be included in Article V, as there are other forms of assimilation that are not expressly mentioned, but that nevertheless exist.

Marcelo Califuquir, indigenous representative of Chile: Supported the position of Huilcaman, and made reference to the case of Chile, where certain situations exist that could be considered assimilation.

Miriam Miranda, indigenous representative of Honduras: Requested that the term “extermination” be included in paragraph 2.

Mirna Cunningham, indigenous representative of Nicaragua: Proposed a new formulation of Article V:

“Indigenous peoples 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.

They therefore have, *inter alia*, 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; and
- e. Any type of propaganda directed against them.”

She therefore supported the principles and language of Article VI, and emphasized the need for special protections of indigenous rights, in order to ensure their existence. Special guarantees are needed to remedy historical discrimination. She therefore proposed that the text be modified as follows: “special anti-discriminatory measures.” Thus, the article should read:

“The States shall take measures, including the application of civil and criminal sanctions to ensure that indigenous peoples do not suffer acts of discrimination.

Indigenous peoples should have the right to special anti-discriminatory measures, which may have to be instituted in order that they may fully benefit from nationally and internationally recognized human rights.

Special attention shall be given to discrimination against indigenous youth and women.

Indigenous peoples have the right to participate fully in consenting to the design and implementation of such special measures.”

Serafín Thaayrohyadí Bermúdez, indigenous representative of Mexico: Proposed that “xenophobia and racism” be incorporated in the title of Article VI.

United States: The U.S. appreciated the efforts toward progress. In regard to Article VI, it proposed that certain texts be combined, including the proposals formulated in 1999, with a view to consolidating texts.

Thursday, April 5, 2001 (morning session)

The Chair: The Chair begged pardon for the late start of the session, due to a meeting with the member states to reply to some concerns, and transmitted their message on the positive character of the discussion. The Chair then gave the floor to the indigenous representatives for a discussion of Articles V and VI.

Indigenous Representatives

Brooklyn Rivera, indigenous representative of Nicaragua: Thanked the Chair for the fruitful dialogue that had been held. Regarding Articles V and VI, he supported the NCAI proposal read by Dr. Mirna Cunningham the day before.

Marcial Colín, indigenous representative of Panama: Felt it was important to clarify that indigenous representatives were present at this event in order to provide better information on some matters. He did not agree with the use of the adjective “forced” in Article V, as there were many ways to assimilate that were not necessarily forced. Hence he suggested that the original text be kept without any adjective.

Eduardo Nieva, indigenous representative of Argentina: Asked that the meeting move forward with the special guarantees so that genuine guarantees could be provided for the full exercise of all rights. Assimilation was regarded as a cause of ethnocide, not extermination.

Terry Jenis, Indian Law Resource Center: Was of the view that the discussion of Articles V and VI had produced a very positive exchange. He said it should be stated that the rights referred to in them related to important realities. Finally, he noted the interest of the states in combating discrimination. In this regard he noted his concern about the notions of genocide and cultural ethnocide, which were matters connected with these two articles, as were the notions of culture, land, population transfer, assimilation, etc.

The States

Guatemala: On Article V, thought it was necessary to keep both the title and paragraphs 1 and 2 in their original versions because assimilation had taken many forms in the recent history of the countries.

Chile: Considered that in each country assimilation evolved in light of the historical relationship between the government and the indigenous peoples. Chilean legislation was taking cognizance of the rights of indigenous peoples. The law proposed a commitment to put an end to assimilation. It was hence suggested that Article V be as brief as possible and worded in positive terms without going into negative aspects. Finally, a clarification was made on the advanced state of the legislation to protect against assimilation on Easter Island, which had been cited and criticized the day before by the Mapuche representative.

Panama: Supported the view of Guatemala in favor of keeping the original title and wording of paragraph 1, but wished to replace the text of paragraph 2 with the following:

“The States shall not adopt, support or favor any policy of assimilation that implies any possibility of destruction of the culture of an indigenous people.”

Brazil: Considered that the text presented the day before on Article V.2 stood in the way of policies conducive to assimilation initiated by different sectors of society, and supported the view expressed by Chile the day before that paragraph 1 should be couched in positive terms.

Venezuela: It was necessary to identify the importance of the duty of government to protect indigenous peoples, and it was therefore proposed that paragraph 2 be divided into two parts:

“Government, in conjunction with the entire society, must oppose any exogenous initiative that implies any possibility of artificial assimilation or leads to the extermination of indigenous cultures.”

Mexico: A distinction should be drawn between the need for protection against assimilation and its isolation to avoid the blocking of some fundamental guarantees.

Nicaragua: Globalization was so important that it was necessary to be aware of its positive effects. Television had to be regarded as an important instrument for the dissemination of ideas.

Colombia: As pointed out the day before, the title must include the term “forced.” On paragraph 1 the proposal of Chile was favored, and on paragraph 2 that of Paraguay.

Brazil: While it agreed with the delegation of Nicaragua on technological development in our time, it was opposed to the idea of television as a source of artificial assimilation.

Canada: Supported the words of the delegate of Brazil, as every attempt at assimilation must be safeguarded against.

Chile: Was of the view that some points had been settled and must not be put into question. There should be agreement on the common language of integration with respect for cultural differences and specificity.

Note of the Chair: At the close of the session, the delegation of the United States circulated a new version of Article V.1.2, which was been incorporated into the final version of the Draft Declaration. This proposal reads as follows:

- “1. Indigenous peoples have the right to freely maintain, express, and develop all aspects of their cultural identity.
2. Governments shall neither support nor adopt any policy for the involuntary assimilation of indigenous peoples, the destruction of their cultures or their eradication as distinct entities.”

Thursday April 5, 2001 (afternoon session)

As explained on the first day, the Chair allowed the Chief of the First Nations of Canada, Matthew Coon Come, to open the session and give a presentation on the implementation of the Indigenous Summit of the Americas.

Mathew Coon Come, Chief of the First Nations, Canada: Expressed his gratitude for the invitation to the event and presented the Conclusions of the Indigenous Summit of the Americas held from March 28 to 31 2001, in Ottawa, Canada. The conclusions there adopted were produced by the

efforts of the indigenous representatives of the Hemisphere, and would be presented by the Prime Minister of Canada at the Summit of the Americas to be held in Quebec City, Canada.

The Chair: The Chair thanked Chief Coon Come and said that the document presented would be included in the Report of the Chair (see Annex VIII). The session then formally opened to discuss Article V.2.

It should be noted that there was a failed attempt to combine various versions of paragraph 2, which prompted the Chair to decide that the proposals would be considered in their original versions as presented separately.

Canada: Preferred that the wording of paragraph 2, Article V, be retained, but with addition after the word “policy” of the following phrase: “that has as its intended effect.” The resulting text would read:

“The states shall not undertake, support or favor any policy that has as its intended effect the [artificial or] forced assimilation of indigenous peoples [destruction of a culture or possibly the extermination of any indigenous people].” It is also proposed that the concept of genocide be included in a different section, and the following language is proposed: “Indigenous peoples have the right not to be subjected to any kind of genocide as defined in international law.”

Mexico: Proposed that the text be made more specific by adding a reference to cultural heritage.

Note of the Chair: Both Canada and the United States submitted in writing their respective proposals on Article VI.

The United States proposal should read:

“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. Indigenous peoples have the right to full participation in the prescription and exercise of such guarantees. All rights and freedoms herein are equally guaranteed to indigenous women, men, and children. States recognize that violence based on immutable characteristics impedes and undermines the exercise of those rights.”

The Canadian proposal should read:

“1. Indigenous peoples have the right to be protected from discrimination. The states are encouraged to take special measures against discrimination as needed for the full enjoyment of internationally and nationally recognized human rights, and all measures needed to enable indigenous women, men, and children to exercise their civil, political, economic, social, cultural and spiritual rights.

2. The indigenous peoples must be consulted on the prescription of that protection.”

Section Three: Cultural Development

The States

Panama: Thought the article too restrictive, because it was not enough to refer to historical and archeological heritage. The following wording was proposed:

1. “Indigenous peoples have the right to their cultural integrity, which is intimately tied to their view of the world and ancestral wisdom and with their spiritual relationship with nature for their survival and continuity into the future.

2. The States recognize and respect the forms of social, economic, and political life, customs, traditions, forms of social and institutional organization, practices, beliefs, values, view of the world, art, dance, music, and languages.”

United States: Requested that paragraph 1 of Article VII as proposed in 1999 be withdrawn and the original in brackets be retained. Explained that the relations of the U.S.A. with its indigenous peoples were based on respect for their roles as governments that had existed before the arrival of the Europeans. The indigenous identity sprang from the land, the territory, and its members. In short, cultural preservation depended on many elements.

Colombia: Proposed the following wording for paragraph 1 of Article VII:

“Indigenous peoples have the right to their cultural identity and to the development thereof, which are important to their survival and for the identity to their members.”

Thought paragraph 2 should be removed and the wording of the initial proposal for paragraph 3 accepted.

Brazil: On the original wording of paragraph 2, Article VII, the delegate found that the subject of restitution must be analyzed at length. The use of titles to ownership should be established and the type of property referred defined. Proposed that all text in brackets be eliminated and that the sentence end with the word “compensation.” The proposed text would then read:

“Indigenous peoples are entitled to the restitution of property of which they have been dispossessed, or, when that is not possible, to compensation.”

Hence it is accepted that the reference be to domestic and not to international law, as there is no established practice in this area. With this proposal Brazil dissociated itself from the proposal for elimination of this paragraph proposed in 1999.

Chile: Suggested that Article VII.1 reflect a more current vision of the different peoples in keeping with the new acceptance of diversity. This paragraph should read as follows:

“Indigenous peoples have the right to their cultural integrity and to their historical, archeological and cultural heritage, which are important both for their survival and for the identify of their members, and for the enrichment of their own States.”

Regarding paragraph 3 of Article VII, it was regarded as unnecessary to refer to clothing because the States recognized and respected the indigenous lifestyles, customs, traditions, and forms of organization, all of which were aspects broader than that of dress. Replacement of the word “lengua” with “idioma” was also proposed. This paragraph would then read:

“The states recognize [and respect] indigenous lifestyles, customs, traditions, forms of social organization, institutions, practices, beliefs, values, views of the world, and languages (idiomas).”

Mexico: In response to Brazil’s suggestion to eliminate its paragraph 2 from 1999, it proposed to favor a reference to domestic law instead of international law. It should be specified that indigenous peoples are entitled to the enjoyment of their own heritage, and it is therefore proposed that the language suggested in 1999 by Mexico be retained, with the addition of: “...on the basis of the domestic provisions of the States.” Paragraph 2 of Article VII would then read:

“Indigenous peoples have the right to own their heritage and to restitution if they have been dispossessed of it, on the basis of the domestic provisions of the States.”

