

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

OEA/Ser.K/XVI
GT/DADIN/doc.321/08
14 January 2008
Original: Spanish

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

REPORT OF THE CHAIR ON THE
MEETING FOR REFLECTION ON THE MEETINGS OF NEGOTIATIONS
IN THE QUEST FOR POINTS OF CONSENSUS

(Washington, D.C., United States – November 26-28, 2007)

REPORT OF THE CHAIR

I. MANDATE

At the last General Assembly of the Organization of American States, held in Panama City, Panama in June 2007, the Permanent Council was requested, in resolution AG/RES. 2294 (XXXVII-O/07) to instruct the Working Group to:

- a. Hold a special two-day meeting at OAS headquarters between September and October, 2007 and before scheduling the Eleventh Meeting of Negotiations in the Quest for Points of Consensus, in order to engage in a process of reflection regarding the Draft American Declaration on the Rights of Indigenous Peoples. The outcomes and recommendations of the two-day meeting of the Working Group will be presented the following day to a special meeting of the Permanent Council by the Chair of the Working Group and the Leaders of the Indigenous Peoples' Caucus. The Permanent Council will consider those recommendations on how to strengthen the negotiation process in the presence of representatives of the indigenous peoples.

Pursuant to that request, and after consulting with representatives of the member states and indigenous peoples as to the date that best suited the parties concerned, the Chair decided to hold that meeting at the end of November.

II. MEETING FOR REFLECTION

A. Date of the meeting

The Meeting for Reflection was held on November 26 to 28, 2007, at the Headquarters of the Organization of American States in Washington, D.C., United States of America.

B. Procedure

The Meeting for Reflection was organized around four priority topics that formed the basis for the dialogue and exchange of views among representatives of the member states and the indigenous peoples. Those topics are listed in the agenda, document GT/DADIN/doc. 313/07 rev. 2.

The procedure adopted for the meeting was set by the Chair in accordance with a proposal that had been presented beforehand and provided for the consideration of the member states and the indigenous peoples. The meeting began with an unconventional seating arrangement, whereby indigenous representatives and the representatives of the member states sat at the same table, with alternating seats. This was to promote integration and interaction among the participants. Sitting at the head of the table were the Chair, the Vice Chair of the Working Group, a representative of the indigenous peoples, a special guest, and the representative of the secretariat.

Each of the four segments of the meeting, according to the agenda, was moderated by a different member of the head of the table.

Likewise, a representative of the member states and a representative of the indigenous peoples was named for each segment, their job being to record the main ideas and present the outcomes and recommendations emerging during each segment.

In addition, the Chair invited those designated persons and the other participants in the meeting to work together on the morning of November 28, in the final session for drafting the outcomes and recommendations to be submitted to the Permanent Council.

C. Documents

The participants in the Meeting for Reflection had the following official documents at their disposal: on the agenda for the meeting, contained in document GT/DADIN/doc.313/07 rev.2, the Work Schedule for the meeting (GT/DADIN/doc.314/07 rev.3), the Informal Consultative Document (GT/DADIN/doc.294/07), the Record of the Current Status of the Draft American Declaration on the Rights of Indigenous Peoples (GT/DADIN/doc.301/07), the Table Comparing the Draft American Declaration on the Rights of Indigenous Peoples and the United Nations Declaration on the Rights of Indigenous Peoples (GT/DADIN/doc.317/07 corr. 1) and the Procedure for Promptly Concluding the Negotiations in the Quest for Points of Consensus of the Working Group to Prepare the Draft American Declaration on the Rights of Indigenous Peoples (GT/DADIN/doc.246/06 rev.6).

D. Participants

The list of those participating as representatives of the indigenous peoples was published as document GT/DADIN/doc.319/07.

E. Caucus of Representatives of the Indigenous Peoples in connection with the drafting of the American Declaration

With the support and coordination of the OAS General Secretariat, the representatives of the indigenous peoples met on November 24 and 25, 2007. Their participation in that caucus was facilitated in part by funding from the Specific Fund set up for the drafting of the American Declaration for those representatives that did not finance their participation themselves.

