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

TABLE COMPARING THE DRAFT AMERICAN DECLARATION ON THE RIGHTS OF
INDIGENOUS PEOPLES AND THE UNITED NATIONS DECLARATION ON
THE RIGHTS OF INDIGENOUS PEOPLES

(Document prepared by the Office of International Law)

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Presented below are general comments on the substantive aspects of the Draft American Declaration on the Rights of Indigenous Peoples, in the light of the text of the declaration adopted by the United Nations General Assembly on September 13, 2007 (A/RES/61/295).

The reference text for the Organization of American States (hereinafter “OAS”) has been the document “Record of the Current Status of the Draft American Declaration on the Rights of Indigenous Peoples (Outcomes of the Ten Meetings of Negotiations in the Quest for Points of Consensus, held by the Working Group)” [GT/DADIN/doc.301/07]. In the case of the United Nations (hereinafter “UN”), the reference for the Spanish version has been the document distributed on December 10, 2007, while the English version has been taken from the document distributed on October 2, 2007.

In the comments on the OAS text, distinctions are not made between what has been agreed and what remains subject to approval. The analysis also does not include elements of the preamble of the Draft American Declaration, given that the proposal made in the Chair’s Consolidated Text (GT/DADIN/doc.139/03) has not been revised by the Working Group at the Meetings of Negotiation in the Quest for Points of Consensus. The preamble, however, is included at the end of this document.

SECTION ONE: Indigenous Peoples. Scope of Application^{1/}

<p align="center">DRAFT AMERICAN DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES (Outcomes of the Ten Meetings of Negotiations in the Quest for Points of Consensus, held by the Working Group)</p>	<p align="center">UNITED NATIONS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES (approved by the UN General Assembly on September 13, 2007)</p>
<p>Article I.</p> <p>1. The American Declaration on the Rights of Indigenous Peoples applies to the indigenous peoples of the Americas. (Approved on March 25, 2006 – Seventh Meeting of Negotiations in the Quest for Points of Consensus)</p> <p>2. Self-identification as indigenous peoples will be a fundamental criteria for determining to whom this Declaration applies. The States shall respect the right to such self-identification as indigenous, individually or collectively, in keeping with the practices and institutions of each indigenous people. (Approved on March 25, 2006 – Seventh Meeting of Negotiations in the Quest for Points of Consensus).</p>	<p>Article 33:</p> <p>1. Indigenous peoples have the right to determine their own identity or membership in accordance with their customs and traditions. This does not impair the right of indigenous individuals to obtain citizenship of the States in which they live.</p> <p>2. Indigenous peoples have the right to determine the structures and to select the membership of their institutions in accordance with their own procedures.</p>
<p><u>Comments:</u></p> <p>The OAS text specifies that the declaration applies to indigenous peoples, and the definition of that category depends solely on self-identification as indigenous people, for both the individual and the collective. The UN text establishes their right to determine their own identity or membership.</p> <p>The reference to identity is in Article XII of the OAS text [Right to cultural identity].</p> <p>The reference to the right to belong to indigenous peoples has been incorporated into Article IX of the OAS Draft Declaration (“Indigenous persons and communities have the right to belong to the indigenous peoples”).</p>	

1. The details of the negotiation of Articles 1, 2, and 3 of this section, which were examined during the Seventh Meeting of Negotiations in the Quest for Points of Consensus, can be found in Annex II to this document.

Article II. The States recognize and respect the multiethnic and multicultural (and multilingual] character of their societies. ^{2/}	
<u>Comments:</u> This provision does not have a counterpart in the UN text, which speaks of indigenous cultural diversity (see paragraph 2 of Article 16 of the UN text). A couple of paragraphs in the preamble to the OAS consolidated text refer to the cultural and ethnic diversity of the indigenous peoples of the Americas and the cultural diversity of societies.	

Article III. [Within the States, the right to self-determination of the indigenous peoples is recognized, pursuant to which they can define their forms of organization and promote their economic, social, and cultural development.]	Preamble Acknowledging that the Charter of the United Nations, the International Covenant on Economic, Social and Cultural Rights ^{1/} and the International Covenant on Civil and Political Rights ^{1/} , as well as the Vienna Declaration and Programme of Action, ^{2/} affirm the fundamental importance of the right to self-determination of all peoples, by virtue of which they freely determine their political status and freely pursue their economic, social, and cultural development, <hr/> <ol style="list-style-type: none">1. See resolution 2200 A (XXI), annex.2. A/CONF.157/24 (Part I), Ch. III. Bearing in Mind that nothing in this Declaration may be used to deny any peoples their right to self-determination, exercised in conformity with international law, Article 3: 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 and cultural development.
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2. At the Eighth Meeting of Negotiations, the majority of the delegations, including the Indigenous Peoples' Caucus, supported the following text:
"The States recognize and respect the pluricultural and multilingual character of the indigenous peoples, which constitute an integral part of their societies."

Comments:

In the OAS Draft Declaration, the right of self-determination involves the ability to define “their forms of organization,” while the UN Declaration expressly refers to political status.

In both cases, the right of self-determination will also serve to promote the economic, social, and cultural development of indigenous peoples.

The exercise of this right would be circumscribed, in the OAS text, by the sovereignty of the states, while in the UN text its exercise would be defined “in conformity with international law” and the framework established by the “Charter of the United Nations, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, and the Vienna Declaration and Programme of Action.”

It is important to note that these provisions must be analyzed in the light of Articles IV and XXXVII of the OAS text and Article 46 of the UN text, which place additional parameters on the exercise of the right enshrined in this provision, such as respect for territorial integrity, sovereignty, the independence or political unity of sovereign and independent states, the Charter of the OAS, the Charter of the UN, and respect for the domestic constitutional system.

Article IV.

[Nothing in this Declaration shall be construed so as to authorize or foster any action aimed at breaking up or diminishing, fully or in part, the territorial integrity, sovereignty, and political independence of the States, or other principles contained in the Charter of the Organization of American States.]

Article 46:

1. Nothing in this Declaration may be interpreted as implying for any State, people, group or person any right to engage in any activity or to perform any act contrary to the Charter of the United Nations or construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States.

2. In the exercise of the rights enunciated in the present Declaration, human rights and fundamental freedoms of all shall be respected. The exercise of the rights set forth in this Declaration shall be subject only to such limitations as are determined by law and in accordance with international human rights obligations. Any such limitations shall be non-discriminatory and strictly necessary solely for the purpose of securing due recognition and respect for the rights and freedoms of others and for meeting the just and most compelling requirements of a democratic society.

3. The provisions set forth in this Declaration shall be interpreted in accordance with the principles of justice, democracy, respect for human rights, equality, non-discrimination, good governance, and good faith.

Comments:

Interpretive clause very similar in the two texts, since any interpretation must respect the territorial integrity, sovereignty, and political independence of states and the founding charters of the corresponding organizations in each case.

In the exercise of the rights set forth, the UN text also stipulates respect for the human rights and fundamental freedoms of all. It also provides for the possibility of limiting certain rights.

SECTION TWO: Human rights and collective rights

<p>Article V. <u>Full effect and observance of human rights</u></p> <p>Indigenous [peoples and persons] have the right to the full and effective enjoyment of all the human rights and fundamental freedoms recognized in the Charter of the OAS, the American Declaration of the Rights and Duties of Man, and [, where applicable] the American Convention on Human Rights [the Convention 169 of the International Labour Organization,] [as well as] and other international [and regional] [principles, standards, and] instruments of human rights. Nothing in this Declaration may be interpreted so as to limit, restrict, or deny in any way those rights, or so as to authorize any action that is not in keeping with the principles [, standards, and instruments] of international law, including international human rights law.^{3/}</p>	<p>Article 1:</p> <p>Indigenous peoples have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights^{4/} and international human rights law.</p> <p>_____</p> <p>4. Resolution 217 A (III).</p>
<p><u>Comments:</u></p> <p>Both texts grant the full exercise or enjoyment of human rights and fundamental freedoms. The OAS text refers to human rights instruments adopted by the inter-American system but would permit the inclusion of “other international and regional human rights instruments.” The UN text refers to the UN Charter, the Universal Declaration of Human Rights, and the provisions of international human rights law.</p> <p>Both texts apply to indigenous peoples. Moreover, the OAS text applies to “indigenous persons,” while the UN text applies to “individuals.” The UN text includes both concepts, peoples and individuals, in the expression “indigenous peoples.”</p> <p>It is important to recall the comments made in Article IV of the OAS text on paragraph 2 of Article 46 of the UN text, which would impose certain restrictions on the exercise of some rights in exceptional cases.</p>	

3. During the Eighth Meeting of Negotiations, the majority of the delegations, including the Indigenous Peoples’ Caucus, supported the following text for Article V:
“Indigenous peoples and persons have the right to the full and effective enjoyment of all the human rights and fundamental freedoms recognized in the Charter of the United Nations, the Charter of the Organization of American States, and in international human rights law.”