Venezuela: Felt that the Mexican proposal imposed time limits and opens the way for ambiguities. Here the delegate leaned toward the Brazilian proposal. The States had received a historical legacy, for it was not the national States that had destroyed indigenous peoples. Accordingly, he decided that the original wording of paragraph 2 should be retained, and insisted on the importance of the national legislations.

Peru: Rather than propose wordings, the delegation referred to the views framed by the three preceding delegations. In relation to paragraph 1, the delegation was of the view that under international law the peoples were entitled to their own identities. He found reasonable the Chilean position against the emphasis on the past, but did not think it necessary to introduce more descriptive elements such as the allusion to architecture, because enumerations raise the danger of omissions. Finally, the delegation proposed that the language used be general to cover all aspects.

Regarding Article VII.2 he found with Brazil that there was no objection to compensation, for the idea was to avoid reference to international law. However, such an obstacle should not be imposed, for in some situations references to international law could be constructive.

On the subject of paragraph 3, it was felt that the wording was correct and that the reference to clothing should not be removed. He respectfully asked the Chilean delegate for consent to leave that reference in because of the important implications of clothing.

In regard to the intervention of the delegation of Venezuela, the delegate felt it was necessary to stick to the legal and not the historical analysis, because in many societies of the Americas the greatest dispossessions had taken place under the independent republics and not in colonial times. In consequence, the delegate was of the view that the treatment of time in paragraph 2 was appropriate.

Argentina: Supported the proposal of Brazil on Article VII.2.

Panama: Proposed new wordings. Paragraph 1 of Article VII should read as follows:

“Indigenous peoples have the right to their cultural identity, which is intimately tied to their view of the world and ancestral wisdom and to their spiritual relationship with nature for their survival and continuity into the future.”

He also proposed that references to music and dance be introduced into paragraph 3 and agreed with Chile that the term “idioma” be used for “language” in Spanish.

Canada: Recognized the principles underlying this article. Regarding Article VII, paragraph 2, the delegate agreed with Venezuela on future acts while recognizing that past acts should facilitate restitution. There should certainly be two parts. In line with this, the following proposal was submitted:

1. “Indigenous peoples are entitled to pursue their own cultural development and to enjoy their own culture, both of which are important for their survival and for the identity of their members.
2. The States must make every possible effort to facilitate, in accordance with domestic and international law, restitution to indigenous peoples of all cultural property of which they have been unjustly dispossessed. [When this is not possible, indigenous peoples are entitled to compensation on a basis no less favorable than the standard recognized by international law.]
Indigenous peoples have the right to resort to legal proceedings for the restitution of their cultural property of which they have been dispossessed in violation of law.
3. The States must respect the lifestyles, customs, traditions, forms of social, economic and political organization, institutions, practices, beliefs and values, dress and languages of indigenous peoples.”

The Chair: The delegation of Chile has consented to the retention of the term “dress” for the sake of consensus, which is appreciated.

Paraguay: Introduced the terms “usages and customs” to the enumeration in Article VII.3, which was expressly seconded by Ecuador, Panama, Peru, and Guatemala.

Panama: Suggested a change in the Spanish version from “*vestimenta*” to “*vestuario*” owing to the pejorative sense of the former term.

United States: For the sake of achieving consensus the delegate suggested combining the proposal made in 1999 with the first paragraph as modified by the States.

The Chair: Observed that there appeared to be consensus on Article VII.3. However, at the end of the session Canada introduced a new paragraph in writing.

Indigenous Representatives

Marcial Colín, indigenous representative of Chile: Clarified some points:

Article VII.1 The delegate agreed that the right of peoples to cultural integrity is imperative for survival.

Article VII.2 He criticized the proposal to delete it.

Article VII.3 He said it raises no problems for anyone.

Marcelo Calfuquir, indigenous representative of Chile: To preserve the spirit of paragraph 1 in relation to survival, Article VII, paragraph 2 should be retained.

Willie Littlechild, International Organization of Indigenous Resource Development: Article VII.3 should pose no problems, having been written into several domestic laws. He remarked the importance of dress in indigenous daily life and the need to distinguish between “*vestuario*” and “*vestimenta*.” In short, he urged that the original article be retained and the brackets be removed, but the phrase “use of” should be eliminated from paragraph 3.

Serafin Thaayrohyadí Bermúdez, indigenous representative of Mexico: In the absence of a reference to self-determination, an obligation to respect the historical heritage should be included. In regard to restitution, this respect should be required in international law so as to avoid situations of discrimination.

Miriam Miranda, indigenous representative of Honduras: Attached importance to the relationship of culture to nature and the environment. In Honduras a particular leaf is required to build a ceremonial structure, but these leaves are under environmental protection and taking them is a prosecutable offense, which strains relations between the indigenous population, society and the State.

Tarcila Rivera, indigenous representative of Peru: Proposed inclusion of the following language in Article VII.1:

“Indigenous peoples have the right to their cultural integrity, to their living heritage and to their ceremonial centers, which are important for their continued existence and the identity and dignity of their members.”

Margarita Gutiérrez, indigenous representative of Mexico: Archeology is a dead subject and all references to it should be kept out. Article VII.2 should include a reference to international standards regarding restitution.

Paulo Celso Oliveira Pancararu, indigenous representative of Brazil: Article VII.3 should retain the reference to international standards because national legislation was sometimes unable to solve the problems associated with restitution. He related the experience of the indigenous organizations in Amazonia at an exhibition of artifacts of Brazilian indigenous peoples held in Manaus by foreign organizers. The objects belonging to persons who had passed away could not be returned to the heirs because the domestic legislation included no provision to that effect.

He supported a minor modification of Article VII, paragraph 1, which would make it read as follows:

“Indigenous peoples have a right to their own cultural identity and to their own historical and archeological heritage.”

He proposed the modification of paragraph 2 to read as follows:

“Indigenous peoples are entitled to the restitution of property of which they have been dispossessed.”

Finally, paragraph 3 should read:

“The States shall recognize and respect indigenous lifestyles, customs, forms of social, economic and political organization, institutions, practices, beliefs and values, use of dress, and languages.”

The Chair: Said there appeared to be a rapprochement between the views of the delegates of the governments and the representatives of indigenous peoples, and undertook to present a clean copy of the revised Article VII. He explained that the purpose of making clean copies of the articles was to seek convergence among the positions of the delegates and the representatives of the indigenous peoples rather than acceptance. Finally, he invited the OAS delegates and the indigenous representatives to a press conference to be held at midday.

Friday, April 6, 2001 (morning session)

Argentina: Requested that the Chair incorporate a document containing the specifications in Section One, Article I (1) and (2) of the Draft Declaration.

Venezuela: Stated that the purpose of the Special Meeting of the Working Group was to make signification progress in the consideration of the Draft American Convention on the Rights of Indigenous Peoples, and that this was done, in fulfillment of resolution AG/RES. 1708 (XXX-O/00). Venezuela proposed that the Chair highlight the need to begin a preliminary phase of putting together basic terminology to guide the discussions of the State representatives and facilitate consideration of the indigenous claims voiced by the representatives invited to the Special Meeting.

The Chair: Took note of the proposals made and asked that the meeting proceed with the analysis of Article VII (3), which had begun the previous day. He indicated that at the April 3rd session, it was decided not to discuss Section One for now.

Honduras: Suggested to the US that it change the verb tense in the second part of Article VII (2) to put the verb into the future (shall), instead of the conditional (should); the US accepted the proposal.

The Chair: Asked the US if the terms “languages” and “dialects” could be replaced by “languages” (“idiomas” in Spanish), to maintain consistency with the first part. The US consented.

Panama: Agreed with the Chair’s proposal to substitute “languages and dialects” with “languages” (“idiomas” in Spanish). Asked Canada if it would be possible to incorporate “social, economic, and political organization” into the first part of Article VII (2). Finally, requested that the brackets be removed from the text.

Colombia: Welcomed the consensus proposals relative to Article VII, paragraph 3, and noted for the record the position of the Colombian delegation on Article VII, paragraphs 1 and 2. Requested that the report of the Chair note for the record Colombia’s proposal to eliminate paragraph 2.

Peru: Requested that Canada and the US put together wording that incorporates all the positive elements mentioned.

United States: Agreed to change “languages and dialects” to “languages” (“idiomas” in Spanish).

Canada: Accepted the language in the first paragraph, but questioned the definition of the verb to “recognize” and therefore asked that it be left in brackets.

Ecuador: Suggested that the term “ancestral” be added before “languages” at the end of Article VII, paragraph 1.

Panama: Tried to respond to Canada’s question about the meaning of the verb to “recognize” and urged the indigenous representatives to help provide an explanation. However, Panama understood that the brackets requested by Canada had to remain, to respect the constitutional system in that country, despite Colombia’s position to eliminate them.

Honduras: Suggested that the order be changed to put “world views” at the start of the list.

The Chair: Expressed appreciation for the cooperation. The following agreed-upon text was adopted for Article VII (3):

“The states [will recognize]* and respect indigenous ways of life, world views, usages and customs, traditions, forms of social, economic, and political organization, institutions, practices, beliefs, values, dress, art, dance, music, and languages (Chile, Panama, Ecuador, Peru, Guatemala, and Colombia). *Canada requests that “will recognize” be placed in square brackets.

The states should respect and take the necessary measures to protect peoples against discrimination based on ways of life, customs, traditions, forms of social organization, clothing, language, or other indigenous cultural practices.”

United States: Requested that its written proposals on this and other articles be attached to the Final Report.

Venezuela: Reiterated this delegation’s concern about the need to incorporate its proposal on definitions.

The Chair: Took note of the expressions of appreciation of the various delegations for the positive participation of the indigenous representatives and the OAS delegates, the General Secretariat, and the Chair.

5. Closing Session

This session was attended by the Assistant Secretary General, Ambassador Luigi Einaudi. The Chair informed those assembled that the preliminary meeting with government representatives that had been scheduled to take place before the closing session had to be canceled due to time

constraints. The Chair then indicated that his Final Report was only a preliminary version; he therefore took the liberty of providing a brief explanation of the content of the various chapters that will make up the report, using the Table of Contents of the Report as a basis. Regarding the Draft Declaration, he reported that all the proposals received on Articles II, III, IV, V, VI, and VII would be incorporated into the third revision (rev.3). Proposals on articles that were not discussed will be included in Appendix II of the report. The Chair stressed that formal discussions covered only Sections Two and Three of the Draft Declaration, not Section One, and recalled that at the second working meeting, it was decided to skip directly to Section Two. The Chair then read the preliminary conclusions and recommendations from the Special Meeting, which are included in this section 6 of this report.

