



**Economic and Social
Council**

Distr.
GENERAL

E/CN.4/2004/81
7 January 2004

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Sixtieth session
Item 15 of the provisional agenda

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)

Summary

The present report contains a summary of the discussions held at the ninth session of the working group established in accordance with Commission on Human Rights resolution 1995/32 on preambular paragraphs 14 and 15, as well as on articles 1-4, 8, 10, 13-21, 23, 25-28, 30, 31, 33, 36, 44 and 45, of the draft United Nations declaration on the rights of indigenous peoples. The proposals for amendments or new language of the articles are presented in the Chairperson's summary in the annex to the report. The Chairperson-Rapporteur noted that no consensus had been achieved for the adoption of articles during the ninth session of the working group, yet an open and constructive dialogue had been established and the problems concerning the 26 articles discussed had been clearly identified, which would facilitate future discussion.

The list of documents and participants, the original text of the articles discussed and supported by all indigenous organizations, and proposals for the text of the articles by one indigenous organization can be found in the addendum to this report (E/CN.4/2004/81/Add.1).

CONTENTS

| | <i>Paragraphs</i> | <i>Page</i> |
|---|-------------------|-------------|
| Introduction | 1 - 7 | 3 |
| I. OPENING OF THE SESSION | 8 - 10 | 4 |
| II. ORGANIZATION OF WORK | 11 - 20 | 4 |
| III. INFORMAL DISCUSSION OF ARTICLES | 21 - 127 | 6 |
| IV. CLOSURE OF THE SESSION | 128 - 131 | 19 |
| Annex: Chairperson's summary of proposals | | 20 |

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 26 August 1994 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 of 25 July 1995.
2. The working group held 19 meetings during the period from 15 to 26 September 2003. A total of 350 people attended the meetings of the working group, including representatives of 44 Governments, 5 United Nations organizations and 82 indigenous and non-governmental organizations.
3. As agreed by the working group at its first meeting, the present report contains a summary of the debate which took place in informal plenary meetings, as reflected by the Chairperson-Rapporteur.
4. This report reflects the discussion which took place on the draft elaborated by the Sub-Commission in document E/CN.4/1994/45, which constitutes the basis of the discussion, and the different proposals for amendments. However, consideration of these proposals does not imply their acceptance, nor does it diminish the preference shown by indigenous peoples’ representatives and some governmental delegations for the draft in its present form.
5. Many delegations reiterated their preference for the original text of the articles as contained in the draft by the Sub-Commission which, in their view, had always been and would continue to be the basis for the negotiations of the working group. That should not diminish the value of the various proposals presented by governmental and indigenous representatives that aimed to reflect specific positions and interests in connection with each draft article discussed. Many of those proposals are not contained in the present report, but are contained in other official documents issued in connection with former meetings of the working group.
6. The present 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.
7. All indigenous representatives accept the expression “indigenous peoples” used in the current text of the draft declaration. No governmental delegation expressed opposition to the use of the term “indigenous peoples”.

I. OPENING OF THE SESSION

8. The working group was opened by a representative of the Office of the High Commissioner for Human Rights (OHCHR) who welcomed the participants, especially the 15 indigenous representatives assisted by the Voluntary Fund for Indigenous Populations, and thanked the Governments that had contributed to the Fund. He encouraged further contributions and underlined the importance of the financial assistance given through the Voluntary Fund to ensure broad participation of indigenous peoples, especially for those with limited resources.

9. He also recalled the recommendation by the General Assembly and the Commission on Human Rights that the declaration be adopted before the end of the International Decade of the World's Indigenous People (1995-2004). He underlined that the draft declaration was a pioneering document and represented the first efforts of the United Nations to define human rights standards for indigenous peoples. He encouraged renewed efforts by all participants to achieve progress. He concluded by providing information on some of the ongoing work of the Office in relation to indigenous peoples.

10. At its first meeting, the working group elected by acclamation Luis-Enrique Chávez (Peru) as its Chairperson-Rapporteur.

II. ORGANIZATION OF WORK

11. In his opening statement, the Chairperson-Rapporteur informed the participants that he had received a letter from the High Commissioner for Human Rights supporting the adoption of the draft declaration before the end of the International Decade. He expressed the hope that several articles could be adopted, at least on a preliminary basis, at the present session.

