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INDIGENOUS ISSUES

**Report of the working group established in accordance with
Commission on Human Rights resolution 1995/32**

Chairperson-Rapporteur: Mr. Luis-Enrique Chávez (Peru)

Executive summary

The eighth session of the working group on the draft declaration met from 2 to 13 December 2002 and discussed the clustering of: (a) articles 3, 31 and 36; (b) articles 25, 26, 27, 28, 29 and 30; (c) articles 7, 8 and 11. A compilation of amendments proposed by some States is included in the annex. The ninth session of the working group will take place from 15 to 26 September 2003 and will discuss the clustering of: (a) articles 3, 31, 19, 20, 21, 30, 36, 45 and preambular paragraph 15; (b) articles 22, 23 and 24; (c) articles 25, 26, 27 and 28; (d) articles 15, 16, 17 and 18; (e) articles 7, 8 and 11.

Introduction

1. By resolution 1995/32 of 3 March 1995, the Commission on Human Rights decided to establish an open-ended intersessional working group of the Commission on Human Rights with the sole purpose of elaborating a draft declaration, considering the draft contained in the annex to resolution 1994/45 of the Sub-Commission on Prevention of Discrimination and Protection of Minorities (now the Sub-Commission on the Promotion and Protection of Human Rights) entitled "Draft United Nations declaration on the rights of indigenous peoples" for consideration and adoption by the General Assembly within the International Decade of the World's Indigenous People. This decision was endorsed by the Economic and Social Council in its resolution 1995/32.
2. The working group held 3 formal meetings and 13 informal plenary meetings during the period 2-13 December 2002. A total of 298 people attended the meetings of the working group, including representatives of 36 Governments, 2 United Nations organizations and 55 indigenous and non-governmental organizations (NGOs).
3. The present report contains a record of the general debate. The debate which took place in the informal plenary meetings is reflected in the summaries of the Chairperson-Rapporteur.
4. This report is solely a record of the debate and does not imply acceptance of the usage of either the expression "indigenous peoples" or "indigenous people" by all Governments. In this report both terms are used without prejudice to the positions of particular delegations, where divergence of approach remains.
5. It is noted by indigenous representatives that all indigenous representatives and many Governments could accept the expression "indigenous peoples" used in the current text of the draft declaration.

Opening of the session

6. The working group was opened by a representative of the Office of the High Commissioner for Human Rights (OHCHR). He welcomed the 16 indigenous representatives assisted by the Voluntary Fund for Indigenous Populations and thanked the Governments that had made contributions to the Fund. He noted that the Fund ensured that there was broad geographical participation by indigenous organizations in the important United Nations processes affecting them.
7. At its first meeting, the working group elected by acclamation Mr. Luis-Enrique Chávez (Peru) as its Chairperson-Rapporteur.

Organization of work

8. In his opening statement, the Chairperson-Rapporteur announced that he had had informal consultations with indigenous representatives and that he would hold informal consultations with representatives of Governments on the organization of work.

9. On behalf of the Group of Latin American States, the representative of Chile reaffirmed the region's commitment to indigenous peoples and said that every effort would be made to adopt the draft United Nations declaration on the rights of indigenous peoples before the end of the International Decade of the World's Indigenous People in 2004. The draft declaration contained provisions concerning both individual and collective rights, and a new framework was needed in order to take into account all human rights for the indigenous peoples.

10. The representative of Mexico expressed support for the draft declaration and said that his Government could accept the Sub-Commission text without any changes. Many of the proposals that had been put forward weakened the draft instead of strengthening it. The working methods of the working group should involve the full participation of indigenous peoples. He therefore encouraged discussions in plenary and also suggested inviting indigenous representatives to informal and intersessional meetings. In addition, he invited Governments to adopt the term "indigenous peoples" throughout the text in line with the Declaration and Programme of Action of the World Summit on Sustainable Development, where the term was used without qualification. His statement was in accordance with the agreement reached regarding the draft declaration in the consultation process that had taken place in Mexico between the Government, indigenous representatives and civil society organizations.

11. The representative of Guatemala said that her Government could accept the original text approved by the Sub-Commission. It was necessary to resolve the core topics in order to move forward in the adoption of the declaration. In that sense, she stressed that the principle of self-determination and the principle pertaining to land, territory and natural resources only made sense if they were accepted as indigenous peoples' collective rights. The exercise of self-determination allowed peoples and national groups to define, within States, their political condition through processes of decentralization and autonomy, allowing them to participate effectively in setting policies of economic, social and cultural development. If there was belief in the democratic system, denying or limiting the right to self-determination was contradictory, for inside a pluralistic and participatory democracy in which human rights and fundamental freedoms were respected, the fulfilment of the right to self-determination would come about by defining or redefining the political-legal order, structuring the adequate levels of decentralization and autonomy.

12. The representative of Ecuador endorsed the statement of the representative of Chile and underlined the urgency in achieving substantive progress if the goal of adopting the declaration before the end of the Decade was to be achieved. He stressed that the working methods should be planned with dynamism and efficiency in order to achieve this goal.

13. The representative of Cuba said that it was vital that indigenous peoples participate in both informal and formal meetings. He also suggested that all changes, amendments and deletions should be reflected in the report so that it was clear which delegations were behind each proposal. He regretted that the working group had not been able to adopt the draft declaration, and said that the right to self-determination should be included.

14. At the second meeting, the Chairperson-Rapporteur gave a summary of the consultations he had held with States and indigenous representatives and proposed a programme of work. He suggested continuing the method of work adopted at the last session, that is discussing articles in informal meetings. He provided information about the governmental intersessional meeting held from 16 to 19 September 2002 and said that the minutes of that meeting were available to all participants as a working paper (E/CN.4/2002/WG.15/WP.4) in English, French and Spanish. He also referred to paragraph 83 of the report of the seventh session of the working group reflecting the agreement to discuss three clusters of articles, and he proposed starting with the first cluster dealing with articles 3, 31 and 36. He proposed that at least three meetings be set aside for this discussion, followed by discussion on the clusters dealing with articles 25-30 and 7, 8 and 11. The Chairperson-Rapporteur said that he would convene a formal meeting to adopt appropriate decisions, should consensus be achieved. He further informed participants of the new documentation rules by which reports of intergovernmental bodies could not exceed 10,700 words and said that this would put additional pressure on all to be clear, to the point and constructive.