Following the Chair's presentation, the Assistant Secretary General, Ambassador Luigi Einaudi, took the floor and he was pleased and grateful to be able to participate in the closing session with the Working Group. He expressed regret for not having been able to participate in the deliberations, since he was abroad on a mission. He thanked the Chair for his work and paid tribute to the representatives who took part in formal and informal discussions on a paramount topic in the Hemisphere. He mentioned topics that were discussed at the meetings, with the full participation of all and, in that regard, mentioned the important step taken in changing the word "populations" to "peoples" in the title of the Draft Declaration. Finally, he indicated that progress had been made in the discussions towards preparing a Declaration on the Rights of Indigenous Peoples that will not only reflect the ideas of the government representatives, but also those of indigenous peoples in the Hemisphere.

Several delegations took the floor to thank the Chair for convening the Special Meeting, which had opened up a sphere for open, frank dialogue of mutual respect between the representatives of the member states and the representatives of the indigenous peoples. They congratulated the Chair for the discussions held over the course of the week. They also expressed their support for the recommendations presented by the Chair, particularly regarding the establishment of a Voluntary Fund to facilitate attendance by indigenous peoples at future meetings, making them more representative. They agreed that the Working Group's mandate had to be extended until an inter-American instrument on the rights of indigenous peoples was passed. Likewise, they stressed the importance of having more homogenous knowledge of indigenous issues and, to that end, recommended that a technical workshop be held, with national experts, which may make it possible to advance more quickly on the matter. Delegations also thanked the indigenous representatives for their participation and contribution to a positive, constructive dialogue and wished them a pleasant return to their countries. The delegations concluded that significant progress had been made and thanked all those who collaborated on what they called an "historic" event. In particular, they expressed their appreciation to Dr. Osvaldo Kreimer, an attorney with the Inter-American Commission on Human Rights, who has played an important role from the outset of the process, particularly in the progress made to date, and they congratulated him on his enormous dedication to the issue. The Delegation of Mexico requested that it be noted for the record that the Mexican government was committed to the negotiations and to concluding this Declaration and renewing the mandate of the Group for as long as necessary to reach a Declaration that satisfies both parties. It also reiterated its support for the establishment of the Voluntary Fund, to which that government will try to make a contribution.

The Chair, in turn, thanked the member states for the flexibility they showed during the dialogue. He was also pleased that a formula had been reached within the Organization that allows

for participation by indigenous representatives in the dialogue. He expressed hope that the confidence building here will grow further to strengthen the consultation process on the potential future adoption of a declaration. Finally, he thanked his colleagues from the mission of Guatemala, Alma Gladys Cordero, Carla Aguilar, and Elsa Samayoa, and the technical personnel who assisted and contributed to the success of the event: Kelly McBride, of the Office of the Secretary General, Dr. Osvaldo Kreimer and Dr. Isabel Madariaga of the IACHR, and Alfredo Forti (independent advisor). He also expressed appreciation to the legal advisor from the Department of International Law of the Secretariat for Legal Affairs, Dr. Luis Toro, for his valuable support and advice during the preparatory meetings and at the Special Meeting; and to Henriette Lachmising, the Committee Secretary, whose patience and dedication contributed to the preparation of the different documents. He thanked and congratulated the interpreters for the cooperation and time, and stressed their professionalism, when they continued to provide their services beyond the stipulated time.

Finally, he offered the floor to the indigenous representatives. Following a traditional, ceremonial song, they expressed their satisfaction with and appreciation for participating in the event. They congratulated the Chair for the fair, balanced proceedings and positive, frank dialogue achieved. They also acknowledged the representatives of the member states who devoted their effort, commitment, and knowledge to the Special Meeting for hearing the voice of the indigenous representatives. They agreed that clear progress was made on the declaration and in the dialogue and expressed their hope that this new relationship between the government representatives and the indigenous peoples and among the peoples themselves would be maintained—since this is what made it possible to reach consensus and move forward. To that end, they expressed hope that practical consultation mechanisms would be established. They lauded the recommendation to establish a Voluntary Fund, since such a fund would facilitate increased participation by indigenous peoples. They also thanked the Secretary General of the OAS for all the arrangements made for the proceedings. Likewise they expressed appreciation to all the entities that provided financial support to help them attend, in particular the Government of Canada. They requested that the representatives of the States support the recommendations presented by the Chair and hoped that those recommendations would be implemented to make this declaration a reality very soon. Finally, they recommended that Ambassador Ochaeta continue to serve as the Chair of the Working Group.

6. Conclusions and Recommendations

General Conclusions

1. The meeting was characterized throughout by open, frank, and mutually respectful dialogue among member state delegates and representatives of indigenous peoples. Although the procedure^{1/} did limit the directness of dialogue, the exercise was positive and useful.
2. The Chair wishes to recognize the participation of member state representatives in this special meeting, which was distinguished by the presence and active participation of representatives of indigenous peoples of the Americas. This fact alone shows tangible progress in the process of dialogue and narrowing the gap between indigenous peoples and governments, under the institutional umbrella of the OAS, with the aim of finalizing the Draft Declaration.

1. The approved procedure called for indigenous representatives to participate at the beginning and end of each chapter's discussion, and not in the dialogue among states.

3. The participation by indigenous peoples was outstanding in both quantitative and qualitative terms. From the outset of the special meeting, common proposals and positions on substantive questions were in evidence, with some nuances of form. The participation was active and technically adept, showing a command of the topic and the legal issues.
4. Some of the statements by representatives of indigenous peoples led the Chair to believe that they need better information on what the Draft Declaration contains and the consultation procedure followed to date, and that this limits the contributions and the progress of deliberations.
5. Important contributions were made to the work of the special meeting by the Hemispheric Caucus of Representatives of Indigenous Peoples in Guatemala and the Indigenous Peoples Summit of the Americas in Ottawa, Canada. Both meetings gave the indigenous representatives of the Hemisphere the opportunity to meet and reflect on the discussion process and the content of the Draft Declaration.
6. In the government delegations, the Chair noted substantive differences in positions and in familiarity with the topics, which is reflected in the diversity of proposals. Also noted were different levels of technical expertise on the topics. Thought should be given to a more dynamic way of conducting discussion among member states. Some delegations brought along technical specialists, which raised the level of the discussions. Others included indigenous representatives, which reflects the progress of their inclusion and communication policies.
7. The Chair especially wishes to recognize the participation of indigenous representatives in the following government delegations: Mr. James Sappier, Former Chief, Penobscot Nation, United States; Senator Francisco Rojas Bieri, Colombia; Senator Enrique Montesuma, Panama; Dr. Marcos Huaiquilaf Gómez, Chile; Luis Eduardo Maldonado Ruíz, Ecuador, and Vilmar Guarany, Brasil.
8. The Chair noted with special concern the irregular participation of some government delegations during the work sessions. Particularly notable was the sparse attendance by government delegations at the special meeting's informal dialogue, especially since this was intended to strengthen confidence among member states and representatives of indigenous peoples.
9. The financial limitations, owing both to the Organization's Regular Fund allocation and to the impossibility of securing outside funds to enable more indigenous representatives to attend the special meeting, worked against efforts to carry out a comprehensive, participatory process of consultation between the inter-American system and indigenous peoples.
10. The time between the first and second special meetings of the Working Group allowed significant progress to be made in the discussion of certain topics. The adoption of the term "peoples" in the Draft Declaration is especially noteworthy in this regard. However, the fact that no consultation or follow-up activities were conducted between November 1999 and April 2001 weakened the momentum and eroded the degree of consensus that had been reached at the beginning.

11. The lack of participation by some specialized organizations of the system invited to attend the discussion of the Draft Declaration was noted with concern. The Inter-American Juridical Committee (CJI) and the Inter-American Indian Institute (III) were not formally represented at the special meeting.
12. The Chair viewed the role of the Inter-American Commission on Human Rights (IACHR) as positive. The Commission has not only been involved throughout the process, but has also helped to draft documents that have facilitated discussion and its specialists have actively participated in the debate.

Recommendations

1. Given the importance of the topic, the progress made, and the expectations generated, extend the mandate of the Working Group to Prepare the Draft American Declaration on the Rights of Indigenous Peoples. For that purpose, transform the Working Group into a special committee of the OAS Permanent Council, to remain so until the Declaration has been adopted.
2. Strengthen the means of participation by representatives of indigenous peoples in discussions of the Draft Declaration, taking into consideration the recommendations they made: in the Declaration of the Hemispheric Caucus of Representatives of Indigenous Peoples, Guatemala; in the Recommendations of the Indigenous Peoples Summit of the Americas, Ottawa; and at the informal session of the special meeting, Washington, D.C.
3. Promote within the member states and the Organization the holding of national and regional meetings with representatives of indigenous peoples for purposes of information, consultation, and consensus-building, so as to raise awareness of the Draft Declaration's content and arrive at a preliminary convergence of views.
4. Maintain mechanisms for fluid, ongoing follow-up on awareness of and consultation about the Draft Declaration, using alternative media such as videoconferences and the Internet.
5. Urge the countries to participate actively and continuously in the work of the Group and, as their financial and human resources allow, to assign specialists on these topics to discussions of the Draft Declaration's content.
6. Establish a voluntary fund at the OAS to channel financial resources intended to facilitate participation by representatives of indigenous peoples in discussion of the Draft Declaration.
7. Urge the specialized organizations of the system, particularly the Inter-American Commission on Human Rights (IACHR), the Inter-American Juridical Committee (CJI), and the Inter-American Indian Institute (III), to continue to support the efforts of the Working Group on an active, ongoing basis.
8. With respect to the role of the Inter-American Indian Institute (III), the Chair considers the Institute should be the natural forum for ongoing consultation with representatives of

indigenous peoples on the Draft Declaration, for which reason proceeding with its reform and restructuring is imperative.

IV. Appendices

PERMANENT COUNCIL OF THE
ORGANIZATION OF AMERICAN STATES
COMMITTEE ON JURIDICAL AND POLITICAL AFFAIRS

Working Group to Prepare the Draft American Declaration
on the Rights of Indigenous Peoples

Appendix I

OEA/Ser.K/XVI
GT/DADIN/doc.1/99 rev. 3
5 April 2001
Original: Spanish

DRAFT AMERICAN DECLARATION
ON THE RIGHTS OF INDIGENOUS PEOPLES

(Considered at the meetings held from April 2-6, 2001,
incorporating the observations and proposals of the delegations and
the representatives of indigenous peoples)

(Document presented by the Chair on April 6, 2001)

EXPLANATORY NOTE

The General Assembly, in resolution AG/RES. 1708 (XXX-O/00), requested the Permanent Council to renew the mandate of the Working Group of the Committee on Juridical and Political Affairs so that it might continue to consider the Draft American Declaration on the Rights of Indigenous Peoples and hold at least a second meeting before the thirty-first regular session of the General Assembly.