<p>Article VI. <u>Collective rights</u></p> <p>1. Indigenous peoples have collective rights that are indispensable for their existence, well-being, and integral development as peoples.</p> <p>2. In this regard, the States recognize [and guarantee], inter alia, the right of the indigenous peoples to their collective action; to their social, political, and economic organization; [to their legal systems;] to their own cultures; to profess and practice their spiritual beliefs; [and] to use their languages [; and to administer and control their lands, territories, and natural resources].</p>	<p>Preamble</p> <p>Recognizing and reaffirming that indigenous individuals are entitled without discrimination to all human rights recognized in international law, and that indigenous peoples possess collective rights which are indispensable for their existence, well-being and integral development as peoples,</p> <p>Article 7:</p> <p>1. Indigenous individuals have the right to life, physical and mental integrity, liberty and security of person.</p> <p>2. Indigenous peoples have the collective right to live in freedom, peace and security as distinct peoples and shall not be subjected to any act of genocide or any other act of violence, including forcibly removing children of the group to another group.</p>
<p><u>Comments:</u></p> <p>Both texts recognize that indigenous peoples possess collective rights, which are “indispensable for their existence, well-being, and integral development as peoples.” In the OAS text, this applies to indigenous peoples, while in the UN text this would pertain to indigenous individuals.</p> <p>In addition, the OAS text specifies the scope of that right in the second paragraph of that article. Also, Article XXXIII would include the right to reparations for violations of collective rights.</p> <p>The second paragraph of Article 7 of the UN Declaration contains a reference to the collective right of indigenous peoples “to live in freedom, peace and security as distinct peoples,” rights contained in Article XXX of the OAS text (right to peace, security and protection in the event of armed conflicts).</p>	

<p>Article VII. <u>Gender equality</u> Indigenous women have the right to the recognition, protection, and enjoyment of all human rights and fundamental freedoms provided for in international law, free of all forms of discrimination.</p> <p>2. States recognize that violence against indigenous peoples and persons, particularly women, hinders or nullifies the enjoyment of all human rights and fundamental freedoms.</p> <p>3. States shall adopt the necessary measures, in conjunction with indigenous peoples, to prevent and eradicate all forms of violence and discrimination, particularly against indigenous women and children.</p> <p>Article XXXII. All the rights and freedoms recognized in the present Declaration are guaranteed equally to indigenous women and men.^{4/}</p>	<p>Article 22:</p> <p>1. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities in the implementation of this Declaration.</p> <p>2. States shall take measures, in conjunction with indigenous peoples, to ensure that indigenous women and children enjoy the full protection and guarantees against all forms of violence and discrimination.</p> <p>Article 44: All the rights and freedoms recognized herein are equally guaranteed to male and female indigenous individuals.</p> <p>Article 21:</p> <p>1. Indigenous peoples have the right, without discrimination, to the improvement of their economic and social conditions, including, inter alia, in the areas of education, employment, vocational training and retraining, housing, sanitation, health and social security.</p> <p>2. States shall take effective measures and, where appropriate, special measures to ensure continuing improvement of their economic and social conditions. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities.</p>
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4. This footnote is to explain that during the Seventh Meeting of Negotiations held in Brasilia, Brazil, the Working Group approved the three paragraphs which had been proposed by the Indigenous Peoples' Caucus and which the Chair had suggested appear currently in Article VII, Gender Equality. The paragraph that had been agreed upon through consensus in another Meeting of Negotiations and was the first paragraph of Article VII, has been moved to become a general provision and is the one that now appears as Article XXXII in this section.

Comments:

Although there is a general provision in both texts on the recognition of equal rights and freedoms for indigenous women and men (Art. XXXII of the OAS text and Art. 44 of UN text), the two include a provision that recognizes the rights of certain groups within the population. The OAS text emphasizes in Article VII the recognition, protection, and enjoyment of rights by women and the adoption of measures to prevent and eradicate violence and discrimination against indigenous women and children. The equivalent UN text provides "particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities."

Subsequent analysis of Article VII of the OAS text should reconsider the title.

The UN text includes a provision promoting improvement of the economic and social conditions of indigenous peoples (Article 21).

[Article VIII. Right to belong to the indigenous peoples

Indigenous persons and communities have the right to belong to the indigenous peoples, in accordance with the identities, traditions, customs, and systems of those peoples.]

Article 9:

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

Article 2:

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

Article 33:

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

Article 35:

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

Comments:

There is an initial difference between the two texts in terms of subject and object. In the OAS text, the right to belong to indigenous peoples falls to persons and communities; in the UN text, the right pertains to peoples and individuals and falls to the indigenous community or nation.

Also, in the OAS text the belonging would take into account the “identities, traditions, customs, and systems of those peoples,” while the UN text takes into consideration the “traditions and customs of the community or nation concerned”.

The reference to communities as juridical persons is used by the OAS and the UN in terms of the right of communities to “preserve, use, develop, revitalize, and transmit to future generations their own histories, languages, oral traditions, philosophies, systems of knowledge, writing, and literature; and to designate and maintain their own names” (Art. XIII OAS; Art. 13 UN). There is also a provision in the preamble to the UN text referring to the responsibility of families and communities for the upbringing, training, education and well-being of their children).

As for the term “nation” used in the UN text, it does not appear in the OAS text (in fact this is the only UN provision that uses that term).

In addition to the exercise of the right to belong cited by the UN, there is an explicit clause against discrimination that is absent from the OAS text. The UN text also has a provision on the responsibilities of individuals within their communities.

Article IX. Juridical personality

The States shall recognize fully the juridical personality of the indigenous peoples, respecting indigenous forms of organization and promoting the full exercise of the rights recognized in this Declaration.

Comments:

There is no reference to the juridical personality of indigenous peoples in the UN text. An argument for its inclusion in the regional context has been the complexity of certain bodies of law in terms of recognition of the juridical personality of indigenous peoples in the Americas.

Article X. Rejection of assimilation

1. Indigenous peoples have the right to maintain, express, and freely develop their cultural identity in all respects, free from any external attempt at assimilation.
2. The States shall not carry out, adopt, support, or favor any policy to assimilate the indigenous peoples or to destroy their cultures.

Article 8:

1. Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture.
2. States shall provide effective mechanisms for prevention of, and redress for:
 - (a) Any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities;

	<p>(b) Any action which has the aim or effect of dispossessing them of their lands, territories or resources;</p> <p>(c) Any form of forced population transfer which has the aim or effect of violating or undermining any of their rights;</p> <p>(d) Any form of forced assimilation or integration;</p> <p>(e) Any form of propaganda designed to promote or incite racial or ethnic discrimination directed against them.</p>
<p><u>Comments:</u></p> <p>Both texts contain a provision against assimilation. The OAS text pertains to indigenous peoples while the UN text includes indigenous peoples and individuals.</p> <p>The OAS text prohibits states from instituting any policy of assimilation or destruction of the cultures of indigenous peoples. The UN text requires the state to establish mechanisms of prevention and redress.</p>	

<p>Article X. bis. <u>Protection against genocide</u> Indigenous peoples have the right to not be subjected to any form of genocide or attempts to exterminate them.</p>	<p>Article 7:</p> <ol style="list-style-type: none">1. Indigenous individuals have the right to life, physical and mental integrity, liberty and security of person.2. Indigenous peoples have the collective right to live in freedom, peace and security as distinct peoples and shall not be subjected to any act of genocide or any other act of violence, including forcibly removing children of the group to another group.
<p><u>Comments:</u></p> <p>Both texts contain a reference against genocide or attempted extermination (OAS). The UN text also includes notions relating to the right to life, physical and mental integrity, liberty and security of person. Those rights would be contained in different articles of the OAS text: The right to life in the OAS text would be in Article XVIII, [Right to] protection of a healthy environment], while the reference to enjoyment of physical, mental, and spiritual health would be in Article XVII, on health.</p> <p>The UN text also expresses concern over the forcible removal of children. The OAS text has a provision that protects indigenous peoples in general against removal or relocation without their consent, with certain exceptions (see Article XXV).</p>	

<p>[Article XI. Special guarantees against racism, racial discrimination, xenophobia, and related forms of intolerance.</p> <p>1. Indigenous peoples have the right to protection from racism, racial discrimination, xenophobia, and related forms of intolerance. In this regard, the States shall adopt special measures, when necessary, for the full enjoyment of internationally and nationally recognized human rights, and shall adopt all necessary measures so that indigenous women, men, and children can enjoy their civil, political, economic, social, cultural, and spiritual rights.</p> <p>2. Indigenous peoples have the right to participate in the determination of those special guarantees.]</p>	<p>Preamble Reaffirming that indigenous peoples, in the exercise of their rights, should be free from discrimination of any kind,</p> <p>Welcoming the fact that indigenous peoples are organizing themselves for political, economic, social, and cultural enhancement in order to bring to an end all forms of discrimination and oppression wherever they occur,</p> <p>Article 2: Indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their indigenous origin or identity.</p> <p>Article 15:</p> <p>1. Indigenous peoples have the right to the dignity and diversity of their cultures, traditions, histories and aspirations which shall be appropriately reflected in education and public information.</p> <p>2. States shall take effective measures, in consultation and cooperation with the indigenous peoples concerned, to combat prejudice and eliminate discrimination and to promote tolerance, understanding and good relations among indigenous peoples and all other segments of society.</p>
<p><u>Comments:</u></p> <p>The OAS text accords to indigenous peoples protection against “racism, racial discrimination, xenophobia, and related forms of intolerance,” while the UN text speaks against “discrimination of any kind” and in favor of the promotion of “tolerance, understanding and good relations.”</p> <p>The OAS text also urges states to adopt special measures for the enjoyment of human rights and for the enjoyment by indigenous women, men, and children of their civil, political, economic, social, cultural, and spiritual rights. It is important that Article XXXI of the OAS text refers to the same rights; a review to reconsider this situation would be in order.</p> <p>The UN Declaration has a provision on the “right to the dignity and diversity of their cultures, traditions, histories and aspirations, which shall be appropriately reflected in education and public information.” Similar provisions are found in the OAS text, in Articles XIII and XIV (including the promotion of harmonious intercultural relations).</p> <p>The UN text also contains protection against discrimination based on origin or identity.</p>	

SECTION THREE: Cultural identity

<p>[Article XII. <u>Right to cultural identity</u>]</p> <p>[1. Indigenous peoples have the right to their cultural integrity and to their historical and ancestral heritage, which are important for their collective continuity, and for their identity and that of their members and their States.]^{5/}</p> <p>[2. Indigenous peoples have the right to restitution of the property that is part of that heritage of which they may be dispossessed or, when restitution is not possible, to fair and equitable compensation.]^{6/}</p> <p>3. Indigenous people have the right to recognition and respect for all their ways of life, world views, spirituality, uses and customs, norms and traditions, forms of social, economic and political organization, forms of transmission of knowledge, institutions, practices, beliefs, values, dress and languages, recognizing their inter-relationship as elaborated in this Declaration. (Approved on January 26, 2007)</p>	<p>Article 33:</p> <p>1. Indigenous peoples have the right to determine their own identity or membership in accordance with their customs and traditions. This does not impair the right of indigenous individuals to obtain citizenship of the States in which they live.</p> <p>2. Indigenous peoples have the right to determine the structures and to select the membership of their institutions in accordance with their own procedures.</p> <p>Article 2:</p> <p>Indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their indigenous origin or identity.</p> <p>Article 8:</p> <p>2. States shall provide effective mechanisms for prevention of, and redress for:</p> <p>(a) Any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities;</p> <p>Article 9: Indigenous peoples and individuals have the right to belong to an indigenous community or nation, in accordance with the traditions and customs of the community or nation concerned. No discrimination of any kind may arise from the exercise of such a right.</p>
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5. Informal consultations were conducted during the ninth meeting and the following text is the outcome of those consultations:
- [1. Indigenous peoples have the right to/rights pertaining to their own identity and cultural integrity and to their cultural heritage, both tangible and intangible, including historic and ancestral heritage; and to the protection, preservation, maintenance, and development of that cultural heritage for their collective continuity and that of their members and so as to pass on/and to transmit that heritage to future generations.]
6. Informal consultations were conducted during the ninth meeting and the following text is the outcome of those consultations:
- [States shall provide [redress, reparation], including the right of [restitution, return], whenever possible, of any cultural heritage of which indigenous peoples have been dispossessed without their free, prior, and informed consent. Should return not be possible, indigenous peoples shall have the right to fair and equitable compensation. States, in conjunction with indigenous peoples, shall establish effective mechanisms for that purpose.]