15. The indigenous caucus stated that the basis for discussions should remain the draft declaration as adopted by the Sub-Commission. It also raised a concern about the French and Spanish translations of article 31, and it was agreed that an informal group would review those translations.

16. An indigenous representative stressed the importance of the articles under discussion because an agreement on them would complete the draft declaration before the end of the Decade. He argued that treaties were agreements between nations and therefore evidence of the exercise of the right of self-determination.

17. The Chairperson-Rapporteur confirmed that the draft declaration as adopted by the Sub-Commission was the basis for the deliberations.

Informal discussion of articles

18. The working group discussed the agreed clusters of articles in informal meetings. At the outset of the discussions, the Chairperson-Rapporteur invited participants to make substantive proposals for improvements to the draft, presenting alternative language.

Articles 3, 31 and 36

19. The working group discussed the first cluster of articles in informal meetings. A proposal was made by the representative of Norway concerning the cluster of articles dealing with self-determination which it offered in an attempt to bridge the gap between the different positions on this question. The representative noted that some Governments had raised two main concerns regarding indigenous peoples' right to self-determination. The first was whether the right of self-determination entailed a right to secession and the second was whether indigenous peoples' right to land and natural resources were to be regarded as being an integral part of the right of self-determination. The proposal consisted of three elements: the inclusion of a reference to the 1970 Declaration on Principles of International Law concerning Friendly

Relations and Cooperation among States in accordance with the Charter of the United Nations (Friendly Relations Declaration) in the fifteenth preambular paragraph of the draft declaration; a re-clustering of articles 3, 31, 19, 20, 21, 30 and 36 of the draft declaration dealing with self-determination and autonomy; and the deletion of the remaining text of article 31 after the term “local affairs”.

20. Government delegations and a number of indigenous representatives welcomed the proposal. The representative of Cuba stated that his delegation could accept the inclusion of a reference to the Friendly Relations Declaration in the fifteenth preambular paragraph but proposed including the entire text of the paragraph cited by the representative of Norway. This proposal was supported by a number of delegations. The representative of Spain proposed a general reference to the Friendly Relations Declaration in order to reach consensus. The representatives of Costa Rica, Cuba, Denmark, Ecuador, Finland, Norway, Peru and Sweden said that they could accept article 3 as drafted. Those States also said that they would consider proposals in relation to article 3 in the interests of achieving consensus. The delegations of Guatemala and Mexico expressed their support for articles 3, 31 and 36 as drafted by the Sub-Commission without changes, but at the same time stated their readiness to dialogue in order to achieve consensus without diminishing the rights of indigenous peoples. The Indian Law Resource Center, referring to the proposal to cite a paragraph of the Friendly Relations Declaration in the fifteenth preambular paragraph, proposed substituting the phrase “without distinction as to race, creed or colour” for the phrase “without distinction of any kind” in line with the Vienna Declaration and Programme of Action.

21. The representative of Finland proposed alternative language for article 45 of the draft declaration based on article 8, paragraph 4, of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (Minorities Declaration) as a further means of dealing with the issue of the territorial integrity of States.

22. The representatives of Australia, Canada, New Zealand, the Russian Federation, the United Kingdom of Great Britain and Northern Ireland and the United States of America said that article 3 as currently drafted needed to be made more precise. The representative of the United States of America expressed concern about the reference to self-determination in several places in the draft declaration and therefore preferred a reference to “internal” self-determination. She introduced an alternative text combining articles 3 and 31. The representatives of Canada and New Zealand also proposed alternative language to the text of article 3; the former also introduced alternative texts for article 36.

23. Indigenous organizations referred to the Declaration adopted by the World Summit on Sustainable Development that had used the term “indigenous peoples” without qualification. They requested that the term “indigenous peoples” be accepted and therefore used in the draft without qualification. Some States said they could accept the term “indigenous peoples” throughout the draft declaration. Other States preferred to use the term “indigenous peoples” only in the articles dealing with collective rights, but said that they did not have a problem per se with the use of the term “peoples”. The representative of France said that his Government could not accept the term “indigenous peoples” if the term was used in articles stipulating individual rights.

24. Many indigenous representatives stressed the fundamental importance of self-determination in the draft declaration. They stated that self-determination was an accepted right and that the addition of the term “internal self-determination” as proposed by one State or other proposals that might restrict the right had no basis in international law. It was noted also that the declaration under discussion was a human rights instrument and should not be focused on the territorial integrity of States. While there was discussion of the Norwegian proposal to include a reference to the Friendly Relations Declaration in the fifteenth preambular paragraph, some indigenous representatives were concerned about the proposal by the Government of Finland to redraft article 45 which appeared to give States an absolute right to territorial integrity regardless of whether they recognized self-determination and democratic processes. Several indigenous speakers reacted to the references by States to their domestic arrangements and encouraged a more open approach, underlining that the purpose of elaborating international norms was to provide universal standards that were forward looking. One representative focused on article 36 and underlined that those Governments that could not accept article 36 had disputes with indigenous peoples over their original treaties, which the indigenous peoples regarded as international agreements between nations, not domestic arrangements. In that regard, he highlighted the need for international legal remedies and support for the final report of the United Nations study on treaties, agreements and other constructive arrangements between States and indigenous populations (E/CN.4/Sub.2/1999/20).

25. In response to the proposal by the Norwegian delegation to delete part of article 31, indigenous representatives expressed preference for maintaining the text unchanged, arguing that it was useful to identify the different elements that could make up an autonomy arrangement since it was often in that area where most misunderstandings arose between indigenous peoples and States.

26. The Chairperson-Rapporteur made a summary of the discussions of articles 3, 31 and 36, noting that the proposals made by delegations had been constructive. He expressed appreciation of the Norwegian proposals to regroup articles 3, 19, 20, 21, 30, 31 and 36 and to make an addition to the fifteenth preambular paragraph, aimed at keeping the language of those articles as drafted. He noted that article 45, as proposed by the delegation of Finland, seemed, in his view, to have also been welcomed. He also recognized that efforts had been made in both the Norwegian and Finnish proposals to accommodate the concerns of some States concerning article 3. The proposals had led to useful discussions and further suggestions. He noted that indigenous representatives had been positive about the efforts made in seeking consensus. He also recognized that some States still had difficulty with articles 3, 31 and 36 and welcomed their proposals aimed at trying to find a solution. He noted the proposals of the representatives of the United States of America to combine articles 3 and 31 and of the representatives of Canada and New Zealand to make some changes to article 3 to accommodate their concerns. In connection with article 31, the Chairperson-Rapporteur recalled the Norwegian proposal to delete the text after the words “local affairs” and noted that some delegations had supported this idea while others preferred the original language. On article 36, he had received a proposal from the representative of Canada with two alternative texts. In conclusion, he said that the full texts with all proposals would be included as an annex to the report of the working group.