In accordance with that resolution, the Permanent Council, at its meeting of August 13, 2000, instructed the Committee on Juridical and Political Affairs (CAJP) to extend the mandate of the Working Group to Prepare the Draft American Declaration on the Rights of Indigenous Peoples. The Working Group was installed at the meeting of September 9, 2001, and elected Ambassador Ronalth Ochaeta Argueta, Permanent Representative of Guatemala, to serve as its chair.

The Working Group decided to hold a special meeting from April 2 to 6, 2001, for discussion of the content of the Draft Declaration by the member states and representatives of indigenous peoples of the Hemisphere, with a view to implementing resolution AG/RES. 1708 (XXX-O/00), enabling progress to be made in the discussion of the Draft Declaration, and making possible its adoption by the member states.

The working document for discussion at the special meeting was GT/DADIN/doc.1/99 rev. 2.

Because of the complexity of the topic, it was possible to discuss formally only the second and third sections of the Draft Declaration during the deliberations. A decision was made at the first working session not to discuss the first section for the time being. Therefore, this document reflects the proposals of the delegations and the representatives of indigenous peoples on the second and third sections, Articles II, III, IV, V, VI, and VII.

Articles not discussed and those for which amendments have been proposed are included in Addendum II to the report of the Chair.

DRAFT AMERICAN DECLARATION ON THE RIGHTS
OF INDIGENOUS PEOPLES

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

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

[Asserting that indigenous peoples are equal in dignity and rights to all other peoples, 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 indigenous peoples, and that many of their present participatory systems of decision-making and of authority contribute to improving democracies in the Americas;

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

[Recognizing that indigenous [societies] [peoples] 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 are deprived of their human rights and fundamental freedoms, both within and outside their communities, and despoiled of their lands, territories, and resources, which prevents 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 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 would focus their efforts on improving the exercise of democratic rights and providing indigenous peoples 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 of the Americas, and considering the special relationship between those peoples 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, 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 preeminence and applicability to the states and peoples of the Americas 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 nations of the Americas in securing the rights and institutions of indigenous peoples, in order to consolidate the multiplicity of cultures, ethnic groups, and languages in our societies [APPROVED AD REFERENDUM];

8. The situation of indigenous peoples 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 pertain to subheading No. 8.

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

Urging states to recognize the identity, culture, and interests of indigenous peoples and their communities and to 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; [AGREED AD REFERENDUM]

Recognizing the severe poverty in which many indigenous peoples 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 access to social services by indigenous people and their societies;

DECLARE:

SECTION ONE

DEFINITIONS

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

Article I. “Indigenous peoples^{1/}” 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; regulatory systems; practices and customs; and social, economic, cultural, and political institutions; and whose members consider themselves to be part of that indigenous culture. (Chair)

-
1. For their part, several representatives of indigenous populations indicated that it would not be appropriate for states to define the concept of “indigenous peoples,” 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.

“Indigenous peoples” 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; regulatory systems; or social, economic, cultural, and political institutions or a part thereof; and who self-identify and are recognized as members of that indigenous culture. (Mexico)

The use of the term “peoples” 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”^{1/} is understood to mean the ability of indigenous peoples 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. (Chair)

a. *“Self-determination” is understood to mean the ability of indigenous peoples to develop and freely 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 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)

-
1. 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.

b. This framework of autonomy or self-government finds legal expression in areas and at levels where indigenous peoples, in accordance with national law, exercise their forms of political, economic, social, and cultural organization. (Chair)

Article III

“Territory”^{1/} is understood to mean the entire habitat, including the lands on which indigenous peoples are settled or which they enjoy in some fashion, in the manner established under national law.

“Lands” is understood to mean the entire habitat in which indigenous peoples are settled or which they enjoy in some fashion, in the manner established under national law. (Peru, Argentina)

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

“Territories” is understood to mean 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^{2/}

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

SECTION TWO. HUMAN RIGHTS

Article II. Full observance of human rights [“Fundamental human rights of indigenous peoples”–Mexico] [*Full observance of “individual and collective” human rights–Peru*] [*Fundamental human rights of indigenous peoples*] (Mirna Cunnigham, Victoria Wright)

-
- 1 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.
 - 2 The representatives of indigenous populations also called upon governments to include in their domestic law the three concepts discussed in this section, that is, “peoples,” “territory,” and “self-determination,” recognizing thereby the diversity of these communities.

1. Indigenous peoples 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 which pertains to human rights.

1. Indigenous individuals are entitled to the full and effective enjoyment of human rights and fundamental freedoms recognized in the OAS Charter, 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 action not in accordance with the relevant instruments of international law, including human rights law. (United States)

1. Indigenous peoples 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 instruments, as well as essential indigenous rights; 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 which pertains to human rights. (Panama)

1. Indigenous individuals are entitled to the full and effective enjoyment of human rights and fundamental freedoms, and the opportunity to exercise them effectively, recognized in the OAS Charter, the American Declaration of the Rights and Duties of Man, the American Convention on Human Rights, the Convention on Biological Diversity, the U.N.'s Agenda 21, the Declaration of Rio de Janeiro, 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 principles of international law, including human rights law. (Mirna Cunningham and Victoria Wright)

2. Indigenous peoples 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, *inter alia*, to collective action; (to their social, political, and economic organization;) (to recognition of their regulatory systems;) to their own cultures; to profess and practice their spiritual beliefs, and to use their languages.

[2. “Indigenous peoples have the collective rights that are indispensable for their continued existence, well-being, and development as peoples, and for the enjoyment of the individual rights of their members. Accordingly, the states will recognize, respect, and protect the fundamental, civil, political, economic, social, spiritual, and cultural rights of indigenous peoples and, *inter alia*, their collective right to lands, territories, and resources, and the right of indigenous peoples to self-determination.” (Mirna Cunningham and Victoria Wright)]

3. The states shall guarantee all indigenous peoples 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). (Ecuador, Colombia, Chile, Mexico, and Venezuela prefer to keep the reference to consitutional provisions; Canada, and the United States prefer not to include it.)

[3. *The states shall guarantee all indigenous peoples the full exercise of their rights, and shall adopt—in accordance with their domestic systems—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). (Panama)]*

[3. *“States shall therefore recognize the basic social, economic, political, and cultural [and spiritual] rights of indigenous peoples, and, in particular, the collective right to lands, territories, and resources, and the right of indigenous peoples to self-determination.” (Marcelo Calfuquir requested that the 1999 proposal by the National Congress of American Indians be retained; Willie Littlechild asked that the word “spiritual” be included.)*

[3. *The states shall guarantee all indigenous peoples 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. (Héctor Huertas)]*

[3. *“The states shall guarantee indigenous peoples the full exercise of all their rights and shall adopt—with the participation and informed consent of indigenous peoples and in accordance with their constitutional procedures—such legislative or other measures as may be necessary to give effect to the rights recognized in this Declaration.” (Mirna Cunningham and Victoria Wright)*

4. Definition of the term “self-determination”

[4. *Indigenous peoples, like all peoples, have the right of self-determination, and are therefore entitled to freely determine their political status and pursue their economic, social, and cultural development.*

This right exists within the states, and in this connection agreement should be reached on levels of decentralization and autonomy that will ensure their political, economic, social, and cultural development as peoples.

To enable the right of self-determination of peoples to be exercised, states should have a political and legal system that provides for the establishment, by agreement, of levels of decentralization and autonomy.

When necessary, constitutional, legal, and administrative reform should be promoted within the states to ensure the effective exercise of the right of self-determination of peoples. (Guatemala)

[Indigenous peoples have the internal right to self-determination. By virtue of that right, they may negotiate their political status within the framework of the existing nation-state and are free to pursue their economic, social, and cultural development. Indigenous peoples, in exercising their right of internal self-determination, have the internal right to autonomy or self-government in matters relating to their local affairs, including determination of membership, culture, language, religion, education, information, media, health, housing, employment, social welfare, maintenance of community safety, family relations, economic activities, lands and resources management, environment, and entry by nonmembers, as well as ways and means of financing these autonomous functions. (United States)].

[4. *“Indigenous peoples have the collective and individual right to maintain and develop their distinct identities and characteristics, including the right to identify themselves as indigenous and to be recognized as such. 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.” (Mirna Cunningham and Victoria Wright)] *It should be noted that Ms. Wright asked that this definition be placed after paragraph 2.*

Article III. Right to belong to indigenous peoples

Indigenous persons and communities have the right to belong to indigenous peoples, in accordance with the traditions and customs of the peoples concerned.

Indigenous persons and communities have the right to belong to indigenous peoples, in accordance with the traditions and customs of the peoples concerned. States should recognize the authority of indigenous people to exercise autonomy in determining membership, consistent with international human rights. (United States)

Indigenous persons and communities have the right to belong to pre-Columbian indigenous peoples from which they are descended, in accordance with traditions and customs. (Colombia)

States should ensure respect for the individual or collective right to identify oneself as indigenous, according to the institutions of each indigenous people (Peru).

Indigenous persons and communities who define themselves as nationalities with ancestral roots have the right to belong to indigenous peoples, in accordance with the traditions and customs of the peoples concerned. (Ecuador)

Indigenous peoples, in accordance with their rules of law and indigenous customs, have the right and authority to determine their own membership and, accordingly, shall define the membership of individuals and communities. (Panama)

Indigenous peoples, in accordance with their rules of law, customs, and traditions, have the right and authority to determine their own membership. (Mirna Cunningham)

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

Article IV. Legal status

Indigenous peoples have the right to have their legal status fully recognized by the states within the legal systems of the states.

States shall recognize the legal status of indigenous peoples, respecting their forms of organization, decision-making institutions, traditional authorities, and forms of self-government, in accordance with the administration of justice in the framework of indigenous law. (Panama, Guatemala)

States shall recognize the existence of indigenous peoples and communities, their social, political, and economic organization, and their cultures, practices, customs, languages, and religions, in accordance with the particular law of each state. (Venezuela)

States should provide the necessary mechanisms to recognize the legal status of indigenous peoples, enabling such societies to operate corporately, or in other comparably effective manners, under state law. (United States)

Subject to the specific provisions of each country's law, states shall ensure that legal status is granted to indigenous peoples, communities, and organizations. (This 1999 proposal by Brazil, Chile, and Argentina was endorsed by Chile and Argentina.)

Article V. Rejection of [forced or involuntary assimilation (Mexico, Chile, U.S., Colombia, and Ecuador)] The delegation of Guatemala would like the title to remain without a modifier and the rest of the article to remain as presented in the original document.