	<p>Article 11:</p> <p>1. Indigenous peoples have the right to practice and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artifacts, designs, ceremonies, technologies and visual and performing arts and literature.</p> <p>2. States shall provide redress through effective mechanisms, which may include restitution, developed in conjunction with indigenous peoples, with respect to their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs.</p> <p>Article 28:</p> <p>1. Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.</p> <p>2. Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size and legal status or of monetary compensation or other appropriate redress.</p>
<p><u>Comments:</u></p> <p>The OAS text, unlike the UN text, links cultural integrity and historical and ancestral heritage to their collective continuity and that of their members and their States.</p> <p>The OAS Draft Declaration would recognize under this concept the “ways of life, world views, spirituality, uses and customs, norms and traditions, forms of social, economic and political organization, forms of transmission of knowledge, institutions, practices, beliefs, values, dress and languages” of indigenous peoples. The UN text would include “the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artifacts, designs, ceremonies, technologies and visual and performing arts and literature.”</p> <p>Both texts propose forms of reparation. The OAS draft refers to the restitution of property that is part of historic and ancestral heritage “of which they may be dispossessed,” while the UN text treats restitution as one of the means of reparations in connection with “their cultural, intellectual, religious and spiritual</p>	

property taken without their free, prior and informed consent or in violation of their laws, traditions and customs.” The OAS text also includes the possibility of fair and equitable compensation when restitution is not possible.

Article XIII. Systems of knowledge, language and communication

1. Indigenous peoples have the right to preserve, use, develop, revitalize, and transmit to future generations their own histories, languages, oral traditions, philosophies, systems of knowledge, writing, and literature; and to designate and maintain their own names for their communities, individuals, and places.^{7/} Approved January 24, 2007.

The States [shall] [will] adopt adequate [and effective] measures to protect the exercise of this right [, in consultation with the peoples concerned].^{8/}

2. Indigenous peoples [, on an equal basis with the rest of society,] have the right to promote and develop all their systems and media of communication, including their own radio and television programs, and to access all other means of communication and information. The States shall take measures to promote the broadcast of radio and television programs in indigenous languages, particularly in areas with an indigenous presence. The States shall support and facilitate the creation of indigenous radio and television stations, as well as other means of information and communication.

3. The States, in conjunction with indigenous peoples, shall make efforts to ensure that those peoples can understand and be understood in their languages in administrative, political, and judicial proceedings, where necessary through the provision of interpretation or by other effective means. (Approved Jan. 26, 2007).^{9/}

Article 13:

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

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

Article 16:

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

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

7. After participating in the meetings of the Working Group with respect to Section Three, The United States understands that this Section does not refer to intellectual property rights, which are addressed solely in Article XXVIII of this Declaration.

8. This text is in the consultation process and its placement will be determined.

9. Approved *ad referendum* of the Indigenous Peoples' Caucus.

Comments:

The ideas contained in Article XIII of the Draft American Declaration are reflected in two provisions of the UN Declaration.

- There are similarities in terms of the right to “use, develop, revitalize, and transmit to future generations their own histories, languages, oral traditions, philosophies, systems of knowledge, writing, and literature; and to designate and maintain their own names,” the only difference being that the OAS text also uses the verb “preserve.” The OAS text stipulates the right of indigenous peoples to be consulted. But in both texts the states must adopt effective measures to protect the exercise of that right.
- There are also similarities concerning the right to “promote and develop all their systems and media of communication” and of access to “other means of information and communication,” except that the OAS text would limit this to “areas with an indigenous presence” and the UN text refers to “media” instead of means of communication.
- Finally, both texts urge that indigenous peoples be able to “understand and be understood in their languages in administrative, political, and judicial proceedings, where necessary through the provision of interpretation or by other effective means.” In the OAS text, the states, “in conjunction with indigenous peoples, shall make efforts,” while in the UN text the states must “take effective measures” to ensure such protection. In the OAS text, this is strengthened by Article XXI, which includes the right of indigenous persons to representation before the law without discrimination; this would include the use of linguistic and cultural interpreters.

[Article XIV. Education

2. Indigenous peoples and individuals, particularly indigenous children, have the right to all levels and forms of education, without discrimination.^{10/}

2. States and indigenous peoples, in keeping with the principle of equality of opportunity, shall promote the reduction of disparities in education between indigenous and non-indigenous peoples. (Approved on April 27, 2007, at the Tenth Meeting of Negotiations in the Quest for Points of Consensus, La Paz, Bolivia)

3. Indigenous peoples have the right to their own educational systems and, by virtue of this right, they can define prepare, apply and control their own programs, plans, curricula, methodologies, and teaching materials; and to educate, train and accredit their teachers and administrators [, in coordination with the State].

4. States shall, in conjunction with indigenous peoples, take [effective] measures to

Preamble

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

Article 14:

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

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

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

10. Approved *ad referendum* of Mexico

11. This text is in the consultation process and its placement will be determined.

<p>provide access for indigenous individuals, particularly children, living outside their communities to an education in their own languages and cultures.</p> <p>5. States shall promote harmonious intercultural relations, ensuring in State educational systems curricula with contents that reflect the pluricultural and multilingual nature of their societies and that encourage respect for and knowledge of the different indigenous cultures. States shall, in conjunction with indigenous peoples, promote intercultural education that reflects the cosmovision, histories, languages, knowledge, values, cultures, practices, and ways of life of those peoples. (Approved on April 27, 2007, at the Tenth Meeting of Negotiations in the Quest for Points of Consensus, La Paz, Bolivia).</p> <p>6. States shall adopt necessary and effective measures to ensure the exercise and observance of these rights.^{11/}</p>	<p>Article 15:</p> <p>1. Indigenous peoples have the right to the dignity and diversity of their cultures, traditions, histories and aspirations which shall be appropriately reflected in education and public information.</p> <p>2. States shall take effective measures, in consultation and cooperation with the indigenous peoples concerned, to combat prejudice and eliminate discrimination and to promote tolerance, understanding and good relations among indigenous peoples and all other segments of society.</p>
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Comments:

There are similarities between the two texts in relation to three major elements: the right of indigenous peoples to control their own educational systems; the right of indigenous children in particular to have access to all levels of education; and access to education in their own culture. The OAS text refers to indigenous peoples and “persons” whereas the UN text refers to indigenous peoples and “individuals”.

What is new in the OAS text is that it includes the promotion of harmonious intercultural relations and the task of reducing disparities in education, to be carried out jointly by the states and the indigenous peoples. The harmonious nature of relations “among indigenous peoples and all other segments of society” is also cited in the UN text.

<p>Article XV. <u>Indigenous spirituality</u></p> <p>1. Indigenous people have the right to freely exercise their own spirituality and beliefs and, by virtue of that right, to practice, develop, transmit, and teach their traditions, customs, and ceremonies, and to carry them out in public and in private, individually and collectively. (Approved on April 24, 2007 during the plenary session of the Tenth Meeting of Negotiations in</p>	<p>Article 12:</p> <p>1. Indigenous peoples have the right to manifest, practice, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites; the right to the use and control of their ceremonial objects; and the right to the repatriation of their human remains.</p> <p>2. States shall seek to enable the access and/or</p>
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12. Approved by the Drafting Group on April 26, 2007, on the condition that the concerns expressed by the Caucus over the terms in brackets be adequately addressed elsewhere in this Article.

<p>the Quest for Points of Consensus)</p> <p>2. No indigenous people or person shall be subject to pressures or impositions, or any other type of coercive measures that impair or limit their right to freely exercise their indigenous spirituality and beliefs. [States, in conjunction with indigenous peoples, shall take effective measures to prohibit actions by religious authorities or third parties that undermine indigenous spirituality and beliefs.]^{12/}</p> <p>3. Indigenous peoples have the right to [recover, preserve, use, control, protect, and access^{13/}] their sacred sites and objects, including their burial grounds, human remains, and relics [located in their ancestral and other territories]. States, in conjunction with indigenous peoples, shall adopt the necessary measures to protect these rights.^{14/ 15/}</p> <p>[States shall adopt effective measures, in conjunction with indigenous peoples, to preserve, respect, and protect their sacred sites and objects, including their burial grounds, human remains, and relics.]</p> <p>4. States, in conjunction with indigenous peoples, shall adopt effective measures, both to promote the respect of society for indigenous spirituality and beliefs, and to protect the integrity of the symbols, practices, ceremonies, expressions, and spiritual protocols of indigenous peoples [in accordance with international standards].</p>	<p>repatriation of ceremonial objects and human remains in their possession through fair, transparent and effective mechanisms developed in conjunction with the indigenous peoples concerned.</p>
<p><u>Comments:</u></p> <p>The texts agree on the right of indigenous peoples to exercise their own spirituality and to practice, develop, transmit, and teach their traditions, customs, and ceremonies. The OAS text also includes the right to do so “in public and in private, individually and collectively.”</p> <p>The two texts also refer to respect for sacred sites and objects and human remains. The OAS text also would include burial grounds and relics and would provide for the right to “recover, preserve, use, control, protect, and access.” And Article XIX specifies that the right to assemble in sacred and ceremonial places would involve “free [reasonable] access, use [and administration] of these sites and</p>	

13. The drafting group also considered the following alternative: “have the right to the recovery, preservation, use, control, protection and access to...”