Articles 25, 26, 27, 28, 29 and 30

27. The working group discussed in informal meetings articles 25-30.

28. The representatives of Costa Rica, Cuba, Denmark, Ecuador, Guatemala and Mexico expressed support for the whole cluster of articles under discussion and said that they could adopt those articles of the draft declaration without any changes. Many were, however, open to suggestions for strengthening the text and would welcome such proposals. All indigenous representatives who took the floor on these articles expressed support for the draft declaration as adopted by the Sub-Commission; however, one indigenous organization stated that it could not accept article 29 in its present form.

29. The representatives of Australia, Canada and the United States of America intervened on articles 25, 26 and 27, noting that they had concerns about the retrospective nature, the ambiguity of some terms and the prescriptive nature of the articles as presently drafted. These delegations, and that of New Zealand, also raised the question of third party interests in regard to articles 25, 26 and 27. Although they could accept the underlying principle of recognition of the special relationship indigenous peoples have with the land and the collective nature of this relationship, these delegations could not accept the current text.

30. The representative of Australia provided alternative language for articles 25-28 and 30, stating that it did not represent what Australia would regard as an ideal text but what appeared to be the basic common ground among States. The representative of Canada associated himself with the proposal. The alternative language is contained in the annex.

Article 25

31. The representative of France said that his delegation had concerns about article 25 that were in line with those of the Governments of Australia and New Zealand. He also suggested replacing the wording "material relationship" in article 25 with the phrase "particular relationship". The representative of Australia recommended that article 25 should acknowledge that indigenous peoples had a right to recognition of their distinct relationship with the land. Some delegations said that they would be very interested in looking further into that proposal. The representative of New Zealand also suggested alternative language reflecting the idea that lands and resources could be voluntarily alienated or expropriated on the same basis as was applied to non-indigenous peoples. The representative of Argentina preferred that the words "lands, territories" be separated with the word "or" instead of with a comma as in the current draft.

Article 26

32. The representatives of Australia, Canada, New Zealand and the United States of America requested clarification of certain terms in article 26, including the terms "resources" and "total environment". The representatives of Australia and the United States said that they could not support rights that were exclusive and unqualified and Australia again underlined that it only could support such a text if it applied to lands that indigenous peoples currently owned or exclusively used. The representative of New Zealand stated that indigenous peoples' obligations

to manage resources in a sustainable way should be included in the text. The representative of Canada said that his country fully supported the principle that indigenous peoples have the right to control, develop and use the lands which they owned or to which they had rights of exclusive use. He noted the categorical prohibition in the current text of any alienation of land and suggested a formulation to require States to prevent, or provide remedies for, unauthorized interference, alienation or encroachment on indigenous peoples' lands.

33. The representative of Cuba said that historically consideration for third party rights in fact had violated indigenous peoples' rights to their land and resources and expressed concern about the matter.

Article 27

34. The representative of New Zealand said that his country could support the thrust of article 27 but made a proposal to change the word "restitution" to the word "redress" and to delete the last sentence of the article. The representative of Australia also expressed concern about the sweeping retrospective nature of article 27 but said that applied prospectively the article was useful for governing the future relationship between indigenous peoples and States. He also said that Australia had difficulties with the term "resources" as it encompassed oils and minerals, which were owned by the Crown. The representative of the United States said that the draft was vague in regard to the terms "compensation" and "restitution" but expressed agreement that current lands should be protected and where lands were confiscated in the future indigenous peoples could be compensated. Canada agreed to the principles in article 27 but not to the current language and suggested including procedures for the resolution of unresolved claims. The proposals put forward by the delegations of Australia, Canada and New Zealand are included in the annex. The representative of Argentina suggested including a definition of the term "lands" similar to article 13 (2) of ILO Convention No. 169.

35. All indigenous representatives who spoke on articles 25, 26 and 27 noted that the right to land and resources constitutes a fundamental aspect of the right to self-determination and said that they could support the article as presently drafted. A few mentioned that changes could be accepted as long as they did not undermine the basic rights of indigenous peoples. Several representatives also stated that the delegations that had raised concerns about third party rights in those articles all had made reference to domestic legislation that seemingly resolved this problem. Others stressed that the concern expressed by some State delegations regarding the rights of third parties was unfounded and would have to be resolved on a case-by-case basis. Finally, a number of indigenous speakers stated that the intent of article 27 was not retrospective.

36. Several indigenous representatives also underlined that the standards being developed should not be lesser than already existing instruments and standards and that the articles lay well within the boundaries of existing international law and jurisprudence. In this context one representative stated that indigenous peoples had an absolute right as peoples to self-determination under the Charter of the United Nations. Reference was made by a number of indigenous representatives to the concluding observations of the treaty bodies and other international human rights bodies such as the Inter-American Commission on Human Rights. It was also suggested that all forms of ownership of property, not only aboriginal ownership, should be recognized and protected in the article.

Article 28

37. The representative of Canada noted that there was no right of protection and restoration of the total environment under international law. He also said that indigenous lands should be no more available for military use than any other lands. The representative of New Zealand reiterated his concern about the meaning of the term “total environment” and an apparently unlimited obligation on States to restore it. He also noted that the article should reflect that the storage of hazardous materials should be allowed with the free and informed consent of indigenous peoples. The representative of Australia said that Australia applied protection on the grounds of non-discrimination and proposed to reflect this principle in article 28. While supporting article 28 as drafted, the representative of Ecuador supported the Australian position on the revision of the article in order to stress the obligations of States with regard to the protection of the environment and the national defence in all its territory. The representative of the United States said that there was no human right to environmental protection and that States could not be held solely responsible, especially if damage was caused by third parties. She agreed that some of the principal paragraphs should be reformulated to reflect the principle of non-discrimination. The representative of Finland said that it was necessary to keep the language of article 28 as broad and flexible as possible in order to encompass all national situations. She also suggested deleting the last sentence in paragraph 1 as Governments might need to take military action for protection purposes in any part of the national territory.