F. Inauguration

The inaugural session took place on November 26, 2007, with a moment set aside, at the suggestion of the Chair, for individual meditation, followed by an indigenous prayer. The Chair of the Working Group then welcomed participants and gave a brief introduction to the meeting. He then gave the floor to the representative of the Caucus, Ms. Azelene Inacio, for her to give a brief introduction and presentation of the Caucus' concerns and expectations with regard to the meeting. The inaugural session was also attended by the Assistant Secretary General of the Organization, Ambassador Albert R. Ramdin, who thanked those present for participating and briefly underscored the importance of the meeting and of a prompt conclusion to the negotiations.

G. Proceedings

First segment THE UNITED NATIONS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES

This segment was directed by special guest Luis Enrique Chávez, Deputy Permanent Representative of Peru to the United Nations, who gave a presentation on the background and process of adoption of the United Nations Declaration on the Rights of Indigenous Peoples. In his presentation, he underlined the differences between the United Nations process and that of the Organization of American States and emphasized both the regional nature of the process for the OAS and the need to clarify how the declaration would be adopted: by a vote or by consensus.

The presentation was followed by a round of questions put to Ambassador Chávez and open dialogue among participants.

The conclusions reached in this segment were as follows:

“The majority of States and all of the indigenous representatives supported the use of the UN Declaration as the baseline for negotiations and indicated that this represented a minimum standard for the OAS Declaration. Accordingly, the provisions of the OAS Declaration has to be consistent with those set forth in the United Nations Declaration. Moreover, the OAS Declaration should expand on the general concepts of the United Nations Declaration by addressing the particular characteristics of the indigenous peoples of the Americas, while at the same time filling in any gaps or regulatory lacunae in those areas that were insufficiently addressed in the United Nations Declaration.

The delegations of Canada and the United States, however, indicated that they could not accept the UN Declaration text as the starting point or minimum outcome for these negotiations. The delegation of the United States reminded the participants of their General Reservation, and proposed that the Working Group focus on taking actions, rather than engaging in negotiations, through an exchange of information and best practices in relation to the issues under negotiation.”

Second segment: INFORMAL CONSULTATIONS

At the start of this segment, the Chair of the Working Group provided an explanation of the origins and background to the document entitled “Sensitive Issues,” Informal Consultative Document (GT/DADIN/doc.294/07). The representative of the Caucus, Ms. June Lorenzo, gave a brief presentation in which, among other things, she called for transparency and the need for member states to be more open in their communications.

Direct discussion of the “Sensitive Issues” document was thereby obviated and, for the sake of reaching an understanding, it was agreed to define the scope of current conditions following the adoption at the United Nations of the Declaration on the Rights of Indigenous Peoples.

By the end of the dialogue, the following conclusions had been reached:

1. “Accelerate the negotiation process of the Declaration.
2. Continue to work on the OAS text (Record of Current Status of the Draft American Declaration on the Rights of Indigenous Peoples GT/DADIN/doc.301/07).
3. Establish clear rules to continue the negotiation and identify obstacles and issues on which progress has been made.
4. A majority of States and the Indigenous Caucus considered the document “Identification of Issues of Great Interest in the Draft American Declaration on the Rights of Indigenous Peoples” GT/DADIN/doc.294/07 was superseded by the document of the United Nations, nevertheless some States considered that the issues contained in the document continued to be relevant.
5. International law shall be the standard with which the draft American Declaration should be approached.”

Third segment: PROCEDURE

The dialogue in this segment was mainly based on a document containing new proposals as regards procedure presented by the representative of the Caucus, Mr. Adelfo Regino Montes. By the end of the dialogue, it had been agreed to keep to the existing document on procedure, including the changes in a revised version of it.

Document GT/DADIN/doc.246/06 rev.7 reads as follows:

1. Page 1, paragraph 4, an additional sentence at the end: **“In that sense, we appeal to all the parties to show greater flexibility and willingness for the purpose of reaching consensus.”**
2. Page 2, paragraph 4, an additional two sentences at the end: **“Those articles of the American Declaration on the Rights of Indigenous Peoples that to date have not been the object of consensus shall use as a point of reference that set forth in the UN Declaration on the Rights of Indigenous Peoples. And to this end we shall use document GT/DADIN/doc.317/07 corr.1.” (Canada and the United States could not join consensus on this point.)**
3. Page 2, paragraph 6, to be changed to read: **“If no consensus is reached, the Chair of the Working Group will invite the delegations to hold informal consultations via drafting groups composed of representatives of member states and indigenous peoples in order to find a text acceptable to all parties.”**

In addition, the following comments were taken into account:

“The delegation of Brazil proposed that the Eleventh Meeting of the Working Group should be devoted to a comparative in-depth analysis between the UN Declaration and the text of the draft American Declaration on the Rights of Indigenous Peoples based on the document entitled “Table Comparing the Draft American Declaration on the Rights of Indigenous Peoples and the United Nations Declaration on the Rights of Indigenous Peoples” (GT/DADIN/doc.317/07 corr. 1), to

identify gaps with a view to moving forward addressing regional specificities. This proposal was supported and amplified by other parties, who proposed among other things that this be done to guide negotiations in a progressive manner.