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

1. *Indigenous peoples have the right to freely maintain, express, and develop all aspects of their cultural identity. (Chile, seconded by Colombia)*

1. *Indigenous peoples have the right to freely maintain, express, and develop all aspects of their cultural identity. (United States)*

1. *“The states shall not take any action which forces indigenous peoples to assimilate and shall not endorse any theory, or engage in any practice, that imports discrimination, destruction of a culture or the possibility of the extermination or limits the membership of peoples concerned.” (Willie Littlechild)*

1. *“Indigenous peoples have the collective and individual right to maintain and develop their distinct identities and characteristics, including the right to identify themselves as indigenous and to be recognized as such.” (Mirna Cunningham)*

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

The states shall not undertake, support, or favor any policy with the intended effect of [artificial or] enforced assimilation of indigenous peoples [, destruction of a culture, or the possibility of the extermination of any indigenous peoples.] (Canada). The delegation of Canada

proposes that a separate article be incorporated in the text to deal with the issue of genocide. The following language is proposed: “Indigenous peoples have the right not to be subjected to any section of genocide as defined at international law.” (Canada)

2. The states shall not support or pursue any policy of involuntary assimilation of indigenous peoples, destruction of their cultures, or their eradication as distinct entities. (United States)

2. States shall not adopt, support, or favor any policy of assimilation that could lead to the destruction of an indigenous people. (Panama)

2. States shall refrain from adopting any measure that would result in the forced assimilation of indigenous peoples 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 or the destruction of an indigenous culture, and shall guarantee the effective exercise of this right. [This 1999 proposal by Paraguay was endorsed by Colombia and Chile.]

2. States, together with all of society, will deal with any outside attempt that could possibly lead to involuntary assimilation or to the extermination of indigenous cultures. (Venezuela)

2. Consequently, they have, inter alia, the collective and individual right not to be subjected to cultural ethnocide or genocide, including the prevention of and reparations for:

- a. Any act that has the effect or intended effect of taking from them their wholeness as distinctive peoples, their cultural values, or their ethnic identity;*
- b. Any act that has the effect or intended effect of taking from them their lands, territories, or natural resources;*
- c. Any form of displacement that has the effect or intended effect of violating any of their rights;*
- d. Any form of assimilation or integration into other cultures or ways of life imposed upon them by legislative, administrative, or other measures;*
- e. Any form of propaganda directed against them.*

(Mirna Cunningham)

Article VI. Special guarantees against discrimination [special measures against discrimination (Mirna Cunningham)] [Special guarantees against discrimination, xenophobia, and racism] (Serafín Thaayrohyadí Bermúdez)

1. Indigenous peoples have the right to such (special guarantees) (avail themselves of the guarantees provided under domestic law) against discrimination as may be required for full enjoyment of internationally and nationally recognized human rights, and any measures necessary to enable indigenous women, men, and children to exercise their civil, political, economic, social, cultural, and (religious) (spiritual) rights (and their world views) (without discrimination). The states recognize that violence 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)*

1. *Indigenous peoples have the right to protection from discrimination. States are encouraged to take special measures against discrimination as may be required for full enjoyment of internationally and nationally recognized human rights and to take any measures necessary to enable indigenous women, men, and children to exercise their civil, political, economic, social, cultural, and spiritual rights. (Canada)*

2. *Indigenous peoples 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)*

2. *Indigenous peoples shall be consulted in the prescription of such protection (Canada).*

2. *“States shall take measures, including the imposition of civil and criminal penalties, to ensure that indigenous peoples are not subjected to acts of discrimination.*

Indigenous peoples, so that they may fully enjoy their nationally and internationally recognized human rights, have the right to special measures that may have to be taken against discrimination.

Special attention will be paid to discrimination against indigenous women and girls.

Indigenous peoples have the right to participate fully in, and give their consent for, the design and implementation of such special measures.” (Mirna Cunningham)

SECTION THREE. CULTURAL DEVELOPMENT

Article VII. Right to cultural integrity

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

1. *Indigenous peoples have the right to pursue their cultural development and the right to enjoy their culture, which are important both for their survival and for the identity of their members. (Canada)*

1. *Indigenous peoples have the right to preserve their culture and their historic, archaeological, and architectural heritage, which are important for their survival, for the identity of their members, and for the enrichment of their own states. (Chile)*

1. *Indigenous peoples have the right to their cultural identity, which is intimately linked to their world view, ancestral wisdom, and spiritual relationship with nature, for survival and future continuity. (Panama)*

Indigenous peoples have the right to their cultural identity, or to its development, which are important for their survival and for the identity of their members. (Colombia)

1. *“Indigenous peoples have the right to their cultural integrity, their living heritage, and their ceremonial centers, which are important to their continuity and the identity and dignity of their members.” (Tarcila Rivera)*

1. *“Indigenous peoples have the right to their cultural identity and their historic and archaeological heritage.” (Paulo Celso Oliveira)*

[2. Indigenous peoples are entitled to the restitution of property that is a part of that heritage and 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.]] *(Venezuela prefers to keep).

States shall make best efforts to facilitate, in accordance with international and domestic law, the return to indigenous peoples of any of their cultural property of which historically they have been wrongfully dispossessed. [Where this is not possible, indigenous peoples are entitled to compensation on a basis no less favorable than the standard recognized by international law.] Indigenous peoples have the right of access to legal procedures for the return of their cultural property which is taken from them in violation of the law. (Canada)

2. *Indigenous peoples are entitled to the restitution of property that is a part of that heritage and of which they have been dispossessed, or, when that is not possible, to compensation. (Brazil, endorsed by Argentina)*

Colombia proposes that subparagraph 2 be deleted.

2. *The states recognize and respect indigenous lifestyles, economic and political structures, customs, traditions, forms of social organization, institutions, practices, beliefs, values, world views, art, dance, music, and languages. (Panama)*

2. *Indigenous peoples have the right to own their heritage and to restitution if they have been dispossessed of it, in keeping with the domestic law of the states. (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)*

2. *“Indigenous peoples have the right to restitution of property of which they have been dispossessed.” (Paulo Celso Oliveira)*

3. The states [will recognize] and [respect] indigenous ways of life, world views, customs, practices and customs, traditions, forms of social, economic, and political organization, institutions, practices, beliefs, values, clothing, art, dance, music, and languages. (Chile, Panama, Ecuador, Peru, Guatemala, and Colombia) *Canada requests that “will recognize” be placed in square brackets.

States should take the necessary measures to prevent discrimination based on indigenous ways of life, customs, traditions, forms of social organization, dress, languages, and other cultural practices. (1999 United States proposal, amended, corresponding to the second part of this paragraph 3)

3. *“The states shall recognize and respect indigenous ways of life, customs, forms of social, economic, and political organization, institutions, practices, beliefs and values, use of dress, and languages.” (Paulo Celso Oliveira)*

Article VIII. (Outlook and language) (Linguistic rights)

1. Indigenous peoples have the right to their own languages, philosophy, and (world views) [outlook] as a component of national and universal culture, and, as such, the states shall recognize, respect, and promote them, (in consultation with the peoples 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 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 nonindigenous official languages].

3. States should take measures to enable indigenous peoples 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 provide indigenous peoples with access to state authorities in their own languages. (Mexico)

4. Indigenous peoples 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 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 (a) to 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 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 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 conclude as follows:

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

Article X. Spiritual and religious freedom

1. Indigenous peoples 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 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 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 of their internationally recognized human rights. States must take the necessary measures to prohibit any attempt to forcibly convert an indigenous people or to impose on it beliefs or religious practices against its will. (Inter-American Juridical Committee, with amendment by Mexico.)*

They 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 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 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 properties 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, protected, and respected. Where such properties are 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, 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, 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 have the right to [legal] [recognition and practice of their traditional medicine, treatment, pharmacology, and health practices and promotion], including preventive measures and rehabilitation], (subject to national laws).

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

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

1. *Indigenous peoples 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 nondiscriminatory access to health services available to the general public. (Unites States)*

1. *Indigenous peoples preserving traditional forms of social organization, communal governance, 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 them, the only condition being respect for public order and the full and effective enjoyment by the persons making up those peoples 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 law, ways to make traditional medicine compatible with scientific medicine.

2. Indigenous peoples 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 in their traditional territories. (Canada)*

3. Indigenous peoples have the right to use, maintain, develop, and manage their own health services, (in accordance with national standards and, under the same terms as other members of society, indigenous individuals shall also have access) (and should also have access,) without discrimination, to all health institutions and services and medical care (available to the general population).

3. *Where circumstances so warrant, states, in consultation with indigenous peoples, should take measures to improve health conditions in indigenous societies and assist them in maintaining 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 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 are entitled to participate in the use and exploitation of renewable natural resources present in their traditional territories. (Bolivia)

Article XIII. The right to environmental protection

1. (States shall make best efforts to provide indigenous peoples with) (Indigenous peoples are entitled to) a safe and healthy environment, which is an essential condition for enjoyment of the right to life and collective well-being, (and indigenous peoples 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 enjoy the same measure of protection under environmental legislation and through enforcement action as others within the national territory. (United States)*

2. Indigenous peoples have the right to be informed of (and consulted regarding) measures that could affect their environment, including information ensuring their effective participation in acts and policies that 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 are entitled 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 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 have the right of 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 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 health conditions in indigenous communities that fall below internationally accepted minimum standards. (Canada)*

5. Indigenous peoples shall be entitled 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 under national law).

6. The states shall prohibit and punish and, in conjunction with indigenous authorities, shall impede the introduction, abandonment, or deposit of radioactive materials or residues and toxic substances or wastes 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 to the transit or possession 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, 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 concerned.

“The state shall obtain the free and informed consent of the affected indigenous peoples prior to authorizing or implementing any protected area on or near any territories under actual or potential claim by indigenous peoples. 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 their territories wholly or in part as indigenous-owned and managed protected areas. The state shall recognize and respect such declarations.” (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 have the right of association, assembly, and expression pursuant to their values, practices, 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 amending articles of the draft declaration, the National Congress of American Indians, the Amerindian Peoples Association of Guyana and the Toledo Maya Cultural Council, and the Upper Sioux Community 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 have the right of assembly and the right to the use of their sacred and ceremonial areas, as well as the right to maintain 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 and 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 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 therefore have the right 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 of 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 in managing their local and internal affairs, including social, economic, and cultural matters. States are encouraged to utilize indigenous peoples 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, they 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 resource management, the environment, and entry by nonmembers; and to determine ways and means of 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 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 forums.