38. The indigenous representatives restated their position that the group of articles under discussion - including article 28 - were fully within the scope of existing international standards and jurisprudence. It was noted that indigenous lands were particularly vulnerable to the storage of hazardous waste resulted from military use and therefore special measures were necessary. Some representatives also stated that article 28 should be adopted as currently drafted as a minimum standard of protection for indigenous peoples.

Article 29

39. The representatives of Australia, the Russia Federation, New Zealand and the United States of America suggested delaying discussion of article 29 pending the outcome of the upcoming meeting of the World Intellectual Property Organization (WIPO), where the issue addressed in article 29 would be discussed. The representative of Australia further noted that the term “cultural and intellectual property” was not a well known and defined concept. The concept of a collective right was not recognized in domestic or international legal systems at present and therefore called for careful consideration. The representatives of the Russian Federation and the United States requested clarification of the terms used in article 29.

40. The representative of Canada said that in his view articles 24 and 29 overlapped and that the article as currently drafted was too prescriptive. He submitted a proposal for consideration.

41. The representative of Denmark welcomed the current WIPO study on intellectual and cultural property rights, but stated that the study did not pre-empt a discussion on a general provision of the issue by the working group.

42. All indigenous representatives stated that the WIPO meeting should not stop the discussion of article 29. Several also noted the limited participation of indigenous peoples in the WIPO process. It was noted that WIPO dealt with private property rights and not collective human rights, and the speakers called for the adoption of the text as adopted by the Sub-Commission.

43. One indigenous speaker said that indigenous peoples for centuries had been robbed of their tangible wealth and that article 29 attempted to protect against the piracy of indigenous peoples' intangible rights. An indigenous organization introduced a proposal for alternative language for article 29 because it believed that the language of the article was not sufficiently strong to protect the rights of indigenous peoples. The proposal is contained in the annex.

Article 30

44. The representative of Norway made a proposal concerning article 30. This proposal was made in connection with the idea of reclustered all the articles dealing with self-determination. The proposal was to divide the text into two parts, moving the text before and including "other resources" to the cluster dealing with self-determination and leaving the second part of the article in the cluster dealing with land rights.

45. The representatives of Cuba, Denmark, Guatemala and Sweden expressed support for the article as currently drafted, but said that the Norwegian proposal was constructive and clarifying and that they could therefore support it. The representative of Ecuador expressed his preference not to split article 30, but said that his delegation could accept the reclustered of the articles on self-determination.

46. The representative of Canada noted the importance of development in the public interest and said that the phrase "their lands, territories and resources" needed to be defined to progress with the adoption of this article. He also noted that prior informed consent might not be required in all cases, and that compensation for cultural and spiritual damage due to adverse effects of development might be hard to quantify. The representative of Australia expressed willingness to consider the Norwegian proposal further.

47. A large number of indigenous representatives were concerned about the proposal to split the text in two, and supported the text and the rights guaranteed in article 30 as currently drafted. One indigenous organization stated that it was prepared to consider such a proposal. Another representative referred to the ongoing marginalization of indigenous peoples from development processes as environmental racism.

48. Indigenous representatives said that the concept of development was very different for indigenous peoples and States and that indigenous peoples had suffered immensely from the effects of national development projects. The principles accepted in international law concerning development, including the principles of consent, compensation and benefit-sharing, were also mentioned by indigenous representatives, and it was said that Governments were arguing against already established legal principles that those same Governments had accepted in other forums.

49. Indigenous representatives also underlined the need to read article 30 in the context of the other articles dealing with land and development. One representative noted that article 30 dealt with development, the exploitation of resources and the involvement of indigenous peoples in those two activities. She also stressed that under international law peoples, not States, had the right to freely dispose of their natural resources.

Articles 7, 8 and 11

50. The Working Group discussed in informal meetings articles 7, 8 and 11.

Article 7

51. The Chairperson-Rapporteur submitted to the working group a document for discussion on article 7 of the draft declaration that had been drafted by some governmental delegations following a request by the Chairperson-Rapporteur. The document contained alternative language for article 7 and comments on the proposal. The alternative language for article 7 as presented by those States is included in the annex.

52. The document for discussion stated that the terms “ethnocide” and “cultural genocide” were not terms that were generally accepted in international law. The document clarified that the term “ethnocide” was used in the 1991 Declaration of San José, a declaration that was developed by experts on ethnodevelopment and ethnocide, not by states, and which was not generally accepted in international law.

53. Many States found the meanings of some terms in this article unclear. Questions were raised about the meaning and scope of a “right to cultural integrity”, the related obligations of States and how such rights were different from “the right to enjoy their own culture” in article 2 (1) of the Minorities Declaration. States also asked whether such a right was an already existing right and, if so, if it could be worded like the existing right was. In addition, it was asked what the scope and content of the right would be, and if the intention was to create a new right unique to indigenous peoples.

54. It was noted that the meaning of the terms “ethnocide and cultural genocide” in the chapeau of article 7 were not clear to many States and those terms needed clarification before all States could accept article 7. The representative of the United States said that in addition to uncertainty about the terms “ethnocide and cultural genocide”, article 7 was too broad as currently drafted. She suggested replacing part of article 7 (1) with the last two paragraphs of proposed article 7, and stated that the United States would be willing to work with proposed article 7 (2) as the basis for further work to cover the concept articulated in article 7 (1) (e).

55. The representative of Norway also found article 7 (1) (e) too broad and proposed including the words “racial or ethnic” before the word discrimination. He also proposed replacing the words “ethnocide and cultural genocide” with the words “genocide, forced assimilation or destruction of their culture”. As a second possibility, the representative raised the idea of merging articles 7 and 6.

56. The representative of New Zealand stressed the importance of the alternative language contained in the document for discussion, but also said that his delegation did not have substantial difficulties with article 7 as currently drafted. He did, however, propose strengthening the text by adding the word “fair” before the word “redress” in the chapeau of article 7 and adding “forceful” before “population transfer” in article 7 (1) (c).