14. The text is in the consultation process and its placement will be determined.

15. Brazil’s proposal for Article XV, paragraph 3: “Indigenous peoples have the right to preserve, protect, and have access to their sacred sites, including their burial grounds, and to use and control their sacred relics and objects, and to recover their human remains.”

areas.” The UN text proposes the right to “maintain, protect, and have access in privacy to their religious and cultural sites; the right to the use and control of their ceremonial objects; and the right to the repatriation of their human remains.” The UN text urges states to enable access to and/or repatriation of ceremonial objects and human remains.

What is new in the OAS Draft Declaration is that it promotes societal respect for indigenous spirituality and beliefs. There is also a provision prohibiting any attempt to limit the right of free exercise of indigenous spirituality and beliefs.

Article XVI. Indigenous family

1. The family is a natural and fundamental group unit of society. Indigenous peoples have the right to preserve, maintain, and promote their own family systems. States shall recognize respect and [protect] the various indigenous forms of family,¹⁶ in particular the extended family,¹⁷ as well as the forms of matrimonial union, filiations, descent, and family name. In all cases, gender and generational equity shall be recognized and respected.

2. In determining the best interests of the child in matters related to the adoption of indigenous children, severance of family ties and other similar circumstances, the courts and other relevant institutions shall take into account, primarily, the [applicable] indigenous law of the peoples concerned and shall consider their points of view, rights, and interests, including the positions of individuals, the family, and the community. The indigenous institutions and indigenous courts, where they exist, shall [may] have jurisdiction in determining the custody and other related matters concerning indigenous children.

Preamble

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

Comments:

The OAS text is more detailed in its description of rights pertaining to the preservation, maintenance, and promotion of the family systems of indigenous peoples. It also cites the importance of indigenous law and of the positions of individuals, the family, and the community in the determination of the best interest of the child in terms of filiation.

The UN text is more general and refers to the responsibility of indigenous families and communities for the “upbringing, training, education and well-being of their children, consistent with the rights of the child.”

16. The phrase “various indigenous forms” is approved *ad referendum* of Argentina.

17. The phrase: “in particular, the extended family” is approved *ad referendum* of Mexico.

Article XVII. Health

1. Indigenous peoples have the collective and individual right to the enjoyment [of the highest possible level] of physical, mental, and spiritual health, in accordance with [national and] international standards.

[2. Indigenous peoples have the right to the use and protection of the plants, animals, and minerals for medicinal use in their ancestral lands and territories, as necessary for the practice of indigenous medicine.]

3. States shall take measures to prevent and prohibit indigenous peoples and individuals from being subject to research programs, biological or medical experimentation, as well as sterilization without their prior, free, and informed consent. Likewise, indigenous peoples and persons have the right, as appropriate, to access to their data, medical records, and documentation of research conducted by individuals and public and private institutions. (Approved on April 25, 2007, at the Tenth Meeting of Negotiations in the Quest for Points of Consensus)

4. Indigenous peoples have the right to use, without any discrimination whatsoever, all the health and medical care institutions and services accessible to the general population. States, in consultation and coordination with indigenous peoples, shall promote intercultural systems or practices in the medical and health services provided in indigenous communities, including training of indigenous technical and professional health care personnel. (Approved on April 26, 2007, at the Tenth Meeting of Negotiations in the Quest for Points of Consensus).

[5. States shall provide the necessary means for the indigenous peoples to improve the health conditions in their communities insofar as they fall short of the standards accepted for the general population.]

Article 24:

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

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

Article 29:

1. Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. States shall establish and implement assistance programmes for indigenous peoples for such conservation and protection, without discrimination.

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

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

Comments:

The right to the highest level of physical and mental health is cited in both texts. In the OAS text, this pertains to indigenous peoples, both collectively and individually, while in the UN text it pertains to indigenous individuals. Although in both cases the states are called upon to provide the necessary means to improve health conditions, the UN text seeks progressive achievement.

The OAS Draft Declaration cites the right “to the use and protection of the plants, animals, and minerals for medicinal use in their ancestral lands and territories, as necessary for the practice of indigenous medicine.” The UN Declaration establishes “the right to their traditional medicines and to maintain their health practices.”

Both texts provide for the right to use, “without any discrimination whatsoever, all the health and medical care institutions and services accessible to the general population.”

The OAS text provides two elements not found in the UN Declaration:

- Protection obliging states to “prevent and prohibit indigenous peoples and individuals from being subject to research programs, biological or medical experimentation, as well as sterilization without their prior, free, and informed consent.”
- The right of indigenous peoples and persons to access to their data, medical records, and documentation of research conducted by individuals and public and private institutions.

Furthermore, the OAS text requests states, in consultation and coordination with indigenous peoples, to promote intercultural systems or practices in the medical and health services provided in indigenous communities. The UN text cites only the right to maintain “their health practices.”

Article XVIII. [Right to] protection of a healthy environment

[1. Indigenous peoples have the right to live in harmony with nature and to a healthy and safe environment, which are essential conditions for enjoyment of the right to life, to their spirituality, and to collective well-being.]

2. Indigenous peoples have the right to conserve, restore, recover, manage, use, and protect the environment, and to the sustainable management of their lands [, territories] [and resources].^{18/}

3. Indigenous peoples have a right to [prior information and consultation on] [their free, prior and informed consent on] measures and actions which may [significantly] affect the

Preamble

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

Article 29:

1. Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. States shall establish and implement assistance programmes for indigenous peoples for such conservation and protection, without discrimination.

2. States shall take effective measures to ensure that no storage or disposal of hazardous

18. Since consensus has not been reached on this paragraph, the Chair has registered proposals from the Member States and the Indigenous Peoples’ Caucus. Several delegations of Member States requested that brackets be inserted around the words “territories” and “resources.” In addition, part of this paragraph will be considered during the review of the chapter on General Provisions.

<p>environment in indigenous lands [and territories].^{19/}</p> <p>4. Indigenous peoples have the right to participate fully and effectively in the formulation, planning, organization and implementation of measures, programs, laws, policies, and any other public [or private] activity that could affect the environment, for the conservation, use and management of their [the] lands [, territories] [and resources].^{20/}</p> <p>5. Indigenous peoples have the right to technical and financial assistance from their States and from International Organizations for the purpose of protecting the environment [, in keeping with the procedures established in the national legislations].</p> <p>[6. States shall prohibit and punish, with the full and effective participation of indigenous peoples [and their consent], the introduction, abandonment, dispersion, transit, use, or deposit of any harmful substance, including persistent organic contaminants; nuclear, radioactive, chemical, and biological materials, and [genetically modified organisms] that can directly or indirectly affect indigenous communities, lands [, territories] and resources.]</p> <p>7. Indigenous peoples have the right to create their own protected areas or areas of conservation on their lands [and territories] that shall be recognized, respected and protected by the State. States shall not create protected areas or areas of conservation of any sort on lands [or territories] that indigenous peoples have historically or traditionally used, possessed, or occupied or have otherwise acquired, without the free, prior and informed consent of the indigenous peoples affected. In the creation of said areas, States shall not [under any circumstances/except under the circumstances set out in Article 25 of this Declaration] require the forced transfer or relocation of indigenous</p>	<p>materials shall take place in the lands or territories of indigenous peoples without their free, prior and informed consent.</p> <p>3. States shall also take effective measures to ensure, as needed, that programmes for monitoring, maintaining and restoring the health of indigenous peoples, as developed and implemented by the peoples affected by such materials, are duly implemented.</p> <p>Article 27: States shall establish and implement, in conjunction with indigenous peoples concerned, a fair, independent, impartial, open and transparent process, giving due recognition to indigenous peoples' laws, traditions, customs and land tenure systems, to recognize and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources, including those which were traditionally owned or otherwise occupied or used. Indigenous peoples shall have the right to participate in this process.</p>
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19. Since consensus has not been reached on this paragraph, the Chair has registered proposals from the Member States and the Indigenous Peoples' Caucus. The terms "significantly" and "free, prior and informed consent" were subject to special consideration by the Working Group. This paragraph will be considered during the review of the chapter on General Provisions.

20. This paragraph will be considered during the review of Article XX (2) and the proposal of the Indigenous Peoples' Caucus for Article XXII.

peoples' communities, impose restrictions or inhibit the traditional uses of the land, their way of life or their means of subsistence.	
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Comments:

There is a right to conserve and protect the environment, although in the OAS text this would pertain to a healthy and secure environment. A healthy environment is not cited in the UN text, while the reference to security would be set forth explicitly in Article XXX (Right to peace, security and protection) of the OAS text and Article 7 of the UN text (right to live in freedom, peace and security). As for the treatment of lands, territories, and resources, the OAS Draft Declaration includes the right to conserve, restore, recover, manage, use, and protect them, as compared to the reference to “productive capacity” in the UN Declaration.

As for harmful substances or hazardous materials, the OAS text seems more detailed in describing their prohibition. First, it obligates the state in a way that differs from the adoption of effective measures required by the UN text. Also, the OAS text urges the prohibition and punishment of “the introduction, abandonment, dispersion, transit, use, or deposit of any harmful substance, including persistent organic contaminants; nuclear, radioactive, chemical, and biological materials, and [genetically modified organisms] that can directly or indirectly affect indigenous communities, lands [, territories] and resources.” The UN text stipulates that measures should guarantee that hazardous materials are neither stored nor discarded in the lands or territories of indigenous peoples without their free, prior, informed consent. A new element in the UN text is the application of “programmes for monitoring, maintaining and restoring the health of indigenous peoples, as developed and implemented by the peoples affected by such materials,” which the states are to adopt.