12. With regard to the method of work, there would be no general debate this year, and all contributions should be concise and concentrate on the text of the articles. All meetings would be held in plenary sessions and were to be considered informal meetings. He suggested a twofold strategy for the discussion: during the first week, the less controversial articles would be discussed first followed by an in-depth discussion of the articles on self-determination; the second week would be devoted to efforts aimed at achieving concrete progress on the text, building on the progress made during the first week.

13. An indigenous representative said that this was a crucial year for the declaration and that proposals from both Governments and indigenous peoples should be taken into account. Another indigenous representative suggested reinserting article 36 in the articles pertaining to self-determination to be discussed during the session.

14. An indigenous representative read out a statement on behalf of about 40 indigenous organizations regarding the working methods of the working group, reminding participants that new proposals should strengthen the current text and respect the principle of non-discrimination. They also recalled General Assembly resolution 41/120 on standard-setting in the field of human rights which emphasized that the established international legal framework should be considered when developing new international human rights standards. They also requested that indigenous

peoples be able to participate effectively in the discussions and that their contributions be reflected accurately in the report. Three indigenous organizations said that they did not associate themselves with that statement.

15. The representative of Chile expressed his Government's willingness to reach consensus during the current session on the less difficult articles to demonstrate that there was, in fact, political will to address issues of a more conflictive nature in the near future. He noted that over the past 10 years Chile had taken a number of steps, including the adoption of a national indigenous law in 1993, the promotion of the ratification of Convention No. 169 of the International Labour Organization and the presentation of a proposal for constitutional recognition of the indigenous peoples of Chile. He also noted that the establishment by the Government of the *Comisión de la Verdad Histórica y Nuevo Trato* constituted a landmark that demonstrated the willingness to address some key pending issues concerning indigenous peoples in the country. He also stressed his country's position concerning self-determination by expressing his acceptance of all formulations included in Convention No. 169 in that regard, including the associated rights contained in preambular paragraph 6 and article 7 of the Convention. Provisions which implied that Governments should recognize the existence of the indigenous organizations and respect their rights to association, assembly and expression.

16. The representative of Guatemala expressed his country's position on the articles, referring to the rights to self-determination, land, territory and others. He asserted that the original text of the draft declaration should be amended as little as possible and that any amendment should strengthen the collective rights of indigenous peoples worldwide. He expressed his support for the original text on the right to self-determination, saying that this right should not be subject exclusively to the criteria of national law and would not imply the risk of secession. He also reaffirmed his support for the rights of indigenous peoples to their lands and territories and underlined their inalienable and absolute right to restitution and compensation in that context. His delegation had decided to withdraw its prior proposals concerning articles on the rights he had mentioned, reiterating its support for the original text of the draft declaration.

17. The representative of Mexico expressed support for the draft declaration in its original text and for the proposed method of work, and also indicated his Government's willingness to be flexible so as to achieve concrete outcomes. His delegation would not make comments on some of the proposals, as many of them deviated considerably from the original text of the articles, which Mexico had supported throughout the process. Notwithstanding, the representative reiterated his willingness to find solutions that allowed consensus agreements that reflected as fairly as possible the concerns of all actors.

18. The representative of Venezuela said that the State had recognized the existence of indigenous peoples and communities, as well as their specific collective rights which were guaranteed in the new Constitution. A process of integration and cultural enrichment had been developed in a democratic way between the society in general, the State and the indigenous peoples. The right to self-determination in Venezuela was exercised by all as one people through a non-exclusive process whereby cultural diversity had strengthened people's ancestral roots.

19. The representative of France recalled the commitment of his country in favour of indigenous peoples and to a conclusion of the negotiations before the end of 2004. A solution had to be found with regard to the question of self-determination that would neither limit this universal principle, nor destabilize States. He appealed to the Chairperson-Rapporteur to take the initiative to propose consensus language.

20. The Chairperson-Rapporteur recalled Commission resolution 1995/32 which established the mandate of the working group as the elaboration of a draft declaration. He stressed that all participants had had the opportunity to discuss and revise the reports of the working group before their adoption and that they had been repeatedly invited to consult and present proposals between sessions. He also reminded participants that all decisions would be taken by consensus.

III. INFORMAL DISCUSSION OF ARTICLES

21. During the first informal meeting the representative of Denmark presented a proposal on behalf of the Nordic countries (E/CN.4/2003/WG.15/WP.2). She referred especially to the part of the proposal concerning the less controversial articles, and suggested that the corresponding discussion should focus on articles 1, 2, 8, 10, 13, 14, 15-18, 35 and 45, which she considered could be adopted on a provisional basis. The second part of the proposal consisted in discussing separately the articles pertaining to self-determination.