57. The representatives of Argentina, Denmark, Ecuador, Finland, Sweden and Switzerland expressed support for the proposals put forward by Norway and New Zealand. Those delegations could also accept the draft as adopted by the Sub-Commission, but all stated that the proposals clarified and strengthened the text.

58. The representative of Canada introduced alternative language to article 7 after having listened to the proposals by Norway and New Zealand. The alternative language took into account those proposals and it is included in the annex.

59. Most indigenous representatives supported article 7 as presently drafted, stating that the scope and intention behind the article was clear and important. One representative referred to the Declaration of San José and stated that the terms “ethnocide and cultural genocide” were used in that document and thus could be said to be founded in international law. She also said that the individual right to life is enshrined in many international instruments, but that the collective right to life for indigenous peoples had not yet been addressed outside the Convention on the Prevention and Punishment of the Crime of Genocide. Some representatives recalled that international standards for those terms were evolving. Another said that the disappearance of languages was a form of ethnocide.

60. A number of indigenous representatives expressed support for the proposals made by Norway and New Zealand and called for the adoption of the article with those modifications.

61. In his summary, the Chairperson-Rapporteur thanked the delegations of Canada, New Zealand and Norway for their constructive proposals. He said that their underlying principle was the desire to encourage consensus. He also underlined the importance of using existing international law as a guide for the arguments and opinions put forward by all participants. He therefore urged all delegations to base their statements on broadly recognized instruments.

Article 8

62. The Chairperson-Rapporteur submitted to the working group a document on article 8 of the draft declaration that had been drafted by some governmental delegations following a request by the Chairperson-Rapporteur. The document contained alternative language for article 8 and comments on the proposal. The alternative language for article 8, as presented by those States, is included in the annex.

63. The discussion paper noted that the article had to be developed in consideration of other articles that dealt with similar subjects, such as articles 2, 21 and 33. In addition, it should be considered in conjunction with article 9, which dealt with issues of community membership, and with those provisions that addressed how to give indigenous peoples mechanisms and means of greater control over their lives, cultures, etc.

64. The discussion paper also stated that States had varying understandings of the purpose of the paragraph. Some understood that it was intended to enable indigenous groups and individuals to self-identify as indigenous. In this respect, queries were expressed by a number of States as to how this right of “peoples” could be both collective and individual. Others understood that the most critical element was to be recognized as indigenous by the State. Some States had concerns about the legal consequences flowing from self-identification, e.g. entitlement to rights and benefits under domestic law. Some States had concerns about recognition resulting in automatic entitlement to all rights in the draft declaration.

65. The representative of Canada introduced a proposal to include the words “and individuals” following the words “indigenous peoples” in the first sentence of the article.

66. The representatives of Australia, Denmark, Ecuador, Finland, New Zealand, Norway, the Russian Federation and Switzerland stated that they would be willing to accept the Canadian proposal in order to reach consensus, though some of them could accept the article as currently drafted.

67. The representatives of the United States, the United Kingdom and France all called for additional clarifications in the article and remained concerned about the possible confusion between individual and collective rights. In addition, the representative of the United States stated that his delegation did not want the wording of the paragraph to be open to an interpretation that would restrict the ability of an indigenous people to determine its membership, nor authorize a non-indigenous group or individual to claim indigenous status. The representative of France proposed alternative language to the article which underlined the right to self-identify as an individual right. This proposal is included in the annex.

68. The representative of Mexico presented a proposal based on ILO Convention No. 169, but, following the debate between States and indigenous representatives, withdrew it on the understanding that the basis for future discussions on the article would be the text adopted by the Sub-Commission.

69. Many indigenous representatives called for the adoption of the text as currently drafted. Some speakers questioned the intention behind the proposal to add the words “and individuals” and felt that it was unnecessary. Responding to States, indigenous representatives stressed that the notion of self-identification required that an indigenous person also be recognized by the members of his or her community. Those representatives therefore could not accept the right to self-identify as an individual right.

70. A number of indigenous representatives, however, could accept the proposal made by the Canadian delegation. They said that what was important in article 8 was to ensure non-discrimination if a person or peoples chose to self-identify as indigenous. One representative also stated that the intention of the article was not to determine who was indigenous but to place a responsibility on States to accord dignity to any indigenous peoples or persons and that the Canadian proposal did not change that. In addition, it was said that the word "individual" was already part of article 8 as drafted by the Working Group on Indigenous Populations and that the proposal therefore was consistent. An indigenous speaker also made reference to articles 2 and 9 because those two articles also included the word "individuals".

71. In his summary statement, the Chairperson-Rapporteur clarified that the basis for the work had to be self-identification. He said that that was the most appropriate formula, unless a definition that was universal in scope were drawn up. In that regard, he stated that, in his opinion, it was not necessary to have a definition to continue the work of drafting the declaration on the rights of indigenous peoples. He also said that what was needed was to find consensus by looking for a common language between indigenous peoples and States, and that it was in that spirit that the representative of Canada had put forward his proposal. In that regard, the Chairperson-Rapporteur noted that it was the first time since his participation in the working group that a proposal to change the text had received such broad support among States and some indigenous peoples. He did, however, also recognize that there still remained some concern among a number of indigenous representatives and a few States, but concluded that great progress had been made in the discussion of article 8. He pointed out that he would include in the annex to the report the text of article 8 with the additions suggested by Canada, as a basis for future consensus.

Article 11

72. The Chairperson-Rapporteur submitted to the working group a document on article 11 of the draft declaration drafted by some governmental delegations following a request by the Chairperson-Rapporteur. The document contained alternative language for article 11 and comments on the proposal. The alternative language for article 11, as presented by those States, is included in the annex.

73. The representative of Norway proposed amendments to the Sub-Commission draft. He suggested deleting the word "special" in the first sentence and proposed introducing a reference to international human rights law and international humanitarian law in the second sentence. He also proposed a modification to subparagraph (a).

74. The representative of Switzerland provided the Chairperson-Rapporteur with an alternative text for article 11 based on the Sub-Commission draft. The representative of Canada also made available proposals for article 11 with the aim of clarifying the text. The foregoing proposals are contained in the annex.