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 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 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. (United States)

1. Indigenous law shall be taken into account when decisions involving indigenous peoples are adopted. (Argentina)

1. The law of indigenous peoples shall be recognized as part of the national 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 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 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, 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 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 in their (national) (organizational) structures, in consultation with, and subject to the consent of, the peoples concerned.

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

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

2. The institutions of each state shall be designed or updated in consultation with indigenous people, 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 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 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 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 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 have the permanent, exclusive, inalienable, imprescriptible, indefeasible, and nontransferable 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 provisions of 3.ii., when property and user rights of indigenous peoples arise from rights existing prior to the creation of those states, the states shall recognize the titles of indigenous peoples 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 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 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 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 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, 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, Amerindian People Association of Guyana and the Toledo Maya Cultural Council)

5. [In the event that subsurface minerals or subsurface 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 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 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 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, Amerindian 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 without the free, genuine, public, and informed consent of those peoples; [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 their 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 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 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] 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 peoples have the right to compensation on a basis not less favorable than the standard under 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. 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 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 shall be entitled to full enjoyment of the rights and guarantees recognized under international 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 have a 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 nondiscriminatory basis, legal protection for their intellectual property through trademarks, patents, copyright, and other such procedures as established under domestic law. (United States)*

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 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 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 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 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 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. (United States)*

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 are not made without the free and informed [consent and] participation of those peoples; that their preferences are recognized; and that no provision which might have negative effects on those peoples is adopted.

3. [Indigenous peoples 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 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, acts, agreements, and constructive arrangements as well as the [historical rights] deriving 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 Hill, a representative of indigenous populations)

States should take all necessary steps under domestic law to implement obligations to indigenous peoples 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 have a right to the recognition, observance, and application of the treaties, agreements, and other arrangements they may have concluded with states or their successors, according to their spirit and original intent, and to take steps to ensure that they are respected and observed by the states. (Brazil)

Article XXIII

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

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

Article XXIV

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

Appendix II

AG/RES. 1708 (XXX-O/00)

PROPOSED AMERICAN DECLARATION ON THE
RIGHTS OF INDIGENOUS POPULATIONS

(Resolution adopted at the first plenary session,
held on June 5, 2000)

THE GENERAL ASSEMBLY,

RECALLING its resolutions AG/RES. 1022 (XIX-O/89), AG/RES. 1479 (XXVII-O/97), AG/RES. 1549 (XXVIII-O/98), and AG/RES. 1610 (XXIX-O/99);

BEARING IN MIND the Guidelines for the Participation of Civil Society Organizations in OAS Activities, approved by the Permanent Council in its resolution CP/RES. 759 (1217/99);

CONVINCED that the adoption of a declaration on the rights of indigenous populations will enhance the recognition, promotion, and protection of the rights of those populations, and will contribute to the development of pertinent activities by the Organization of American States in this area;

CONSIDERING that, in accordance with resolution AG/RES. 1610 (XXIX-O/99), the Working Group to Prepare the Proposed American Declaration on the Rights of Indigenous Populations met from November 8 to 12, 1999; and

HAVING STUDIED the report of the Chair of the Working Group to Prepare the Proposed American Declaration on the Rights of Indigenous Populations (GT/DADIN/doc.5/99),

RESOLVES:

1. To request the Permanent Council to renew the mandate of the Working Group so that it may continue to consider the Proposed American Declaration on the Rights of Indigenous Populations and hold at least a second meeting before the thirty-first regular session of the General Assembly, in accordance with the resources allocated in the program-budget and other resources.

2. To recommend to the Working Group that it follow the procedures agreed upon for suitable participation in its work by representatives of indigenous communities, so that their observations and suggestions may be considered.

3. To request the Inter-American Indian Institute and the Inter-American Juridical Committee to continue to advise the Working Group as necessary.

4. Also to request the General Secretariat 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.

5. To request the Permanent Council to present a report to the General Assembly at its thirty-first regular session on the implementation of this resolution.

Appendix III

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

Washington, D.C., April 2, 2001

The informal meeting had a co-chair designated by the indigenous peoples, Mr. Aucan Huilcaman, Mapuche leader of the Council of All Lands (*Consejo de Todas las Tierras*), Chile.

The chair proposed that the following items be examined:

- Report of the Caucus in Guatemala and its results;
- Report of the Indigenous Summit of the Americas;
- The working agenda for the special meeting.

• **Willie Littlechild, Canada**

Mr. Littlechild proposed that the report on the Indigenous Summit of the Americas be presented on Thursday when the Chief of the Assembly of the First Nations, Mathew Coon Come, would be present. The Chair asked that he give an oral report on the topic and that the official presentation be made on Thursday, April 5, once consideration of the Draft Declaration had been concluded.

• **Dr. Mirna Cunningham, Nicaragua**

Dr. Cunningham proposed an alternative agenda, which was submitted to the meeting and adopted by consensus.

The following agenda was adopted:

1. Comments on the Chair's report
2. Indigenous participation
 - Report of the Conclave in Guatemala and its results;
 - Participation during the Special Meeting and in other meetings, including mechanisms for financial support
3. Working Group's agenda and concerns about consensus and the basic document

• **Chair**

The Chair reported that the Proposed Declaration (GT/DADIN/doc.1/99 rev. 2) was the basic document for that meeting. He then invited delegations to comment on the various items as they appear on the agenda.

1. Comments on the Chair's Report (Working Group Meeting of November 1999)

- **Héctor Huertas, Panama**

In his view, the contributions and proposals made in 1999 by the indigenous representatives were not fully incorporated into the report of the Chair of the Working Group at that time, Ambassador Claude Heller. He noted, in particular, that the preambular part of the Proposed Declaration had not been taken up with the indigenous representatives.

Moreover, it was surprising to see that there were articles that enjoyed a consensus inasmuch as the 1999 meeting had been told that that was a first reading. Lastly, regarding the title of the Declaration, reference should be made to "indigenous peoples" instead of "populations."

- **Chair**

The Chair noted that discussion was pending on whether the official term "peoples" or "populations" would be used in the Declaration. The terms were therefore in brackets and would be discussed at the Special Meeting.

He also reported that document GT/DADIN/doc.9/01 contained proposals on the Declaration as well as the positions of the states and of the representatives of the indigenous peoples. That document was an effort by the current Chair and the Inter-American Commission on Human Rights to present an overall view of the topic.

- **Antonio Jacaminajoy, Colombia**

Mr. Jacaminajoy said that he thought that the Declaration should include terms that were not currently being used but should be, like "people" and "self-determination." He requested that the states be sent the conclusions of the Conclave in Guatemala.

- **Chair**

The Chair said that the Working Group could not amend the report of Ambassador Claude Heller, Chair of the 1999 Meeting, since that was not its mandate. He noted that the preliminary document of the Conclave in Guatemala was presented to the states, but the Guatemala document was not a document of the Chair but rather of the indigenous peoples. They were therefore being asked to present it during the meeting.

- **Willie Littlechild, Canada**

He would like to have a document that compared the original draft of the Proposed Declaration, presented in 1997 by the IACHR, and the current one, since the presentation in the 1999 Chair's report gave rise to confusion.

Regarding the discussion on the use of "people" rather than "populations," he made a proposal that had already been examined in other forums. Taking up the comments made by the Secretary General and the Chair of the Committee on Juridical and Political Affairs on the reference

to international law, he thought it was important to reconsider matters that had been discussed at United Nations meetings. Lastly, he drew attention to the experience of the World Conference against Racism, which used the term “peoples” at the outset only to reverse its position during its second meeting, but now it was resuming use of “peoples.” That was simply an example of how the topic was evolving.

- **Chair**

The Chair noted that the IACHR used the concept “peoples” in its original proposal. He also underscored the progress made by some countries in their constitutions and domestic legislation. Lastly, he mentioned three documents that used the term “peoples”: the Conclusions and Recommendations of the Preparatory Meeting of the World Conference against Racism in Santiago and the Plan of Action and Draft Declaration of the Quebec Summit. In view of that background information and the proposals made by representatives of the indigenous peoples, the Chair pledged to make an official proposal to amend the title of the Proposed Declaration by using “peoples” instead of “populations.”

- **Ferguson Mackay, Advisor, Indigenous Peoples**

Mr. Mackay said that the 1999 Report of the Chair of the Working Group contained inaccuracies, in particular with regard to the use of “populations” instead of “peoples” in the statements of the indigenous representatives. He said that the proposals of the indigenous representatives in the current document should be exact, especially since the statements were presented in writing to the Secretariat. He supported the proposal to use “peoples” instead of “populations.” He also requested that the statements made by indigenous representatives be included in due course in the Final Report since at the last meeting they had remained separate whereas the statements made by governments had been compiled in an appendix. An effort should be made to include the government and the indigenous proposals in a single document for the sake of careful comparison. He suggested that a Committee of Friends of the Chair be set up to review the report before its publication to avoid some of the aforementioned errors and inaccuracies.

- **Chair**

The Chair assured the Meeting that his report would include the comments made by the representatives of the indigenous peoples. He pointed out the 1999 Report of the Chair of the Working Group was an approved text and could not be amended at that time.

He submitted to the states the proposal on the establishment of a Committee of Friends of the Chair (or Style Committee).

- **Delegate from the Government of Panama**

It was essential for there to be equal participation among governments and the indigenous representatives, the basis for which should be participatory dialogue. As far as the use of the concept “people” was concerned, that concept was recognized in the Constitution and relevant statutes of Panama. It was also linked to autonomy and collective, cultural, and social rights, etc., which did not run counter to the laws of states. It was important to acknowledge and reach a consensus on diversity

in the midst of differences and full participation of the indigenous representatives. She supported the establishment of a Committee of Friends of the Chair.

- **Delegate from the Government of Venezuela**

The Bolivarian Republic of Venezuela recognized the use of “indigenous peoples” in the Constitution—a concept that embodied the defense of state sovereignty and integrity. Venezuela would promote efforts within the framework of the meeting to reach consensus on a document that went beyond the original Declaration. For the time being, no substantive progress had been made on the basis of a consensus between the states and the indigenous representatives. She supported the establishment of a Committee of Friends of the Chair.

- **Delegate from the Government of Brazil**

Brazil supported and had made a specific proposal on the establishment of a voluntary fund in support of the participation of representatives of the indigenous peoples. Said proposal sought to facilitate participation in the process of preparing the Proposed Declaration, especially that of indigenous representatives of countries that lack the financial resources to ensure adequate representation. He advised that at the OAS Brazil submitted a proposal to draw up an Inter-American Convention against Racial Discrimination, which would also have an important impact on the indigenous peoples. Brazil’s proposal was distributed.