22. Several Governments and some indigenous participants supported this proposal. Some indigenous representatives proposed adding article 36 to the articles to be adopted provisionally.

Article 45

23. A fruitful debate took place on article 45. All participants agreed on the provisions contained in this article. One delegation suggested that the article could be improved by including, at the end of the last paragraph, a special reference to human rights instruments, in addition to the Charter of the United Nations.

24. Several governmental representatives and some indigenous delegates supported this suggestion. Some governmental and indigenous delegations expressed their wish to study the proposal; therefore, the Chairperson-Rapporteur asked the representative of France to carry out informal consultations in order to provide agreed language that could meet that concern.

Article 8

25. The discussion on article 8 focused on the possibility of expanding the scope of the article to indigenous individuals. In this connection, one delegation introduced a proposal that stated: "Indigenous peoples are free to maintain and develop their distinct identities. Indigenous individuals are free to identify themselves as indigenous."

26. No consensus was reached during the first round of discussions on this article and the Chairperson-Rapporteur suggested coming back to the question at a later stage. He said that there could be other articles in which a reference to individual rights might be proposed and that it would be possible to consider an overall solution to deal with this issue on a case-by-case basis.

Article 1

27. One delegation proposed amending article 1 by adding the words “and individuals” after the words “indigenous peoples”. Another delegation suggested including the word “applicable” before the words “international human rights law” at the end of the article. One delegation proposed the insertion of the words “collective and individual” before the word “enjoyment”.

28. Indigenous representatives strongly opposed the inclusion of a reference to individuals together with the concept of “peoples”, because they considered that the purpose of the declaration was to define collective rights which were not protected by other human rights instruments and that a reference to individuals would dilute the collective dimension.

29. In order to overcome this difficulty, one delegation suggested, with a view to including the concept of individual rights without diminishing the relevance of collective rights already covered in the original text, inserting the words “collectively and individually” after the initial words of the paragraph “indigenous peoples have the right”.

30. Several governmental delegations and indigenous representatives welcomed this proposal and stressed that action should be taken to move forward to the provisional adoption of this article. The Chairperson-Rapporteur requested the delegations of New Zealand and the United Kingdom of Great Britain and Northern Ireland to hold informal consultations in order to find consensus language on this subject, on the basis of this proposal.

31. With regard to the proposal to include in this article the word “applicable” when referring to international human rights law, the Chairperson-Rapporteur recalled that a similar concern had been raised during discussions on article 45 and suggested that it should be addressed in similar terms.

32. At the same time, one delegation introduced alternative language for article 1. The proposal stated: “Indigenous individuals have the right to the full and effective enjoyment of all human rights and fundamental freedoms and indigenous peoples have the right to the full and effective enjoyment of the rights set forth in this Declaration.”

Article 2

33. During the debate on this article, participants considered the possible deletion of the word “adverse” before the word “discrimination”. Several governmental delegations, including those whose preference was to retain the word “adverse”, showed flexibility and stated that they were ready to accept such a deletion if that would lead to consensus.

34. Some indigenous representatives said that they could accept the deletion of the word “adverse”, but most indigenous representatives insisted on keeping it.

35. No other concrete proposals for improvement of the text of this article were made during the debate; however, a few governmental delegations expressed their preference for deferring the adoption of this article until the question of self-determination could be appropriately addressed.

Article 15

36. One governmental delegation introduced two substantive proposals for article 15. One aimed at extending to adults the right to access all levels of education provided by the State. The second proposal aimed at ensuring that indigenous educational systems and institutions would meet minimum educational standards. Some indigenous representatives expressed support for the first proposal. All indigenous representatives expressed disagreement with the second proposal.

37. After the debate, it appeared that it would be necessary to address the two issues appropriately in the future. Additionally, some concerns were expressed by governmental delegations about the cost implications for States arising from the application of the provision contained in the second paragraph of article 15 and about their ability to ensure the enjoyment of the right expressed therein.

Article 16

38. The discussion on article 16 was based on the document for discussion on this article submitted to the working group through the Chairperson-Rapporteur in 1999 and a proposal on the same article introduced during the debate by the Nordic countries. In this particular case, the proposal was to focus the article on the protection that should be provided to indigenous peoples' culture, traditions, histories and aspirations.