75. The representatives of Denmark, Ecuador, Finland, France, New Zealand, Sweden and the United States of America also took the floor on article 11. The representatives of Denmark said that she could accept article 11 as drafted but also welcomed two of the proposals made by Norway. The representatives of France and New Zealand made reference to the non-paper

circulated by the Chairperson-Rapporteur. The representative of Finland supported the Norwegian proposal but preferred to retain the language of article 11 (a) as originally drafted. The representative of Sweden fully supported the Norwegian proposal. The representative of Ecuador could accept the article as drafted but with some modifications to include the principle of non-discrimination in the subparagraphs. The representative of the United States said that her delegation had difficulties with both the original text and some of the proposals made by governmental representatives. However, she thought that the United States could use the Canadian proposal as the basis for future work, although it would need some further modifications. She referred to the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict and recommended that the article reflect the language of that new instrument. She said she was not in favour of mixing international human rights and humanitarian law.

76. Several indigenous representatives argued in favour of keeping the original text of the article as drafted. One indigenous organization expressed support for the proposal to include a reference to international human rights law and proposed that the words “or against other members of the same indigenous people” be included at the end of subparagraph (a). Several stressed the importance of maintaining a reference to special protection, pointing out that a number of international human rights instruments provided for special measures for particular groups of people.

77. The Chairperson-Rapporteur said that as a starting point for the discussions a non-paper had been circulated to all participants. However, he noted that only two representatives had made reference to that document and that other statements had revolved around proposals for changes to article 11 in its current form. Specific changes had been proposed by the delegations of Canada, Norway and Switzerland based on the original draft. He noted there was an area of difficulty in relation to the special protection in the original text. He proposed that the issue be debated further with a view to finding consensus. He said that it should not be difficult to find solutions to the technical difficulties if the discussions were based on existing international humanitarian law. He concluded by saying that delegations had made no objection to additions that led to better protection.

Organization of the work of the next session

78. The Chairperson-Rapporteur informed participants that, following consultations, he wished to propose that at its next session, the working group consider the following clusters of articles: (a) articles 3, 31, 19, 20, 21, 30, 36, 45 and the fifteenth preambular paragraph; (b) articles 22, 23 and 24; (c) articles 25, 26, 27 and 28; (d) articles 15, 16, 17 and 18; (e) articles 7, 8 and 11. He further noted that the discussion of the articles would take place bearing in mind the relevant preambular paragraphs, in particular if that helped to reach consensus. He also said that the plan of work should take into account the fact that all the articles would be addressed, unless it appeared necessary that more time needed to be given to a specific cluster in order to reach consensus.

79. Following consultations, the Chairperson-Rapporteur proposed 15 to 26 September 2003 as the dates for the next session. They were accepted by the participants.

Annex

**COMPILATION OF AMENDMENTS PROPOSED BY SOME STATES FOR
FUTURE DISCUSSION BASED ON THE SUB-COMMISSION TEXT^a**

Explanatory note

There was no consensus on the term “indigenous peoples” at the working group on the draft declaration. Some States can accept the use of the term “indigenous peoples”. Some States can accept the use of the term “indigenous peoples” pending consideration of the issue in the context of discussions on the right to self-determination. Other States cannot accept the use of the term “indigenous peoples”, in part because of the implications this term may have in international law, including with respect to self-determination and individual and collective rights. Some delegations have suggested other terms in the declaration, such as “indigenous individuals”, “persons belonging to an indigenous group”, “indigenous populations”, “individuals in community with others”, or “persons belonging to indigenous peoples”. In addition, the terms used in individual articles may vary depending on context. Some delegations have suggested that if the term “indigenous peoples” is used, reference should also be made to article 1.3 of ILO Convention No. 169.

In the proposals that follow, reference to the proposed text is in bold.

	Preambular paragraph 15
Norway	<u>Bearing in mind</u> that nothing in this Declaration may be used to deny any peoples their right of self-determination, <i>[yet nothing in this Declaration shall be 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 conducting themselves in compliance with the principle of equal rights and self-determination of peoples], [as described above and thus possessed of a government representing the whole people belonging to the territory without distinction [of any kind] as to race, creed or colour,]</i>
Cuba ILRC	
	<u>Article 3</u>
New Zealand	Indigenous peoples have the right of self-determination[, <i>while respecting the territorial integrity of democratic States and their constitutional frameworks where these meet international human rights standards</i>]. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development. <i>[Every State has the duty to respect that right in accordance with the Charter.]</i>
Cuba	

^a The title was agreed upon to more accurately reflect the fact that some States can accept the original draft as adopted by the Sub-Commission.

alternative one -

Canada *[States and indigenous peoples shall work together towards the realization of this right, recognizing the jurisdictions and responsibilities of governments, the needs, circumstances, aspirations and identity of the indigenous peoples concerned, and the importance of achieving harmonious arrangements.]*

or

alternative two -

Canada *[The political status of indigenous peoples, and the means of pursuing their economic, social and cultural development, are matters for resolution between the state and indigenous peoples, respecting the jurisdiction and competence of governments and the needs, circumstances and aspirations of the indigenous peoples involved.]*

Canada *[Nothing in this Declaration shall be 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 conducting themselves in compliance with the principles of equal rights and self-determination of peoples, and thus possessed of a government representing the whole people belonging to the territory without distinction of any kind.]*

Article 31

Norway Indigenous peoples, as a specific form of exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, [including culture, religion, education, information, media, health, housing, employment, social welfare, economic activities, land and resources management, environment and entry by non-members, as well as ways and means for financing these autonomous functions.]

Articles 3 and 31

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

Article 36

Indigenous peoples have the right to the recognition, observance and enforcement of treaties, agreements and other constructive arrangements concluded with States or their successors, according to their original spirit and intent, and to have States honour and respect such treaties, agreements and other constructive arrangements. Conflicts and disputes which cannot otherwise be settled should be submitted to competent international bodies agreed to by all parties concerned.

alternative language one -

Canada

[Indigenous peoples have the right to the recognition 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 arrangements. Conflicts and disputes that cannot otherwise be settled may be submitted to competent domestic bodies.]

Or

alternative language two -

Canada

[Legal obligations arising from treaties, agreements and other constructive arrangements concluded by States with indigenous peoples shall be recognized, observed and enforceable. Recourse shall be to competent domestic bodies for the resolution of conflicts and disputes that cannot otherwise be settled.]

Article 45

Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act contrary to the Charter of the United Nations.

Finland

[Nothing in the present Declaration may be construed as permitting any activity contrary to the purposes and principles of the United Nations, including sovereign equality, territorial integrity and political independence of States.]