The OAS Draft Declaration provides for the right of participation by indigenous peoples in decisions or activities, public or private, that could affect the environment, for the conservation, use, and management of their [the] lands [, territories] [and resources]. In the UN declaration the states are called upon to establish a process “to recognize and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources” (Article 27).

Both texts require the states to assist in this protection, but the OAS text also includes international organizations.

Finally, the OAS text gives indigenous peoples the right to create protected or conservation areas in their lands and territories; these areas are not addressed in the UN text.

SECTION FOUR: [ORGANIZATIONAL AND POLITICAL RIGHTS]

<p>Article XIX. <u>[Rights of association, assembly, and freedom of expression and thought]</u></p> <p>1. [Indigenous peoples have rights of association, assembly, organization and expression, without interference and in accordance with their world view, inter alia, values, usages, customs, ancestral traditions, beliefs, spirituality, and other cultural practices.]^{21/}</p> <p>2. Indigenous Peoples have the right to assemble on their sacred and ceremonial sites and areas, and for this purpose, they shall have free [reasonable] access, use [and administration] of these sites and areas.</p> <p>3. Indigenous peoples, in particular those who are divided by borders, have the right to [move freely and] maintain full contact and common activities with their members [and other peoples] [with whom they have ethnic, religious or linguistic ties] who inhabit the territory of neighboring States, without discrimination. [The States shall adopt measures, including the adoption of international instruments, to facilitate the exercise of these rights.]</p> <p>4. [The States shall adopt measures aimed at facilitating the exercise of the rights recognized in this article, mindful of the rights of third persons.]^{22/}</p>	<p>Article 36:</p> <p>1. Indigenous peoples, in particular those divided by international borders, have the right to maintain and develop contacts, relations and cooperation, including activities for spiritual, cultural, political, economic and social purposes, with their own members as well as other peoples across borders.</p> <p>2. States, in consultation and cooperation with indigenous peoples, shall take effective measures to facilitate the exercise and ensure the implementation of this right.</p> <p>Preamble</p> <p>Considering also that treaties, agreements and other constructive arrangements, and the relationship they represent, are the basis for a strengthened partnership between indigenous peoples and States,</p> <p>Article 12:</p> <p>1. Indigenous peoples have the right to manifest, practice, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites; the right to the use and control of their ceremonial objects; and the right to the repatriation of their human remains.</p> <p>2. States shall seek to enable the access and/or repatriation of ceremonial objects and human remains in their possession through fair, transparent and effective mechanisms developed in conjunction with indigenous peoples concerned.</p>
<p><u>Comments:</u></p> <p>Both texts consider the right of peoples divided by national borders to maintain contact. The OAS text pertains to contact and activities when there are ethnic, religious, or linguistic ties and would involve common activities. The UN text cites the right “to maintain and develop contacts, relations and cooperation,” and lists the types of activities. There is a proposal in the OAS text to include free movement.</p> <p>The OAS text also promotes two types of rights in this provision:</p>	

21. While the majority of delegations supported this paragraph, consensus was not reached.

22. This paragraph will be reviewed during consideration of Section Six “General Provisions” — the proposal of the Indigenous Peoples’ Caucus is registered by the Secretariat.

- The right of “association, assembly, organization and expression,” which is to be exercised “without interference and in accordance with their world view.”
- The right to assemble in sacred and ceremonial places (which in the UN text appears as a right of access, in privacy, to such places).

Article XX. Right to [autonomy] or [and] self-government

1. Indigenous peoples, [as one of the ways to exercise their] [in the exercise of] the right to self-determination [within the States], have the right to autonomy or [and] self-government with respect to, inter alia, culture, language, spirituality, education , [information, means of communication,] health, housing, employment, social well-being, maintenance [of community security], [of jurisdictional functions in matters of territory,] family relations, economic activities, administration of land and resources, environment and [entry of non-members]; [and to determine with States the ways and means of financing { the exercise of these rights } these autonomous functions.]^{23/}

2. Indigenous peoples have the right to maintain and develop their own decision-making institutions. They also have the right to participate fully and effectively without discrimination in decision-making at all levels in relation to matters that may [directly] affect their rights, [lives and destiny]. They may do so directly or through their representatives, in accordance with their own norms, procedures, and traditions. They also have the right [to equal opportunities] to access and to participate [fully and effectively as peoples] in all national institutions and fora, [including deliberative bodies.]

Article 4:

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

Article 5:

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

Article 18:

Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.

Article 19:

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

Article 33:

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

23. This paragraph will be considered together with Articles III and IV of the Draft Declaration.

	<p>institutions in accordance with their own procedures.</p> <p>Article 34:</p> <p>Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.</p>
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Comments:

Both texts establish the following rights:

- Right to autonomy or self-governance in the exercise of self-determination and the establishment of means of funding for the exercise of those rights;
- The right to establish indigenous decision-making institutions according to their own norms, procedures, and traditions (OAS text) or their own political, juridical, economic, social, and cultural institutions “in accordance with their own procedures” (UN text);
- The right to participate in all national institutions and forums;
- The right to participate in matters that could affect them, directly or through their representatives, in accordance with their own standards, procedures, and traditions.

The UN text also includes the “promotion” of their “institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs.” This reference to indigenous legal systems is found in Article XXI of the OAS Draft.

The OAS text establishes a detailed list of the fields that would include the right to autonomy or self-governance, while the UN text refers expressly to “matters relating to their internal and local affairs.”

<p>Article XXI. <u>Indigenous law and jurisdiction</u></p> <p>1. The States shall recognize the [competence] of the authorities of indigenous peoples to exercise [jurisdictional functions] in their territory in accordance with their own standards, institutions and procedures. Indigenous peoples have the right to maintain [control] and strengthen their legal systems to address the internal matters that affect their rights and interests, and to apply them in</p>	<p>Article 13:</p> <p>1. Indigenous peoples have the right to revitalize, use, develop and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems and literatures, and to designate and retain their own names for communities, places and persons.</p> <p>2. States shall take effective measures to ensure that this right is protected and also to ensure that indigenous peoples can understand and be understood in political, legal and administrative proceedings, where necessary through the provision</p>
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<p>accordance with their own rules and procedures.^{24/}</p> <p>2. The indigenous law and legal systems shall be recognized and respected by the national [and international] legal systems.^{25/}</p> <p>3. The matters referring to indigenous persons or to their rights or interests in the jurisdiction of each State shall be conducted so as to provide for the right of indigenous people to full representation with dignity and equality before the law. Consequently, they are entitled, without discrimination, to equal protection and benefit of the law, including the use of linguistic and cultural interpreters.</p> <p>4. The States shall take effective measures in consultation with the indigenous peoples to ensure implementation of this article,^{26/} [for which they shall determine the coordination of the indigenous jurisdictional systems with the national legal systems].</p> <p><u>Article XXII. Contributions of the indigenous legal and organizational systems:</u></p> <p>1. The States shall facilitate the inclusion, within their national and regional organizational structures, as appropriate, of the traditional institutions and practices of the indigenous peoples, in consultation with and with the consent^{27/} of said peoples.</p> <p>2. The indigenous peoples, in matters that may directly affect their rights, have the right to participate fully and effectively [without discrimination] in the design of institutions that serve them in the development, [adoption] and implementation of plans, public policies, and programs and activities, including those that the State agrees [with {financial} multilateral institutions], as well as in the process of development of legislative, administrative and judicial measures. [All of the above, with the purpose of strengthening and promoting the</p>	<p>of interpretation or by other appropriate means.</p> <p>Article 19: States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.</p> <p>Article 34: Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.</p>
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24. While the majority of the delegations supported this paragraph, consensus was not reached. It was suggested that this paragraph be reviewed together with Article XXXIII.

25. While the majority of the delegations supported this paragraph, consensus was not reached. It was suggested that this paragraph be reviewed together with Article XXXIII.

26. The first part of this paragraph will be considered during the review of the chapter on General Provisions.

27. The term “consent” will require additional reflection.

<p>identity, culture, traditions, organization and values of these peoples.] [3. States shall obtain free, prior and informed consent of the indigenous peoples concerned before adopting and implementing such policies and measures.]^{28/}</p>	
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<p><u>Comments:</u></p> <p>The OAS introduces a new element by requesting recognition of and respect for indigenous legal systems and the inclusion within national and international structures of “traditional institutions and practices of the indigenous peoples.”</p> <p>The OAS text limits the exercise of jurisdictional functions to “their territory in accordance with their own standards, institutions and procedures” in addressing “internal matters that affect their rights and interests.” In the UN text, their customs or juridical systems are to be promoted, developed, and maintained “in accordance with international human rights standards.”</p> <p>The OAS Draft Declaration also includes the right of indigenous peoples to representation before the law without discrimination, which would include the use of linguistic and cultural interpreters. This last reinforces the provisions on facilitating understanding in Article XIII of the OAS text: through the “provision of interpretation or by other effective means”; and Article 13 of the UN text: “through the provision of interpretation or by other appropriate means.”</p> <p>Both texts promote participation in administrative and legislative measures that could affect indigenous peoples. The OAS text promotes “full and effective participation” and would include judicial measures. The UN text proposes consultations and good-faith cooperation.</p>

<p><u>Article XXIII. Treaties, agreements, and constructive arrangements</u> [Indigenous peoples have the right to the recognition, observance, and application of the treaties, conventions, and other arrangements that the States or their successors may have concluded, in keeping with their spirit and intent, and to have the same be respected and observed by the States.]^{29/}</p>	<p>Preamble Recognizing also the urgent need to respect and promote the rights of indigenous peoples affirmed in treaties, agreements and other constructive arrangements with States,</p> <p>Considering that the rights affirmed in treaties, agreements and other constructive arrangements between States and indigenous peoples are, in some situations, matters of international concern, interest, responsibility and character,</p> <p>Considering also that treaties, agreements and other constructive arrangements, and the relationship they</p>
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28. The majority of the delegations deemed it necessary to study the scope of this paragraph on another occasion.
 29. The Chair has collected all of the proposals, but the delegations require more time to analyze them.