- **Delegate from the Government of Guatemala**

The delegate said that the use of the term “people” was a fundamental point, on which progress must be made in the two declarations: the United Nations and the Organization of American States. Guatemala had no difficulty whatsoever with using the word “peoples” and was concerned about the possible use of a term similar to that in Convention 169 since it limited the meaning of self-determination. He considered that “people” implied self-determination and cited international documents in which the use of self-determination figured prominently. It was necessary to distinguish how “people” was used in the context of decolonization since self-determination should be used outside that context and it should be clearly understood that it does not lead to secession. Self-determination should be viewed as part of a process of decentralization and autonomy. Self-determination was a collective human right, which was inherent to peoples and achievable in a natural way by means of autonomy and decentralization. Ultimately, he said that the exercise of self-determination should not be restricted. Rather than a provision similar to the one in Convention 169, we should look for a positive wording on self-determination. It was important to recognize the right of peoples to decentralization and autonomy, governed by norms applicable within states.

The Declaration should be considered in its exact dimensions. It was not binding international legislation but an instrument that would serve as inspiration for pertinent international and/or national reforms. In that regard, there were many examples of declarations that had led to international conventions; thus the Universal Declaration of Human Rights led to the subsequent inclusion of those rights in domestic legislation. He suggested the deletion of any references in the Proposed Declaration to the national rights of states. In short, he urged that those obstacles be overcome and the scope and nature of any declaration be understood, without any fear of the term “peoples” or “collective rights to self-determination” or “rights to development.”

- **Serafín Bermúdez, Mexico:**

The Proposed Declaration was a true initiative to generate conditions of peace throughout the Hemisphere; it was therefore important to listen to the voices and the outcry of more than 50 million brothers and sisters in order to make it possible to write the first chapter of our history. In Mexico's case, there had been many rebellions and both peaceful and non-peaceful demonstrations to demand the observance of basic rights. Even then there were sectors that did not recognize those rights—self-determination, the concept of peoples, and the right to territories. He clarified three points:

Discussion of the document should not be based exclusively on points of disagreement. He understood that there had not been a consensus since they had not had the participation and consensus of the indigenous representatives. He therefore proposed that the entire document be reviewed and that discussion start with such substantive issues as: the right to self-determination, peoples, and territories and then go on to consider it chapter by chapter.

Care should be taken with the translation into English, Spanish, and the other languages, to avoid confusion.

The order of participation should not be the indigenous representatives first followed by the states; rather there should be a dialogue in which everyone took part. It was an inalienable right to self-determination to be able to comment on all issues.

- **Delegate from the Government of Canada**

Canada accepted and used the term “indigenous peoples” and therefore supported the proposal to amend the title of the Declaration and hoped to continue those discussions during the rest of the meeting. He agreed that we should look toward the future and that certain changes must be made; consequently he agreed that the Style Committee (Friends of the Chair) should revise the text before its adoption.

- **Delegate from the Government of Mexico**

There was a debate under way in Mexico on the rights of indigenous peoples. President Fox had made a proposal to the Congress for changes on the basis of such concepts as indigenous peoples and the right to self-determination and autonomy as part of the Mexican state.

- **Margarita Gutiérrez, Mexico**

The evolution of topics like the right to self-determination or peoples should be included in the text adopted. She appealed to the other member states to refine their position and move forward. She congratulated those who had advocated use of the term “peoples.”

- **Chair**

The Chair explained the working procedure and the order of participation, which had been called into question earlier, and referred to document GT/DADIN/doc.5/99. He would then put forward concrete agreements.

- Establishment of the Drafting Group (Friends of the Chair).
- Presentation of a proposal to change the title from “population” to “peoples” and facilitation of dialogue on the topic of self-determination, which did not appear in the text.

Lastly, presentation of the Brazilian proposal on the establishment of a voluntary fund was made.

2. **Participation**

- **Marvin Chirix, Guatemala**

Mr. Chirix read aloud the document containing the conclusions of the Caucus in Guatemala (attached to the report).

- **Co-chair**

The Co-Chair considered that the meeting had had an auspicious beginning, as it had enabled everyone to discuss these topics frankly. The concern to discuss anew the concept of indigenous peoples had been noted, which was important, as it was something that had been requested, a fact observed in the original draft presented by the IACHR.

Another topic was that noted by the delegation of Guatemala concerning aspects not discussed frankly owing to underlying concerns, such as self-determination. The concepts of indigenous peoples and self-determination would be ongoing concerns in these forums. Such a point of departure led to the topic of participation, to which constant reference had been made. The point concerning equal participation mentioned by Panama was fundamental. Indigenous peoples should have an opportunity to say how they were to live and a declaration could not be adopted without their participation. The inter-American system was well aware of this, despite existing difficulties. The Committee of Friends of the Chair was important as it would bring together all views, however difficult this might be.

- **Héctor Huertas, Panama**

Mr. Huertas referred to the topic of participation discussed in the Conclave's document. He requested that this document be attached to the conclusions of this event, and that it discuss the agreements that may be reached regarding participation, and that this be institutionalized in the the Working Group meetings. He commended Brazil for its proposal to establish a voluntary fund, for which he requested that provision be made for indigenous participation, with adequate national and regional representation. As regards the Committee of Friends of the Chair, he requested that the delegates of indigenous peoples participate on an equal footing.

- **Indigenous representative of Honduras**

The representative referred to the topic of consultation and representativity. He considered that consultation should be unrestricted and that the states should create mechanisms to ensure the widest possible participation.

- **Serafín Bermúdez, Mexico**

Given the concern over youth participation, this representative requested including in the Declaration the topic of the rights of the indigenous youth of the Americas.

- **Delegate from the Government of Colombia**

The delegate considered that the concepts of peoples, self-determination, and territory cannot be considered in isolation, but rather must be taken together, and examined in depth. Progress has been made in recognizing the use of the concept of people, and in changing the title of “populations” to “peoples.” The use of the term “peoples” did not mean that they were to be viewed as separate within states; on the contrary, such use enabled their very development, and their culture, and structure to be recognized. This was the unity of difference, which represented strength within society.

- **Indigenous representative of Venezuela**

The representative considered that participation should not be theoretical, but actual, in the flesh and present, not absent. An attempt had been made to apply this concept in the new Constitution of the Bolivarian Republic.

- **Eduardo Nieva, Argentina**

Mr. Neiva expressed his concern that representatives of some governments were not present. We were aware they their presence could not be compelled and that those absent were those who opposed some aspects that had already been discussed, including within domestic legislation, as in the Argentina case.

- **Crisolo Izamara, Panama**

Participation should not be divorced from the process of disseminating the Proposed Declaration. Continuous dialogue in that process was necessary between the government and indigenous peoples, all of which would assist in building intercultural relations in terms of diversity and would put an end to discrimination. He invited the governments to support the funding of the participation of representatives of indigenous peoples so as to be able to conduct the consultations within the guidelines.

- **Enrique Moctezuma Moreno, Panama**

Mr. Moctezuma considered that the mere act of meeting was important, even without the presence of all government representatives. In that sense, the OAS was fulfilling its task. There was a debt emanating from history that was owed by the Latin American governments to the indigenous peoples of the Hemisphere, and some, though not all governments, had been moving forward in this area. For progress to be made, commitments between indigenous peoples and governments were needed. Participation was synonymous with dialogue, conversation, and comprehension.

- **Mapuche, Chilean**

This representative referred to the remarks made by Willie Littlechild in connection with the juridical and constitutional status in some countries. He cited the example of Chile, where Convention 169 had not been ratified, although it was being debated in the Senate, which if adopted would imply for the Government of Chile adoption of the concept of people and self-determination.

- **Chair**

The Chair reported on decisions taken:

- Establishment of a voluntary fund;
- Establishment of a Group of Friends to support the drafting; it was proposed that it comprise three indigenous representatives (from Central, South, and North America);
- As the first item on the working agenda, changing the word in the title of the Declaration from “Populations” to “Peoples.”

- **Antonio Jacaminajoy, Colombia**

With respect to representation, Mr. Jacaminajoy wished to include some requests made in Guatemala. Regarding the initial proposal, the document from the Indigenous Conclave, he would provide some views. He referred to some points found on page 5 of the document. Point B.13: it should speak of states and not governments. In point C.14: the proposal on consultation did not appear; nor did the proposal regarding consensus appear in point 15.

- **Representative of the Government of the United States**

The representative stated that this meeting represented an important moment within the OAS, and in its relationship with the indigenous peoples of the Americas. It was hoped that this would be a special working group that took very positive steps in the framework of the promotion and protection of democracy, strengthening of human rights, and economic development and shared prosperity as the basis of any democracy. He hoped that the states not present would participate the next day. Regarding the consensus points, they agreed with use of the term “peoples,” and would also like to support the establishment of the Group of Friends so that it was aware of what was said here. With respect to the voluntary fund, it was important to consider and recall that the OAS had many funds, but not money. Consequently, such an initiative had to be examined closely to avoid creating a mechanism whereby the states avoided their responsibility in this area.

- **Tony James, Guyana**

Mr. James pointed out that there were indigenous peoples in the Caribbean and that they were participating in this meeting, which should be taken into account when any geographic distribution is made. The states of the Caribbean were important among OAS member states, and many had adopted the term "peoples" in their Constitutions. Guyana had recently amended its Constitution as a result. He urged adoption of this term and the rights included thereby.

- **Alejandra Tonconi, Bolivia**

Mr. Tonconi expressed his concern at the absence of some states, although there was considerable indigenous presence. He urged that the view of communities through political parties be considered anew; that communities be considered instead as peoples. The representatives of his country were not present, their absence spoke volumes, which was cause for concern. He expressed his wish that a record be made of this fact and that it be taken into account.

- **William Barrigón, Panama**

In connection with the Conclave document, Mr. Barrigón requested that changes be made in accordance with the latest version, and that that version be the one that was circulated.

- **Chair:**

The Chair requested that SICA submit the final document to the Chair for distribution.

- **Co-chair:**

The Co-Chair requested that the translation into English be reviewed, as it was inexact. One example was that it used "populations" and not "peoples."

- **Paulo Cesar de Oliveira Pankararu, Brazil**

Mr. de Oliveira hoped that the progress made here would be reflected in the final document. Brazil was a country with over 300,000 indigenous persons, scattered unevenly throughout the country. He hoped that the discussion of new domestic legislation in this area would be enriched by the discussion within the OAS. It was important to conduct consultations and extend the discussion with the indigenous communities, which would necessarily lead to further achievements, as, by understanding what was being approved, the provisions would be implemented.