39. Many Governments supported the Nordic countries' proposal, saying that although they could accept the current text, this proposal could serve as a basis for consensus in the future.

40. All indigenous representatives opposed this approach, stressing that the declaration was about indigenous peoples' rights, which were not reflected in the proposal.

Article 17

41. The discussion on article 17 was based on the document for discussion on this article submitted to the working group through the Chairperson-Rapporteur in 1999 and a proposal on the same article introduced during the debate by the Nordic countries.

42. Three possible changes to the original text were discussed. The first one consisted of merging the two sentences of the first paragraph of the article. There was no strong opposition to that proposal.

43. The second proposal was to replace the word "equal" by the phrase "on the same basis as other members of the society". This proposed amendment seemed to be acceptable to most governmental delegations if it would permit consensus. Most indigenous representatives considered that the proposed text would dilute the rights contained in the article.

44. The third proposal consisted of an additional sentence to the second paragraph of the article aimed at privately owned media reflecting adequately the cultural diversity of indigenous people. This proposal, which constituted a new element with respect to the original draft, was considered as deserving further discussion.

Article 18

45. The discussion on article 18 was based on the document for discussion on this article submitted to the working group through the Chairperson-Rapporteur in 1999 and a proposal on the same article introduced during the debate by the Nordic countries. The aim of the proposal was to focus the article on the enjoyment by indigenous peoples of all rights established under applicable national and international labour law.

46. A governmental delegation stated that the insertion of the word “applicable” to the original draft could be acceptable. Indigenous representatives once again expressed their concern regarding that term, saying that such an addition would make international standards dependent on the acceptance or unilateral interpretation by each State and, therefore, potentially discriminatory or non-applicable.

47. A proposal was made to add a sentence after the first paragraph of the article aimed at emphasizing the need for protecting indigenous children from the worst forms of child labour. One indigenous delegation objected to such an inclusion because of its potential impact on the implementation of ILO Convention No. 182. The Chairperson-Rapporteur requested the representative of Finland to hold consultations and to submit consensus language that could appropriately address this concern. There was general agreement regarding willingness to consider language which resulted from that process.

Article 44

48. Discussions on article 44 were fruitful and most of the participants agreed, in principle, on the provisions contained in the article. However, concern was expressed by one delegation about the inconsistency between the English text and the Spanish and French versions. A rephrasing of the article based on the Spanish version, which was considered by participants as the most accurate one, was suggested as follows: “Nothing in this declaration may be construed as diminishing or extinguishing the rights indigenous peoples have now or may acquire in the future”. The French version was amended accordingly.

49. The only remaining issue on this article was whether or not it would be appropriate to expand the scope of the article to indigenous individuals, as had been suggested in relation to certain other articles. Indigenous representatives reiterated their strong opposition to such an approach. While some governmental delegations said that a reference to indigenous individuals in the article would constitute an improvement, other governmental delegations expressed their preference for maintaining the focus of the article on indigenous peoples.

Article 10

50. Discussions on article 10 focused on a proposal introduced by one governmental delegation to include, in connection with the prevention of forced displacement, the concept of “due process”. The proposal was also aimed at addressing the issue of forced displacement as a consequence of natural disasters or other emergency situations. Several governmental delegations expressed their willingness to consider, in an additional sentence or in a separate paragraph, the inclusion of a reference to forced displacement as a consequence of natural disasters or other emergency situations.

51. In this regard, one indigenous representative suggested that any such proposal on this matter should consider the provisions of article 4 of the International Covenant on Civil and Political Rights. The Chairperson-Rapporteur requested the representative of Brazil, together with the representative from the Indian Law Resource Centre, to hold consultations and submit consensus language that could be considered.

52. Most of the governmental delegations that spoke and indigenous peoples' representatives preferred to keep the article in its original form.

53. One governmental representative said that he could accept the principle that indigenous peoples should not be arbitrarily removed from their land, but at the same time it was necessary to take into account situations of need or public emergency. In that connection, he proposed alternative language which is contained in the annex.

Article 13

54. One governmental delegation introduced two proposals for amendments to article 13. The first one consisted of adding the word "reasonable" before the word "access" in the first paragraph in order to make compatible the right of indigenous peoples to access their religious and cultural sites and the legitimate interests of the public or private owners of sites not currently owned by indigenous peoples.