Canada

[Nothing in this Declaration shall be 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 conducting themselves in compliance with the principle of equal rights and self-determination of peoples, and thus possessed of a government representing the whole people belonging to the territory without distinction of any kind.]

Article 25

France
ILRC
New
Zealand

Indigenous peoples have the right to maintain and strengthen their distinctive spiritual and [material] *[particular]* relationship with the lands, territories, waters and coastal seas [and other resources] which they have [traditionally] owned or otherwise occupied or used, *[except where those lands and resources have been alienated voluntarily or through valid rights of governance and in accordance with the States' right to govern for the good of all,]* and to uphold their responsibilities to future generations in this regard.

Article 26

New
Zealand

Indigenous peoples have the right to own, develop, control and use the lands, and territories, including the total environment of the lands, air, waters, coastal seas, sea-ice, flora and fauna and other resources which they have traditionally owned or otherwise occupied or used. This includes the right to the full recognition of their laws, traditions and customs, land-tenure systems and institutions for the development and management of resources, and the right to effective measures by States to prevent any interference with, alienation of or encroachment upon these rights.

[Indigenous peoples have the right to own, sustainably develop, control and use the lands [and territories, including, the total environment of the lands, air, waters, coastal seas, sea-ice, flora and fauna] and other resources which they [have traditionally] own[ed] or otherwise occupy[ed] or use[d]. This includes the right to the [full] recognition of their laws, traditions and customs, land-tenure systems and institutions for the development and management of resources, and the right to effective measures by States to prevent any unwarranted interference with, alienation of or encroachment upon these rights.]

Article 27

New
Zealand

Indigenous peoples have the right to [the restitution of] *[redress for]* the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, occupied, used or damaged without their free and informed consent. Where this is not possible, they have the right to just and fair [compensation] *[redress]*. [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.]

Article 28

Indigenous peoples have the right to the conservation, restoration and protection of the total environment and the productive capacity of their lands, territories and resources, as well as to assistance for this purpose from States and through international cooperation. Military activities shall not take place in the lands and territories of indigenous peoples, unless otherwise freely agreed upon by the peoples concerned.

States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands and territories of indigenous peoples.

Canada/
Technical
review

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] *[in consultation with]* the peoples affected by such materials, are duly implemented.

New article (merger of 25-28, 30)

Australia

[Indigenous peoples have the right to have their distinctive relationship with the land recognized (article 25)]

States should take this distinctive relationship into consideration in the development of environmental protection regimes, and of laws and policies concerning the use of land, including the exploitation of resources (articles 25, 26 and 28). In particular:

(a) Where indigenous peoples own, or have exclusive use over, land to which they have a traditional connection, States should, as appropriate, take measures to:

- (i) recognize their customs, traditions, and practices relating to that land (articles 25 and 26);***
- (ii) promote consultation with, and decision-making by, indigenous peoples in matters concerning the development or use of such land (articles 26 and 30); and***
- (iii) prevent interference with, alienation of, or encroachment upon their use of that land (article 26).***

(b) Where indigenous peoples have use of, and a traditional connection with, land, States should, as appropriate, take measures to facilitate the continued enjoyment of that connection and use (articles 25 and 26).

- (c) *States should take measures, as appropriate, to address indigenous peoples' disadvantage, including through increasing access to land (article 27).*
- (d) *Indigenous peoples have the right to due process and fair compensation for future acquisition or confiscation of land that they own, or have exclusive use over. States should consider compensation in the form of equivalent lands (articles 27 and 30).*
- (e) *Military activities shall not take place on the lands of indigenous peoples, except on the same basis as on non-indigenous lands (article 28).*
- (f) *States shall not allow the storage or disposal of hazardous materials on lands owned, or exclusively used, by indigenous peoples, except on the same basis as on non-indigenous lands (article 28).]*

Article 29

Saami
Council

Indigenous peoples **have the right to, and** are entitled to the recognition of the full ownership, control and protection of **their genetic resources, traditional knowledge, expressions of culture and cultural heritage** [cultural and intellectual property].

They have the right to special measures to control, develop and protect their sciences, technologies and cultural manifestations, including human and other genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs and visual and performing arts.

Canada

[Indigenous individuals have the right to enjoy the benefits of scientific progress and its applications, and to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which she is the author, and are entitled to protection under the law, as other members of the national population.

States should take special measures, as appropriate, to facilitate the efforts of indigenous peoples to develop and protect their sciences, technologies and traditional knowledge, and cultural manifestations including their oral traditions, literatures, designs and visual and performing arts, and their knowledge of the properties of flora and fauna, genetic resources, seeds and medicines.]

Article 30

Norway [Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands, territories and other resources], [including the right to require that States obtain their free and informed consent prior to the approval of any project affecting their lands, territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources. Pursuant to agreement with the indigenous peoples concerned, just and fair compensation shall be provided for any such activities and measures taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.]

Norway (new article)

Article 7

Norway Indigenous peoples have the collective and individual right not to be subjected to [ethnocide and cultural genocide,] ***[genocide, forced assimilation or destruction of their culture]*** including prevention of and ***[fair]*** redress for:

New Zealand

(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;

New Zealand (c) Any form of ***[forcible]*** population transfer which has the aim or effect of violating or undermining any of their rights;

Denmark/France (d) Any form of ***[forced]*** assimilation or integration by other cultures or ways of life imposed on them by legislative, administrative or other measures;

Norway (e) Any form of propaganda ***[designed to promote and incite racial or ethnic discrimination]*** directed against them.