- **Mirna Cuningham, Nicaragua**

Ms. Cuningham commended the adoption of the term "peoples." She noted that the consensus on each of the articles would enable new relationships to be established between governments and indigenous peoples. She also proposed that initial discussion of the substantive topics be included on tomorrow's agenda, as there was a great deal to be discussed, and she welcomed the establishment of a voluntary fund, but said that account should also be taken of the proposal of Peru that the governments undertake to fund some participants directly. Lastly, she warned that great

care also had to be taken with the translations, in view of the problems with the use of “peoples” and “populations,” and she requested the support of the Chair in that connection.

- **Willie Littlechild, Canada**

Mr. Littlechild commended the efforts of the OAS to open a new channel of communication between the states and the representatives of indigenous peoples. As regards the Indigenous Summit of the Americas, as Chief Mathew Come said, “it is our Summit,” the summit of the indigenous peoples of the Americas. Almost 500 indigenous representatives participated in the meeting and it was possible to hold a teleconference with Geneva, which had been very interesting. He set forth the general content of the Declaration of the Indigenous Summit of the Americas, without going into detail, as this would be done later both orally and in writing. Lastly, he stated that there was great satisfaction with the dialogue among states carried out today.

- **Ruth Peñafiel, Ecuador**

Ms. Peñafiel suggested that a new section be added on terms in current use and that a form of glossary be developed on what was understood by each concept.

- **Chair:**

The Chair:

- Reported that the topic of definitions would be taken up the following day
- Thanked those attending for their participation and the high standard of the dialogue
- Reported that the event was being covered by the OAS and included on the Organization's Web site

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

Appendix IV

OEA/Ser.K/XVI
GT/DADIN/doc.18/01 rev. 1
2 April 2001
Original: Spanish

DECLARATION OF THE HEMISPHERIC CAUCUS OF REPRESENTATIVES OF
INDIGENOUS POPULATIONS, HELD IN GUATEMALA CITY,
ON RECOMMENDATIONS REGARDING PARTICIPATION IN THE
WORKING GROUP OF THE OAS PERMANENT COUNCIL

(Document presented by the Chair of the Working Group,
Ambassador Ronalth Ochaeta Argueta, at the meeting held on February 6, 2001)

EXPLANATORY NOTE

At the February 6, 2001 meeting, the Chair of the Working Group to Prepare the Proposed American Declaration on the Rights of Indigenous Populations, Ambassador Ronalth Ochaeta Argueta, presented the attached document to the members of the Working Group for their information.

February 6, 2001

DECLARATION OF THE HEMISPHERIC CAUCUS OF REPRESENTATIVES OF
INDIGENOUS POPULATIONS, HELD IN GUATEMALA CITY,
ON RECOMMENDATIONS REGARDING PARTICIPATION IN THE
WORKING GROUP OF THE OAS PERMANENT COUNCIL^{1/}

-
1. This document contains some conclusions from the deliberations at the Hemispheric Caucus of Representatives of Indigenous Populations, held in Guatemala City on January 24, 25, and 26, 2001. The conclusions from the discussion of substantive elements of the Proposed American Declaration on the Rights of Indigenous Populations and the official list of participants are being completed by the caucus' technical drafting team. Those documents will be distributed in February 2001.

PROPOSED AMERICAN DECLARATION ON THE RIGHTS OF INDIGENOUS POPULATIONS

DECLARATION OF THE HEMISPHERIC CAUCUS OF REPRESENTATIVES
OF INDIGENOUS POPULATIONS, HELD IN GUATEMALA CITY,
ON RECOMMENDATIONS REGARDING PARTICIPATION IN THE
WORKING GROUP OF THE OAS PERMANENT COUNCIL

PREAMBLE

1. Considering resolutions AG/RES. 1022 (XIX-O/89), AG/RES. 1479 (XXVII-O/97), AG/RES. 1610 (XXIX-O/99), and AG/RES. 1708 (XXX-O/00), through which the General Assembly resolved to prepare an American Declaration on the Rights of Indigenous Populations, create a Working Group of the Committee on Juridical and Political Affairs of the Permanent Council, and establish mechanisms for suitable participation by representatives of indigenous populations in the discussions and for commenting on the Proposed Declaration;

2. Considering the declarations, agreements, and resolutions of other international organizations, mechanisms, and documents, such as the Second World Conference Against Racism, Agenda 21 of the 1992 United Nations Conference on Environment and Development, held in Brazil, Article 8(j) of the Convention on Biological Diversity and the resolutions of the Conference of the Parties to that Convention, as well as Convention No. 169 of the International Labour Organization, in particular Article 6, which recognize the right of indigenous populations to fully participate in matters that affect them;

3. Considering existing participation mechanisms in the UN Commission on Human Rights' open-ended intersessional working group on a draft declaration on the rights of indigenous peoples and the Convention on Biological Diversity intersessional working group, which represent significant progress in ensuring appropriate, full and effective participation by indigenous populations in the adoption of international instruments;

4. Considering that General Recommendation XXIII of the Committee on the Elimination of Racial Discrimination calls on States Parties to ensure that members of indigenous peoples have equal rights in respect of effective participation in public life, and that no decisions directly relating to their rights and interests are taken without their informed consent;

5. Acknowledging and supporting the OAS' new national and international initiatives and efforts to adopt the Proposed American Declaration on the Rights of Indigenous Populations, as well as an enhanced mechanism for participation by indigenous populations and organizations in the preparation and adoption of the American Declaration on the Rights of Indigenous Populations;

6. Considering that this hemispheric caucus of indigenous representatives held in Guatemala observed with concern that the current consultation processes promoted by the Working Group of the Committee on Juridical and Political Affairs of the OAS Permanent Council for discussion of the Proposed American Declaration on the Rights of Indigenous Populations, and that, although progress has been made, the instruments and processes in place to ensure suitable participation by indigenous populations are still inadequate in terms of the General Assembly resolutions;

7. Convinced of the need to contribute to full and effective participation by indigenous populations in national and international processes for adopting the American Declaration on the Rights of Indigenous Populations, the participants in this hemispheric caucus resolve to make recommendations to the Chair of the Working Group regarding participation by indigenous populations in the process of consultations, discussion, and adoption of the Declaration, and to that end issue the following statement:

WE, THE PARTICIPANTS FROM THE INDIGENOUS ORGANIZATIONS AND POPULATIONS MEETING AT THIS CAUCUS, GIVEN THE FOREGOING, HEREBY RESOLVE TO:

8. Recommend the following mechanisms to the Chair of the Working Group of the Committee on Juridical and Political Affairs of the Permanent Council, and through him to the General Assembly of the OAS in order to ensure full and effective participation by indigenous populations in the discussion and adoption of the Proposed American Declaration on the Rights of Indigenous Populations:

A. IN THE WORKING GROUP OF THE COMMITTEE ON JURIDICAL AND POLITICAL AFFAIRS OF THE PERMANENT COUNCIL:

9. That the Working Group adopt appropriate measures at its meetings to review and devise new processes to ensure full and effective participation by indigenous populations and organizations.

10. That the Working Group consider the example of the indigenous participation mechanisms established in the UN Commission on Human Rights' open-ended intersessional working group on a draft declaration on the rights of indigenous peoples, including the following elements:

- a. A liaison committee of "Friends of the Chair" with equal participation by representatives of indigenous populations and organizations, as well as states.
- b. Open discussion and dialogue between indigenous populations and organizations and the states, without restrictions or conditions on indigenous participation.
- c. Mandatory consensus between the states and the indigenous populations and their organizations before any article of that Proposed Declaration is approved.
- d. Participation by indigenous populations and organizations in the final drafting of all Working Group reports reflecting the position and contributions of the indigenous populations.

11. Recommend setting a new timeline or rescheduling the process for approving and adopting the OAS Proposed Declaration to allow for consultation with, and full and effective participation by, indigenous populations and organizations, with a view to adopting the Declaration.

12. Recommend institutionalizing and expanding participation by indigenous populations and their organizations in the OAS Working Group.

B. AT THE REGIONAL LEVEL:

13. That the governments promote regional consultation and participation processes for the Proposed Declaration, bearing in mind the following guidelines:

- a. The regional consultations with indigenous populations and organization must be more extensive and deal with issues in greater depth.
- b. Regional workshops should be held with indigenous and non-indigenous leaders and experts along with government and OAS representatives to clarify aspects of indigenous issues.

C. AT THE NATIONAL LEVEL:

14. That the Working Group recommend that OAS member states conduct national consultations through the structures of indigenous populations and organizations on the American Declaration on the Rights of Indigenous Populations, bearing in mind the following:

- a. That national consultation processes must include:
 - Timely and full information prior to the consultations, in the language of the indigenous populations, through mass and alternative media;
 - Internal consultation of the indigenous populations;
 - Consensus-building between indigenous populations and organizations and the states in order to establish genuine dialogue regarding the contents of the Proposed Declaration and commitments to defend their fundamental rights.
- b. That the consultations be monitored by experts on the matter from the OAS and the indigenous populations.

15. That it is important that the consensus-building and consultation processes be open, informed and carried out in good faith, and not be restricted to participants invited by the state. We stress that they must allow full and effective indigenous participation, taking into account traditional indigenous forms of representation and consultation. Translations must be provided in indigenous languages, and the position of other indigenous populations on the Declaration must be reflected.

16. That indigenous populations be involved in drafting the report on the conclusions from the local and national consultations; that report must be published nationally and sent to the Working Group.

17. That, given the violence directed at indigenous leaders in many countries in the Americas, the national consultation processes must guarantee the safety of the participants.

18. That, in the national consultations, governments must take into account other international instruments and processes already in place on direct, full, effective, and appropriate participation by indigenous populations.

19. That governments that have not ratified ILO Convention No. 169 do so and that those that have adopted the Convention guarantee compliance therewith as an initial step in recognizing the rights of indigenous populations, overcoming its shortcomings at subsequent proceedings.

D. GIVEN THE STRUCTURE OF INDIGENOUS PARTICIPATION IN THE OAS:

- a.. That, in the framework of discussions on the Proposed American Declaration on the Rights of Indigenous Populations, a technical working team of indigenous experts be formed to support indigenous populations and organizations in formulating the proposal based on their cosmovision and that this proposal be shared with the governments.
- b. That an information network be established for dialogue on the Declaration between indigenous populations and organizations and the governments, under the aegis of the OAS.

E. FINANCING:

20. To achieve full and effective participation by indigenous populations and organizations, we recommend:

- a. The establishment of a fund that is open to governmental and nongovernmental contributions and is administered by the OAS Secretary General, with the advisory services of representatives of indigenous populations and organizations.
- b. That the governments secure funds for the national and local consultations, without detriment to budgets already allocated for the social and economic development of indigenous populations in those countries.

Issued in Iximulew, Guatemala on January 26, 2001.

Appendix V

<http://scm.oas.org/pdfs/2001/cp08657e.pdf>