55. Some governmental delegations supported the addition because they considered that it clarified the text. Some governmental representatives expressed their preference for the original text. All indigenous representatives who spoke opposed the addition because it could limit their exercise of the rights contained in the article.

56. The second proposal was to add the word "their" before the words "ceremonial objects" in the same paragraph. Most of the governmental delegations that spoke, and many indigenous representatives, supported the proposal as it made the article more precise. One indigenous representative reminded participants that the Spanish text already contained the addition. However, some indigenous representatives expressed concern about the addition because it could be interpreted as granting the right to use ceremonial objects only when those objects are currently owned by indigenous peoples.

57. A few delegations expressed objections to the use of the word "rights" in this paragraph, stating that not all of these issues were "rights".

58. The Chairperson-Rapporteur requested the representative of New Zealand to hold consultations and to submit consensus language that could make this article acceptable to all participants.

Article 14

59. One governmental delegation proposed deleting, in the first sentence of the second paragraph of article 14, the phrase "whenever any right of indigenous peoples may be threatened" after the word "measures" and to include the word "actively" before the word "protected".

60. Some governmental delegations supported the proposal. Others said that they could accept the word “actively”, but not the deletion of the phrase “whenever any right of indigenous peoples may be threatened” after the word “measures”, as they considered that such a deletion could weaken the article.
61. Another governmental delegation suggested replacing the word “effective” in the first sentence of the second paragraph by the word “reasonable” and to replace the word “shall” with the word “should” in the same sentence.
62. Within the framework of the debate on article 14, a few governmental delegations expressed general concerns about the nature of rights contained in this and other articles. Those delegations considered that the draft declaration should be consistent with existing international law. However, no concrete proposal was made to address their concern.
63. All indigenous delegations expressed support for the current text, although some also said they could consider accepting the inclusion of the word “actively” and removing the reference to “whenever any right of indigenous peoples may be threatened” as possibly raising State obligations to a higher level in this article than elsewhere. All indigenous representatives and many governmental representatives opposed substituting the word “should” for “shall” in this and other articles and the replacement of the word “effective” by “reasonable” because those amendments would seriously weaken the article.
64. The Chairperson-Rapporteur said that the discussion on this article would be continued during the second week of the session. However, it was noted that no opposition was raised to the wording of the first paragraph of the article as originally drafted, although one governmental delegation expressed its concern about the implementation of the provision contained therein.
65. The Chairperson-Rapporteur invited the Chairperson of the Permanent Forum on Indigenous Issues, Ole Henrik Magga, to address the working group. He also reminded participants that he had received a letter signed by the High Commissioner for Human Rights, the Chairman of the Permanent Forum, the Special Rapporteur on the situation of the human rights and fundamental freedoms of indigenous people and the Chairman of the Working Group on Indigenous Populations in support of the adoption of the declaration before the end of the International Decade.
66. Mr. Magga underlined the importance of adopting the draft declaration and said that the Permanent Forum at its first and second sessions had called upon States to adopt the declaration before the end of the Decade. The declaration contained rights and principles that were important to the survival of indigenous peoples and that would provide important guidance for the future work of Governments, the United Nations system and the Forum itself.
67. An informal discussion on articles pertaining to the right of self-determination took place, as agreed, on the basis of the cluster of articles proposed by the Nordic countries (arts. 3, 4, 19, 20, 21, 23, 30, 31, 33 and preambular paragraph 15). At the request of indigenous representatives, article 36 was also included in the proposal by Nordic countries.

Preambular paragraphs 14 and 15

68. The discussion began with preambular paragraph 15 on the understanding, as proposed by the Nordic countries, that agreement on this paragraph, with the addition of specific language relating to the territorial integrity of States, would permit adoption of article 3 without a change.

69. Some governmental delegations stated that they would consider additions to preambular paragraph 15, but they reserved their right to propose specific changes to article 3 at a later stage.

70. In response to the Nordic countries' proposal, the American Indian Law Alliance introduced, on behalf of a group of indigenous organizations, an alternative proposal to amend preambular paragraphs 14 and 15 by including a reference to the principles of equal rights and of conformity with applicable principles of international law.

71. Referring to this proposal, some indigenous representatives considered that the reference to "applicable principles of international law" was problematic and could make the application of international standards dependant on interpretation or acceptance by each State.

72. Most governmental delegations and some indigenous representatives acknowledged the Nordic proposal as being an attempt to find a consensus, as it was based on an excerpt from the 1993 Vienna Declaration and Programme of Action and thus represented agreed language.