	<p>represent, are the basis for a strengthened partnership between indigenous peoples and States, Article 37: 1. Indigenous peoples have the right to the recognition, observance and enforcement of treaties, agreements and other constructive arrangements concluded with States or their successors and to have States honour and respect such treaties, agreements and other constructive arrangements. 2. Nothing in this Declaration may be interpreted as diminishing or eliminating the rights of indigenous peoples contained in treaties, agreements and other constructive arrangements.</p>
<p><u>Comments:</u> Article XXIII of the Draft Declaration contains elements similar to those of Article 37 of the UN Declaration in terms of recognition, observance, and application of treaties, conventions, and other agreements that may have been concluded by indigenous peoples with states or their successors.</p>	

SECTION FIVE: Social, Economic, and Property Rights

Article XXIV. Traditional forms of property and cultural survival. Right to land, territory and resources

Indigenous peoples have the right to maintain and strengthen their distinctive spiritual, cultural, and material relationship to their lands, territories, and resources and the [duty] to assume their responsibilities to preserve them for themselves and for future generations.^{30/}

1. [Indigenous peoples have the right to the recognition of their property rights and ownership rights with respect to the lands and territories that they historically occupy, as well as the use of the lands to which they have traditionally had access for carrying out their traditional activities and for sustenance, respecting the principles of the legal system of each State. These rights also include the waters, coastal seas, flora, fauna, and all other resources of that habitat, as well as their environment, preserving these for themselves and future generations.

2. Indigenous peoples have the right to legal recognition of the various and particular modalities and forms of property, possession, and ownership of their lands and territories, in accordance with the principles of the legal system of each State. The States shall establish the special regimes appropriate for such recognition, and for their effective demarcation or titling.

3. The rights of the indigenous peoples to their lands and territories they occupy or use historically are permanent, exclusive, inalienable, imprescriptible, and inalienable.

4. The titles may only be modified by mutual agreement between the State and the respective indigenous peoples, with full knowledge and understanding by their members with respect to the nature and attributes of that property and of the proposed modification. The

Article 25:

Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.

Article 26:

1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.

2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.

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

Article 27: States shall establish and implement, in conjunction with indigenous peoples concerned, a fair, independent, impartial, open and transparent process, giving due recognition to indigenous peoples' laws, traditions, customs and land tenure systems, to recognize and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources, including those which were traditionally owned or otherwise occupied or used. Indigenous peoples shall have the right to participate in this process.

Article 28:

1. Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they

30. The delegation from Chile, by virtue of the instructions received from its capital city following consideration during the meeting of this paragraph, reserves the right to reexamine the term "territories" contained in said paragraph.

<p>agreement by the indigenous people concerned shall be given following its practices, usages, and customs.</p> <p>5. Indigenous peoples have the right to attribute ownership within the community in accordance with the values, usages, and customs of each people.</p> <p>6. The States shall take adequate measures to avert, prevent, and punish any intrusion or use of such lands, territories, or resources by persons from outside to claim for themselves the property, possession, or right to use the same.</p> <p>7. In case the property rights over the minerals or resources of the subsoil belong to the State, or it has rights over other resources existing in the lands and territories of the indigenous peoples, the States shall establish or maintain procedures for the participation of the peoples concerned for determining whether the interests of those peoples would be prejudiced and to what extent, before undertaking or authorizing any program involving prospecting, planning, or exploitation of the resources existing on their lands and territories. The peoples concerned shall participate in the benefits of such activities, and receive fair compensation for any harm they might suffer as a result of such activities.</p> <p>8. States shall provide, within their legal systems, a legal framework and effective legal remedies to protect the rights of the indigenous peoples referred to in this article.]</p>	<p>have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.</p> <p>2. Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size and legal status or of monetary compensation or other appropriate redress.</p> <p>Article 32:</p> <p>1. Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.</p> <p>2. States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.</p> <p>3. States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.</p>
<p><u>Comments:</u></p> <p>Both texts include strengthening the indigenous peoples' spiritual relationship with their lands, territories, and resources.</p> <p>They also speak in favor of ownership and rights of dominion over lands and territories, and of legal recognition of modalities and forms of property, possession, and ownership of their lands and territories.</p> <p>The OAS text speaks on the attribution of ownership within the community and the modification of titles.</p> <p>Both texts require the participation of the peoples concerned in order for the state to carry out certain projects. And they provide for equitable compensation (fair and equitable compensation in the UN text). In the OAS Draft Declaration, this would pertain to any "program involving prospecting,</p>	

planning, or exploitation of the resources existing on their lands and territories,” while the UN Declaration covers “any project affecting their lands or territories and other resources,” for which “their free and informed consent prior to the approval” is required.

Finally, both texts oblige the state to provide certain protections. The OAS text would include the prevention of intrusion or the establishment of a legal framework for the protection of indigenous peoples’ rights. The UN text sets forth a more direct obligation to ensure legal recognition and protection of those lands, territories, and resources.

The OAS text also accords to indigenous peoples exclusive, inalienable, imprescriptibly, and indefeasible rights to lands and territories historically occupied by them.

The UN text provides the right to restitution of, or compensation for, lands, territories, or resources “confiscated, taken, occupied, used or damaged without their free, prior and informed consent.” Article XII of the OAS text sets forth the right of restitution of, or compensation for, “property that is part of that heritage of which they may be dispossessed.”

Article XXV. On transfers and relocations

1. Indigenous peoples shall not be transferred or relocated without their free, prior, and informed consent, except in cases of natural disaster, [national emergency, or exceptional grounds duly justified,] through procedures jointly established with the indigenous peoples. In the event of a transfer or relocation, the States shall ensure the replacement, [wherever possible,] by adequate lands of equal size, quality, and legal status, [guaranteeing] in all cases the right to return if the causes that gave rise to the displacement cease to exist.

2. Just and equitable compensation shall be paid to the indigenous peoples and to their members who are transferred or relocated for [any] loss or harm they may have suffered as a result of their displacement.^{31/}

Article 10:

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

Article 8:

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

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

(a) Any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities;

(b) Any action which has the aim or effect of dispossessing them of their lands, territories or resources;

(c) Any form of forced population transfer which has the aim or effect of violating or undermining any of their rights;

(d) Any form of forced assimilation or integration;

(e) Any form of propaganda designed to promote or incite racial or ethnic discrimination directed against them.

31. The delegation of the United States reserves its position with respect to Article XXV (2)

Comments:

Both texts limit the transfer or relocation of indigenous peoples and require prior, free, and informed consent. One possible exception in the OAS Draft Declaration would be natural disasters. The right to return is also promoted.

As for remedies, both texts call for just and equitable compensation. The UN text includes redress in the case of actions “dispossessing them of their lands, territories or resources.”

The UN text also explicitly prohibits the forced transfer of children in paragraph two of article seven (shall not be subjected to any act of genocide or any other act of violence, including forcibly removing children of the group to another group).

Article XXVI. Indigenous peoples in voluntary isolation or initial contact

1. Indigenous peoples in voluntary isolation or initial contact have the right to remain in that condition and to live freely and in accordance with their cultures.

2. The States shall adopt adequate policies and measures with the knowledge and participation of indigenous peoples and organizations to recognize, respect, and protect the lands, territories, environment, and cultures of these peoples as well as their life, and individual and collective integrity.^{32/ 33/}

Comments:

This provision appears only in the OAS Draft Declaration.

Article XXVII. Labor rights

1. Indigenous peoples and persons have the rights and guarantees recognized in national and [applicable] international labor law. States shall take all special measures to prevent, sanction and remedy the discrimination to which indigenous peoples and persons are

Article 17:

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

2. States shall in consultation and cooperation with indigenous peoples take specific measures to protect indigenous children from economic exploitation and

32. The delegation of Argentina reserves accepting the terms “lands” and “territories” until such time as their scope is considered throughout the text of the declaration.

33. The delegation of México joins the consensus reached on this Article. However, it reserves the right to request reconsideration of the latter part of the second paragraph of this Article that states: “These policies shall include the measures necessary to prevent, prohibit and sanction any unauthorized intrusion in their lands or territories,” if it is not included in another article of the Declaration.

<p>subjected.</p> <p>2. States, in conjunction with indigenous peoples, shall adopt immediate and effective measures to eliminate exploitative labor practices with regard to indigenous peoples, in particular, indigenous children, women, and elders.</p> <p>3. In case indigenous peoples are not effectively protected by the laws applicable to workers in general, States, in conjunction with indigenous peoples, shall take all measures that may be necessary in order to:</p> <ul style="list-style-type: none">a. protect indigenous workers and employees in relation to contracting under fair and equal conditions of employment in both formal and informal labor arrangements;b. establish, apply, or improve labor inspection and the enforcement of rules with particular attention to, inter alia, regions, companies, and labor activities in which indigenous workers or employees participate;c. establish, apply, or enforce laws so that both female and male indigenous workers:<ul style="list-style-type: none">i. enjoy equal opportunities and treatment in all terms, conditions, and privileges of employment under national and [applicable] international law;ii. enjoy the right of association, the right to form trade unions, and join trade union activities, and the right to bargain collectively with employers through representatives of their own choosing or workers' organizations, including traditional authorities;iii. are not subject to discrimination or harassment on the basis of, inter alia, race, sex, indigenous origin or identity;iv. are not subject to coercive hiring systems, including debt servitude or any other form of forced or compulsory labor regardless of whether the labor arrangement arises from law, custom, or an individual or collective arrangement,	<p>from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development, taking into account their special vulnerability and the importance of education for their empowerment.</p> <p>3. Indigenous individuals have the right not to be subjected to any discriminatory conditions of labour and, inter alia, employment or salary.</p> <p>Article 21:</p> <ul style="list-style-type: none">1. Indigenous peoples have the right, without discrimination, to the improvement of their economic and social conditions, including, inter alia, in the areas of education, employment, vocational training and retraining, housing, sanitation, health and social security.2. States shall take effective measures and, where appropriate, special measures to ensure continuing improvement of their economic and social conditions. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities.
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<p>in which case the labor arrangement shall be deemed absolutely null and void;</p> <p>v. are not forced to work in conditions that endanger their health and personal safety; and are protected from work that does not comport with occupational health and safety standards; and</p> <p>vi. receive full and effective legal protection, without discrimination, when they provide their services as seasonal, occasional, or migrant workers, as well as when they are contracted by employers such that they receive the benefits of the national legislation and practices, which shall be in accordance with the [applicable] international human rights laws and standards for this category of workers;</p> <p>d. ensure that the indigenous workers and their employers are informed of the rights of indigenous workers under national law and [applicable] international and indigenous standards, and of the remedies and actions available to them to protect those rights.</p> <p>4. [States should take measures to promote employment of indigenous individuals.]</p> <p>5. [In all cases, applicable indigenous labor laws, norms, and policies shall take precedence within the jurisdiction of the indigenous peoples concerned.]</p>	
<p><u>Comments:</u></p> <p>Both texts refer to indigenous peoples, except that the OAS text refers to “indigenous persons” while the UN text refers to “indigenous individuals,” and to respect for their labor rights under national and international law.</p> <p>Both also obligate the state to take immediate and effective measures to eliminate exploitative labor practices with regard to children, with the difference that the OAS text includes indigenous children and women and the indigenous elderly. Finally, there are similarities between the references to “discrimination or harassment on the basis of, inter alia, race, sex, indigenous origin or identity” (OAS text) and “discriminatory conditions of labour and inter alia, employment or salary” (UN text).</p> <p>The OAS Draft Declaration also reworks Article 20 of ILO Convention 169, adding new elements:</p> <ul style="list-style-type: none">• To the ILO’s protection with respect to hiring and working conditions, the OAS text adds “fair and equal” to the conditions of employment, in both formal and informal labor arrangements;	