The Indigenous Caucus stressed that the preamble needed analysis and negotiation.”

Fourth segment: NEW PROPOSALS

In this segment, the Chair of the Working Group first wished to hear the views of both the member states and the indigenous peoples regarding the proposals that had already been presented and submitted for consideration.

The following proposals for strengthening the negotiation process had been presented and considered:

Proposals by the Indigenous Peoples’ Caucus

1. The Indigenous caucus considers that in this process there must be up to three (3) meetings of negotiations per year or one every six (6) months. The Chair of the Working Group will select the dates in consultation with the Indigenous Caucus, so as to ensure that they suit all the governments and the indigenous peoples.
2. Whenever the circumstances so warrant, the Caucus will hold Technical Team meetings to conduct any necessary analysis and to prepare documents and materials that may then be shared at the meetings of negotiations. **This technical team should receive OAS support in order to ensure that negotiators are technically well prepared for future negotiations.**
3. The Indigenous Caucus considers it important to compare the United Nations Declaration and the Draft being developed here at the OAS, so that the process can systematically move ahead.
4. The Caucus considers that the proposal by the Chair of the Working Group to set up an office for indigenous affairs within the OAS **is not advisable at this time**. However, once this negotiating process is over, the advisability of establishing an indigenous participation unit in the OAS could be discussed.
5. The Caucus points to **the need to strengthen the Specific Fund** and recommends that its funds not be limited just to countries in the Americas; funding from other countries outside the Americas is also welcome.
6. With regard to the Inter-American Indian Institute, the Caucus has a specific recommendation to make. It points out that the existing Institute has exhausted its potential and should therefore be dismantled and replaced by a new body within the OAS with full and effective participation by indigenous peoples.

7. The Caucus recommends that for Articles for which no consensus is reached it would be possible to resort to similar wording to that found in the United Nations Declaration.

Proposal by the States

The delegation of the United States proposed that the Working Group organize a year of action with a view to achieving a real impact, by establishing specific actions and activities based on best practices in the region. However, the Caucus and some States considered that such initiatives could be viable after the adoption of the American Declaration on the Rights of Indigenous Peoples.

The OAS secretariat was asked to complement the comparative analysis of the OAS and United Nations Declarations by contacting the United Nations Office of the High Commissioner for Human Rights in Geneva.

Canada proposed that thematic seminars be held on the topics of interest to the Working Group instead of devoting the next meetings of negotiations to exchanges of proposals and counter-proposals.

A suggestion was made by the Indigenous Caucus to organize a plan of action to implement the United Nations Declaration on the Rights of Indigenous Peoples in the Hemisphere. The delegations of Argentina and Venezuela considered that, in keeping with the recommendations made by the Working Group to speed up the negotiation process of the American Declaration, such initiatives should be postponed until the Declaration is adopted so as not to divert efforts deployed for the negotiation process.

To conclude, the Chair of the Working Group summarized his proposals, as follows:

1. Establish a coordination office, of a technical, not political, nature, primarily to perform a facilitation function.
2. Establish a plan of action parallel to the negotiation process. That plan of action should be geared to, and drawn up in accordance with, indigenous peoples' priorities.
3. Strive to recreate an updated indigenous institute that would make full use of the assets of the Inter-American Indigenous Institute, which was now nearing its end.

H. Acknowledgments

The Chair of the Working Group would like to pay tribute to and thank all the participating delegations, as well as the staff of the General Secretariat, the Summits Secretariat, the Legal Department, and the Inter-American Commission on Human Rights for their effective contribution to this Meeting for Reflection.

Reynaldo Cuadros Anaya
Ambassador, Permanent Representative of Bolivia to the OAS
Chair of the Working Group to Prepare
the Draft American Declaration on the Rights of Indigenous Peoples