73. Some indigenous representatives also pointed out that, although the Nordic proposal included agreed language, the text was incomplete and taken out of its original context and, therefore, emphasized some elements and excluded others. They understood the fear of many States that indigenous peoples might secede but that fear was groundless.

74. During the discussion, an indigenous representative proposed the inclusion of a reference to the Charter of the United Nations in preambular paragraph 15. The representative of the Indigenous World Association suggested that the part of this proposal that read "recognizing that peoples under colonial or other forms of alien domination or foreign occupation have the right to realize their inalienable right of self-determination, in accordance with the Charter of the United Nations" be included within the context of the Nordic proposal for operative paragraph 3. The representative of Guatemala proposed to add language upholding the principles of international law, including the principles contained in this declaration. Some governmental and indigenous representatives supported that proposal.

75. The Chairperson-Rapporteur concluded the discussion on preambular paragraph 15, asking the authors of the four proposals made to hold informal consultations and to present a common text, taking into account all the concerns expressed during the discussion.

76. At the end of the meeting, the representative of Norway presented the results of his consultations on consensus language for preambular paragraphs 14 and 15. He said that the governmental delegations consulted could accept preambular paragraph 14 as drafted and had agreed on a common proposal on preambular paragraph 15, which is annexed to this report.

77. The Chairperson-Rapporteur thanked the Norwegian delegation and noted that the consensus proposal should be the basis for discussion on those preambular paragraphs in the future.

78. A representative of the Indigenous Caucus also presented a proposal on preambular paragraphs 14 and 15 which combined elements of the proposals of the Nordic countries, the delegation of Guatemala and the American Indian Law Alliance and was endorsed by the majority of the Indigenous Peoples' Caucus. The Chairperson-Rapporteur said that it would also be included in the report.

Article 31

79. Discussion on article 31 took into account the proposal presented by the Nordic countries to delete the second part of the article where areas such as culture, religion and education were listed, as well as the reference to "ways and means of financing autonomous functions". The Nordic States, after having heard the views of a number of delegations, proposed that the reference be retained.

80. While some governmental delegations supported the Nordic proposal, arguing that any listing would always be incomplete, indigenous representatives and one governmental delegation strongly opposed the elimination of elements that they considered as essential and critical for indigenous communities worldwide. One governmental delegation said it could accept a listing, but only if the paragraph would address the concept of the right to internal self-determination.

81. In that context, some indigenous representatives supported the current text, while other indigenous representatives, as well as some governmental delegations, suggested keeping closer to the original text by inserting the words "inter alia" or the phrase "including but not limited to" before the list of the areas relevant to the rights expressed in this article.

82. Concerning the proposal to insert new words before any listing of specific areas in the article, the Chairperson-Rapporteur requested the representatives of the Nordic countries to hold consultations to reach consensus on the matter.

83. Many indigenous representatives expressed concern regarding this article being used to limit or qualify the right to self-determination in the declaration, specifically as expressed in article 3. Other indigenous delegations noted that this article described one specific form of exercising the right, among other forms.

84. Concern was expressed by one governmental representative about the current wording of article 31. He therefore introduced a proposal for alternative language, which is contained in the annex.

Article 4

85. In connection with article 4, concerns were raised by some governmental representatives regarding the importance of avoiding the creation of parallel, and even contradictory legal systems within the State.

86. Although most governmental representatives who spoke supported the general concept of the article, some amendments were proposed. One governmental delegation suggested replacing the words "as well as their legal systems" by "legal characteristics". Another governmental delegation proposed separating the article into two sentences, so that the rights of individuals

were addressed in a specific manner. Another governmental representative suggested replacing the words “have the right to” by “are free to” and the word “rights” by “freedom”. Finally, a governmental delegation proposed deleting the phrase “if they so choose”.

87. Most indigenous representatives and some governmental delegations expressed their preference for the original text of the article. They argued that the proposed amendments did not reflect the original intention of the article.

88. A governmental delegation pointed out that the question of specific legal systems was appropriately covered by article 33. Considering that article 33 was also part of the cluster under discussion, the Chairperson-Rapporteur proposed suspending consideration of article 4 and moving immediately to discussion on article 33.

Article 33

89. One governmental delegation proposed reformulating article 33 in order to allow State and indigenous legal systems to operate in a compatible way; that was a concern shared by several governmental delegations. In that regard, he suggested that the article should reflect the obligation of the State to take indigenous peoples’ legal systems into account.