- To the ILO's improvement of labor inspection, the OAS text adds the application of rules to indigenous workers and employees;
- To the ILO's right of association and right to form trade unions, the OAS text adds the possibility of having traditional authorities among their representatives;
- To the ILO's prohibition of coercive hiring systems and all forms of debt servitude, the OAS text adds forced or compulsory labor, in which case the labor arrangement shall be deemed absolutely null and void;
- To the ILO's right not to be forced to work in conditions that endanger their health, the OAS text adds the right not to be forced into or subjected to conditions that endanger their personal safety. There is also a protective measure concerning occupational health and safety standards;
- To the ILO's right to full and effective legal protection for seasonal, occasional, or migrant workers, the OAS texts adds nondiscrimination and observance of international human rights standards;
- The ILO's right of access to employment has been expressed in terms of promoting the employment of indigenous persons.

The OAS text includes a provision on "equal opportunities and treatment" and another to ensure that both indigenous workers and their employers are informed as to their respective rights.

The UN text contains a provision in favor of the improvement of the economic and social conditions of indigenous peoples (Article 21).

[Article XXVIII. Protection of cultural heritage and intellectual property

1. Indigenous peoples have the right to the full recognition and respect for their property, ownership, possession, control, development, and protection of their tangible and intangible cultural heritage and intellectual property, including its collective nature, transmitted through millennia, from generation to generation.

2. The intellectual property of indigenous peoples includes, inter alia, traditional knowledge, ancestral designs and procedures, cultural, artistic, spiritual, technological, and scientific expressions, genetic resources including human genetic resources, tangible and intangible cultural heritage, as well as the knowledge and developments of their own related to biodiversity and the utility and qualities of seeds and medicinal plants, flora and fauna.

3. States, in conjunction with indigenous peoples, shall adopt measures necessary to guarantee that national and international agreements and regimes provide adequate

Article 31:

1. Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.

2. In conjunction with indigenous peoples, States shall take effective measures to recognize and protect the exercise of these rights.

<p>recognition and protection for indigenous peoples' cultural heritage and intellectual property. These measures shall be adopted with the free, prior, and informed consent of indigenous peoples.]</p>	
<p><u>Comments:</u></p> <p>Both texts grant a right to control, develop, and protect the cultural heritage and intellectual property.</p> <p>Likewise, in both texts the indigenous peoples would participate in the adoption of measures needed to provide adequate recognition and protection of said rights.</p> <p>Finally, both texts list in detail the elements that make up the stipulated heritage and intellectual property.</p>	

<p>[Article XXIX. <u>Right to development</u></p> <p>1. Indigenous peoples have the right to freely^{34/} determine their political, economic, social and cultural development in conformity with their own world view. They also have the right to be guaranteed the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities.</p> <p>2. This right includes the development of policies, plans, programs, and strategies in the exercise of their right to development and to administer them through their own institutions.</p> <p>3. Indigenous peoples have the right to obtain adequate means for their own development from the State, as well as those from international cooperation.</p> <p>4. Indigenous peoples have the right to full and effective participation in the formulation, implementation and evaluation of State development plans and programs which may affect them.</p> <p>5. The States shall take the necessary measures to ensure that the decisions referring to any plan, program, or project that affect the rights or living conditions of indigenous peoples are made with the free, prior and informed</p>	<p>Article 20:</p> <p>1. Indigenous peoples have the right to maintain and develop their political, economic and social systems or institutions, to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities.</p> <p>2. Indigenous peoples deprived of their means of subsistence and development are entitled to just and fair redress.</p> <p>Article 23:</p> <p>Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development. In particular, indigenous peoples have the right to be actively involved in developing and determining health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions.</p> <p>Article 32:</p> <p>1. Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.</p> <p>2. States shall consult and cooperate in good faith</p>
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34. This paragraph shall be considered together with Articles III, IV, and XX of the Draft Declaration.

<p>consent or agreement of the indigenous peoples affected, on the basis of the measures proposed.</p> <p>6. Indigenous peoples have the right to effective measures to mitigate adverse ecological, economic, social, cultural, or spiritual impacts of development projects. Indigenous peoples who have been deprived of their own means of subsistence and development have the right to restitution and, where this is not possible, to fair and equitable compensation. This includes the right to compensation for any damage caused to them by the implementation of State, international financial institutions or private business plans, programs, or projects.]</p>	<p>with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.</p> <p>3. States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.</p> <p>Article 39: Indigenous peoples have the right to have access to financial and technical assistance from States and through international cooperation, for the enjoyment of the rights contained in this Declaration.</p>
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<p><u>Comments:</u></p> <p>Both texts refer to political, economic, social, and cultural development and to the obtaining of means of subsistence whose enjoyment is assured. However, the right referred to differs, because the OAS text refers to a right to freely determine their development, while the U.N. text invokes the right to maintain and develop their systems or institutions.</p> <p>Both texts agree that the right to development also implies a right to the enjoyment of their own means of subsistence and to engage freely in all their traditional and other economic activities.</p> <p>There would also appear to be similarities with respect to the participation of the indigenous peoples in policy formulation and in the securing of adequate means for their own development. The OAS text insists on free, prior, and informed consent of the peoples affected by measures adopted: a consent that the UN text requires with respect to any project affecting their lands or territories.</p> <p>Both texts call upon the state to help to “mitigate the impacts of development” (OAS language) or to provide redress to “indigenous peoples deprived of their means of subsistence and development” (U.N. text), in which cases there is to be fair and just compensation (if restitution is not possible, according to the OAS text).</p>	
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<p>[Article XXX. <u>Right to peace, security and protection in the event of armed conflicts</u></p> <p>1. Indigenous peoples have the right to peace and security.</p> <p>2. Indigenous peoples have the rights to recognition and respect for their institutions for the maintenance of peace and security.</p> <p>3. Indigenous peoples have the right to</p>	<p>Preamble</p> <p>Emphasizing the contribution of the demilitarization of the lands and territories of indigenous peoples to peace, economic and social progress and development, understanding and friendly relations among nations and peoples of the world,</p>
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<p>protection and security in situations or periods of internal or international armed conflict, political turmoil or social disorder.</p> <p>4. States shall respect international standards, in particular the international humanitarian law such as the Fourth Geneva Convention of 1949 relative to the protection of civilian persons in time of war, and Protocol II of 1977 relating to the protection of victims of non-international armed conflicts. In the event of armed conflicts, the States shall take adequate measures, with the agreement of the indigenous peoples concerned, to protect the human rights, institutions, lands, territories, and resources of the indigenous peoples, inter alia:</p> <ul style="list-style-type: none">a. Shall not permit the recruitment of indigenous individuals against their will to serve in the armed forces and private security forces and, in particular, for use against their own peoples or other indigenous peoples;b. Shall not recruit indigenous children into the armed forces under any circumstances;c. Shall not force indigenous communities or individuals to abandon their lands, territories or means of subsistence, nor relocate them for military purposes;d. Shall not force indigenous individuals to work for military purposes;e. Shall respect the right to conscientious objection particularly taking into account their cultural or spiritual practices;f. Shall take measures of integral reparation and provide adequate resources for reconstruction, with the free, prior and informed consent of the indigenous peoples affected by the damages incurred.g. Shall take special and effective measures to guarantee that women and children live free from all forms of violence. <p>5. Nothing in this article shall be used as a pretext to militarize, directly or indirectly, the lands and territories of indigenous peoples, by the armed forces of the State, armed groups supported or condoned by the State, or private security groups, or to take any actions that limit or deny their right to peace and security.]</p>	<p>Article 7:</p> <ul style="list-style-type: none">1. Indigenous individuals have the rights to life, physical and mental integrity, liberty and security of person.2. Indigenous peoples have the collective right to live in freedom, peace and security as distinct peoples and shall not be subjected to any act of genocide or any other act of violence, including forcibly removing children of the group to another group. <p>Article 30:</p> <ul style="list-style-type: none">1. Military activities shall not take place in the lands or territories of indigenous peoples, unless justified by a relevant public interest or otherwise freely agreed with or requested by the indigenous peoples concerned.2. States shall undertake effective consultations with the indigenous peoples concerned, through appropriate procedures and in particular through their representative institutions, prior to using their lands or territories for military activities.
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Comments:

Both texts establish the right to peace and security, the difference being that in the OAS text the subjects of those rights are the indigenous peoples, whereas in the UN text they are indigenous individuals.