Alternative text to Article 7:

Document for discussion **7 (1) Indigenous peoples [and individuals] [have the [collective and] [individual] right not to be subjected to ethnocide and cultural genocide to prevention of and redress for [future breaches of]] [shall not be subjected to] any of the following:**

a) any action which has the intent and aim or effect of depriving them of their [integrity as distinct peoples][distinctive cultural values or identities][[and][or] ethnic identities]

b) [any action which has the intended ~~aim or~~ effect of dispossessing them of their lands [territories] or resources without their consent and not in accordance with the principles of due process of law and appropriate compensation, on at least the same basis as is extended to other members of the populations of the States;]

c) any form of population transfer which has the intended ~~aim or~~ effect of violating or undermining any of their [right] [distinctive cultural values and identities];

d) ~~[any form of assimilation or integration by other cultures or ways of life imposed on them by legislative, administrative or other measures; [the imposition of] any legislative, administrative or other measures [imposed upon them and] [that are inconsistent with human rights standards] [[and][or] that are adversely designed to assimilate or integrate] them into other cultures or ways of life;]~~

e) [any form of propaganda directed against them [[by the State] [designed to promote and incite discrimination]]]

(2) States condemn all propaganda based on ideas of superiority of any race over indigenous peoples or which attempts to justify or promote racial hatred and discrimination against indigenous peoples and individuals. States shall not permit public authorities or public institutions, national or local, to promote or incite racial discrimination directed against indigenous peoples or individuals.] (CERD, art. 4)

(3) [States condemn racial segregation and apartheid and undertake to prevent, prohibit and eradicate all practices of this nature.

[[Indigenous peoples have the right to maintain their distinct cultures, beliefs, religion and language, subject to reasonable regulation consistent with international standards.

Accordingly, States should take no actions which have the specific intent and effect of forcing [indigenous peoples] to assimilate or abandon their own customs in favour of different or more widespread customs.]

Canada

[7. (1) Indigenous peoples and individuals shall not be subjected to genocide, forced assimilation or destruction of their culture, and shall not be subjected to any of the following:

a) any action which has the aim and effect of depriving them of their distinctive cultural or ethnic identities;

b) any action which has the aim and effect of dispossessing them of lands or resources that they own or have exclusive use of without their consent or not in accordance with due process of law and appropriate compensation;

c) any form of forced population transfer which has the aim and effect of violating any of their rights;

d) the imposition of any legislative, administrative or other measures that are inconsistent with human rights standards and that are designed to forcibly assimilate them into other cultures or ways of life;

e) States condemn all propaganda based on ideas of superiority of any race over indigenous peoples or which attempts to justify or promote racial hatred and discrimination against indigenous peoples and individuals. States shall not permit public authorities or public institutions, national or local, to promote or incite racial discrimination directed against indigenous peoples or individuals.] (CERD, art. 4)

Alternative (2) text to Article 7:

Canada

[States shall not take or permit measures aimed at depriving indigenous individuals or peoples of their cultural values or ethnic identities through their denigration, or their forced assimilation, integration, or population transfer.]

Article 8

Canada

Indigenous peoples *[and individuals]* have the collective and individual right to maintain and develop their distinct identities and characteristics, including the right to identify themselves as indigenous and to be recognized as such.

Alternative text to Article 8:

France

[Indigenous peoples have the right to maintain and develop their distinctive identities and characteristics. Indigenous peoples have the right to be recognized as such. Individuals have the right to identify themselves as indigenous.]

Article 11

Norway

Indigenous peoples have the right to [special] protection and security in periods of armed conflict.

Norway	States shall observe <i>[applicable international human rights standards and international humanitarian law,]</i> [international standards, in particular the Fourth Geneva Convention of 1949,] for the protection of civilian populations in circumstances of emergency and armed conflict, and shall not:
Norway	(a) Recruit indigenous individuals <i>[into military service against their will, except in cases prescribed by law for all citizens, and to which there are no specific exemptions for indigenous individuals;]</i> [against their
Saami Council	will into the armed forces and, in particular, for use against other indigenous peoples <i>[or against other members of the same indigenous people];]</i>
	(b) Recruit indigenous children into the armed forces under any circumstances;
	(c) Force indigenous individuals to abandon their lands, territories or means of subsistence, or relocate them in special centres for military purposes;
	(d) Force indigenous individuals to work for military purposes under any discriminatory conditions.
	<u>Alternative text to Article 11:</u>
Switzerland	Indigenous peoples have the right to protection and security in <i>[times]</i> of armed conflict. States shall <i>[respect and ensure respect]</i> of the <i>[rules and principles of international humanitarian law, in particular concerning the protection of civilian persons in times of armed conflicts according]</i> to the Fourth Geneva Convention of 1949. They shall <i>[namely abstain from]</i> (or: shall not)
	(a) <i>[Compel(ing) indigenous persons to serve in the forces of a hostile Power;</i>
	(b) <i>Compulsorily or voluntarily recruit(ing) indigenous persons under the age of 18 into their national armed forces;]</i>
	(c) Force (Forcing) indigenous individuals <i>[(persons)]</i> to abandon their lands, territories or means of subsistence, or relocate them in special centres for military purposes;
	(d) Force (Forcing) indigenous individuals <i>[(persons)]</i> to work for military purposes under any discriminatory conditions.
	<u>Alternative text to Article 11:</u>
Canada	<i>[States shall not recruit indigenous individuals into the armed forces in a discriminatory manner.</i>

Indigenous individuals are entitled to all protections provided by international humanitarian law, in particular those in the Fourth Geneva Convention of 1949.

States recognize that there may be circumstances in which special protection and security may be appropriate for indigenous peoples in times of armed conflict.

Alternative (2) text to Article 11:

Canada

[1. Indigenous individuals and peoples are entitled to all protections provided by international humanitarian law in times of armed conflict.

In particular, States shall observe international humanitarian law, including in particular the Fourth Geneva Convention of 1949 for the protection of civilians in armed conflict, and shall not:

(a) Recruit indigenous individuals against their will into the armed forces and, in particular, for use against other indigenous peoples, in a discriminatory manner or otherwise contrary to international law;

(b) Recruit indigenous children into the armed forces or deploy indigenous children in hostilities under any circumstances contrary to international law;

(c) Force indigenous individuals to abandon the lands they own, use or occupy, or means of subsistence, or relocate them in special centres for military purposes contrary to international law; or

(e) Force indigenous individuals to work for military purposes under any discriminatory conditions or otherwise contrary to international law.]

Alternative text to Article 11:

Document
for
discussion

[In times of conflict indigenous individuals are entitled to all protection afforded by international humanitarian laws, in particular the Fourth Geneva Convention. In any form of recruitment of indigenous individuals into the armed forces, States shall not act in a discriminatory manner. States shall not forceably recruit or conscript indigenous individuals solely for the purpose of engaging those individuals, by virtue of their indigenous identity, in hostilities specifically directed at other indigenous peoples. Indigenous children are entitled to all protection afforded by applicable international law regarding the recruitment of children into the armed forces.]