The OAS text contains a reference to protection and security in the event of armed conflicts. The U.N. text would include “the rights to life, physical and mental integrity, liberty and security of person.” As mentioned earlier, the right to life in the OAS text would be stated in Article XVIII, “[Right to] protection of a healthy environment],” while the reference to enjoyment of physical, mental, and spiritual health would be contained in Article XVII on health.

The draft Declaration includes recognition “of indigenous peoples’ institutions... for the maintenance of peace and security,” an idea that appears to be embodied in Article XX (“maintenance [of community security], [of jurisdictional functions in matters of territory]”) and in Article 4 of the U.N. text (“right to maintain and develop their own indigenous decision-making institutions”).

The OAS draft Declaration includes references to international humanitarian law conventions adopted in the United Nations, such as the Fourth Geneva Convention of 1949, relative to the protection of civilian persons in time of war, and Protocol II of 1977, relating to the protection of victims of non-international armed conflicts.

The OAS text opposes militarization of the lands and territories of the indigenous peoples by armed forces or armed groups, whereas the U.N. text calls for “effective consultations with the indigenous peoples concerned (...) prior to using their lands or territories for military activities.”

SECTION SIX: General provisions^{35/}

<p>Article XXXI</p> <p>1. The States shall ensure the full enjoyment of the civil, political, economic, social, cultural and [spiritual] rights, and of all [fundamental human] rights of the indigenous peoples contained in this Declaration.</p> <p>2. The States shall promote, with the full and effective participation of the indigenous peoples, the adoption of the legislative and other measures that may be necessary to give effect to the rights included in this Declaration.</p>	<p>Preamble</p> <p>Acknowledging that the Charter of the United Nations, the International Covenant on Economic, Social and Cultural Rights^{2/} and the International Covenant on Civil and Political Rights,^{2/} as well as the Vienna Declaration and Programme of Action,^{3/} affirm the fundamental importance of the right to self-determination of all peoples, by virtue of which they freely determine their political status and freely pursue their economic, social and cultural development,</p> <p>2. See resolution 2200 A (XXI), Annex.</p> <p>3. A/CONF.157/24 (Part I), chap. III.</p>
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35. Details on the negotiation of this section, examined during the Seventh Meeting of Negotiations in the Quest for Points of Consensus, may be found in Appendix I to this document.

	<p>Article 38: States in consultation and cooperation with indigenous peoples, shall take the appropriate measures, including legislative measures, to achieve the ends of this Declaration.</p> <p>Article 39: Indigenous peoples have the right to have access to financial and technical assistance from States and through international cooperation, for the enjoyment of the rights contained in this Declaration.</p>
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Comments:

Paragraph 1 of Article XXXI explicitly guarantees the indigenous peoples a set of rights: civil, political, economic, social, cultural and [spiritual] rights, and all [fundamental human] rights. The United Nations text embodies those references in its preamble. The OAS text is innovative in that it mentions “spiritual rights.” As noted in Article XI, a review of the OAS text is required, to reconsider the reference made in that provision to the rights cited in that article.

Paragraph 2 of Article XXI mentions that, in the case of the OAS, giving effect to the Declaration would entail legislative and other measures, whereas the UN proposes not only legislative measures but also financial and technical assistance from states and international cooperation (a reference to international cooperation is found in Article XXIX of the OAS text).

<p>Article XXXII. All the rights and freedoms recognized in the present Declaration are guaranteed equally to indigenous women and men.^{36/37/}</p>	<p>Article 41: The organs and specialized agencies of the United Nations system and other intergovernmental organizations shall contribute to the full realization of the provisions of this Declaration through the mobilization, inter alia, of financial cooperation and technical assistance. Ways and means of ensuring participation of indigenous peoples on issues affecting them shall be established.</p> <p>Article 44:</p>
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36. This footnote is to explain that during the Seventh Meeting of Negotiations, held in Brasilia, Brazil, the Working Group approved the three paragraphs which had been proposed by the Indigenous Peoples’ Caucus and which the Chair had suggested appear currently in Article VII, Gender Equality. The paragraph that had been agreed upon through consensus in another Meeting of Negotiations and was the first paragraph of Article VII, has been moved to become a general provision and is the one that now appears as Article XXXII in this section.

	All the rights and freedoms recognized herein are equally guaranteed to male and female indigenous individuals.
<u>Comments:</u> Similar texts except for the use of the plural in the OAS text versus the singular in the UN text. It should be noted that Article VII of the OAS text includes gender equity aspects.	

Article XXXIII. Indigenous peoples and persons have the right to effective and appropriate remedies, including prompt judicial remedies, for the reparation of all violations of their collective and individual rights. The States, with full and effective participation of indigenous peoples, shall provide the necessary mechanisms for the exercise of this right.	Article 40: Indigenous peoples have the right to access to and prompt decision through just and fair procedures for the resolution of conflicts and disputes with States or other parties, as well as to effective remedies for all infringements of their individual and collective rights. Such a decision shall give due consideration to the customs, traditions, rules and legal systems of the indigenous peoples concerned and international human rights.
<u>Comments:</u> Both texts provide for resources to redress violations of collective or individual rights of indigenous peoples, through “prompt judicial remedies” (OAS text) or “effective remedies for all infringements” (UN text).	

Article XXXIV In case of conflicts and disputes with indigenous peoples, States shall provide, with the full and effective participation of those peoples, just, equitable and effective mechanisms and procedures for their prompt resolution. For these purposes, [due consideration/recognition] shall be given to the customs, traditions, norms and [legal systems] of the indigenous peoples concerned. Article XXXIV bis Nothing in this Declaration may be interpreted so as to limit, restrict, or deny human rights in any way, or so as to authorize any action that is not in keeping with international human rights law. <u>(Approved on December 8, 2006 – Eighth Meeting of Negotiations in the Quest for Points</u>	Article 40: Indigenous peoples have the right to access to and prompt decision through just and fair procedures for the resolution of conflicts and disputes with States or other parties, as well as to effective remedies for all infringements of their individual and collective rights. Such a decision shall give due consideration to the customs, traditions, rules and legal systems of the indigenous peoples concerned and international human rights.
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of Consensus).	
<p><u>Comments:</u></p> <p>Very similar provisions, the difference being that the United Nations text refers to disputes with “other parties” as well as with states.</p>	

<p>Article XXXV The Organization of American States, its organs, agencies, and entities, shall take all necessary measures to [promote and ensure] the full application, respect and protection of the rights of indigenous peoples contained in this Declaration.</p>	<p>Article 42 The United Nations, its bodies, including the Permanent Forum on Indigenous Issues, and specialized agencies, including at the country level, and States shall promote respect for and full application of the provisions of this Declaration and follow up the effectiveness of this Declaration..</p>
<p><u>Comments:</u></p> <p>Obligations are placed on both organizations and their bodies regarding promotion of the application of, respect for, and full protection of the rights embodied in the texts.</p>	

<p>Article XXXVI. The nature and scope of the measures that shall be taken to implement this Declaration shall be determined in accordance with the spirit and purpose of said Declaration.</p>	<p>Preamble Solemnly proclaims the following United Nations Declaration on the Rights of Indigenous Peoples as a standard of achievement to be pursued in a spirit of partnership and mutual respect:</p>
<p><u>Comments:</u></p> <p>This provision on the purpose and spirit of the American Declaration does not have an equivalent in the UN text, except for the reference in the preamble to the UN Declaration to the “standard of achievement” for the rights of indigenous peoples.</p>	

<p>Article XXXVII. Any interpretation and application of the present Declaration [shall take into account the constitutional principles of each State and] shall be consistent with the international principles of justice, democracy, respect for human rights, nondiscrimination, [good governance,] and good faith.</p>	<p>Article 46: 1. Nothing in this Declaration may be interpreted as implying for any State, people, group or person any right to engage in any activity or to perform any act contrary to the Charter of the United Nations or construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States. 2. In the exercise of the rights enunciated in the present Declaration, human rights and</p>
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	<p>fundamental freedoms of all shall be respected. The exercise of the rights set forth in this Declaration shall be subject only to such limitations as are determined by law and in accordance with international human rights obligations. Any such limitations shall be non-discriminatory and strictly necessary solely for the purpose of securing due recognition and respect for the rights and freedoms of others and for meeting the just and most compelling requirements of a democratic society.</p> <p>3. The provisions set forth in this Declaration shall be interpreted in accordance with the principles of justice, democracy, respect for human rights, equality, non-discrimination, good governance and good faith.</p>
<p><u>Comments:</u></p> <p>Interpretative provisions containing certain common elements, such as respect for the constitution and for international principles of justice, democracy, respect for human rights, non-discrimination, [good governance,] and good faith. The UN text also includes references to equality and “good governance.”</p>	

<p>Article XXXVIII.</p> <p>Nothing in this Declaration shall be construed as diminishing or extinguishing rights that indigenous peoples now have or may acquire in the future.</p>	<p>Article 45:</p> <p>Nothing in this Declaration may be construed as diminishing or extinguishing the rights indigenous peoples have now or may acquire in the future.</p>
<p><u>Comments:</u></p> <p>Similar texts.</p>	

<p>Article XXXIX.</p> <p>The rights recognized in this Declaration constitute the minimum standards for the survival, dignity, and well-being of the indigenous peoples of the Americas.</p>	<p>Preamble</p> <p>Convinced that the recognition of the rights of indigenous peoples in this Declaration will enhance harmonious and cooperative relations between the State and indigenous peoples, based on principles of justice, democracy, respect for human rights, non-discrimination and good faith,</p> <p>Encouraging States to comply with and effectively implement all their obligations as they apply to indigenous peoples under international instruments, in particular those related to human rights, in consultation and</p>
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	<p>cooperation with the peoples concerned,</p> <p>Article 43 The rights recognized herein constitute the minimum standards for the survival, dignity and well-being of the indigenous peoples of the world.</p>
<p><u>Comments:</u></p> <p>Similar texts, except for the regional reference in the OAS text and the global reference in the UN text.</p>	