90. Another governmental delegation suggested making the article clearer by deleting the word “juridical” after the word “distinctive”, and adding the expression “and juridical characteristics” after the word “practices”.

91. All indigenous delegations and some governmental delegations supported the original text, finding that the proposed amendments weakened the article. They also stated that the article did not refer to the creation of new legal systems but to ensuring the recognition of and the right to promote, develop and maintain indigenous peoples’ institutions and distinctive juridical customs.

Articles 19 and 20

92. One governmental delegation proposed merging articles 19 and 20 and suggested new alternative language that read: “Indigenous peoples have the right to participate, through representatives chosen by them, in decision-making processes of the State in relation to matters which directly affect their rights, in a manner not incompatible with national legislation.” Some governmental delegations supported the proposal.

93. One governmental delegation proposed including in article 19 the words “by their members” after the word “chosen” to stress that the right to choose representatives is exercised by individual members of the community. Another governmental delegation responded to this concern by pointing out that the practice of using representatives as a way of participating in the decision-making process was already recognized by most democratic States.

94. Most indigenous representatives stressed that articles 19 and 20 expressed a number of different and important elements and should, therefore, be considered separately and retain their current form. They also stated that governmental concerns were addressed in the current text.

Article 21

95. One governmental delegation proposed deleting article 21, pointing out that all the provisions of the article were already contained in other articles. Two other governmental representatives supported the proposal.

96. A debate took place to determine whether all the issues contained in article 21 were already considered in other articles. Many indigenous representatives pointed out that article 21 was the only article that stressed the right of indigenous peoples to secure their own means of subsistence and development. Indigenous delegations also stressed that the article did not duplicate other articles, but rather stressed the importance of social, economic and political systems associated with traditional subsistence and development rights of indigenous peoples.

97. One governmental delegation suggested replacing the word “compensation” with the word “redress”, stating that from his perspective “compensation” was specifically related to financial aspects and that the word “redress” would allow a broader range of options. He also suggested adding the words “and agreed” to the last part of the article, so that it would read “are entitled to just, fair and agreed redress”.

98. In response to the concerns regarding duplication, a governmental representative and an indigenous representative proposed removing from the first part of the article the terms that were already contained in the first sentence of article 4, so that article 21 would begin as follows: “Indigenous peoples have the right to be secure in the enjoyment of their own means of subsistence and development”

99. The Chairperson-Rapporteur determined from the discussion that most participants wanted to keep article 21, but that there was still room for improvement and clarification. He noted the comments made by many representatives that the essential provisions of the article were not contained in other articles, and that article 21 should therefore be maintained.

Article 23

100. One governmental delegation proposed amending the original text of article 23 with new wording, which is reflected in the annex.

101. Another governmental delegation presented a proposal involving several elements aimed at clarifying that indigenous peoples “are free” to determine their own development. A third governmental delegation proposed to replace the words “determine and develop all” in the second sentence of the article by “be involved in determining and developing”. That proposal was supported by a number of governmental delegations. Some indigenous representatives also welcomed the proposal, saying that it was concrete and close to the original text of the article; others felt that it would weaken the text.

102. All the indigenous representatives who spoke supported the original text of article 23. One indigenous representative proposed to begin the article with the following phrase: “All indigenous peoples have the collective or individual right to ...” and suggested deleting “as far as possible” from the last sentence. Some governmental delegations expressed their preference

for keeping that phrase. One governmental delegation pointed out that if “as far as possible” were to be deleted, then “to administer” should be replaced by “to participate in the administration of”.

Article 36

103. One governmental representative suggested replacing “their” in the first sentence of the article before the word “original”, with “the” and adding “of the parties” after “intent”. He also suggested deleting the last sentence of article 36. Strong preference was expressed by all indigenous and many governmental delegations for keeping the last sentence.

104. In this regard, another governmental delegation proposed adding in the last sentence of article 36, after the word “competent”, the phrase “national bodies or processes for negotiation and resolution or, where they do not exist, to international bodies agreed to by all parties concerned”. The proposal was supported by a number of participants.

105. One governmental delegation introduced the following alternative text to the article: “States should take all necessary steps under domestic law to implement obligations to indigenous peoples under treaties and other arrangements negotiated with them and, where appropriate, to establish procedures for resolving grievances under such treaties and agreements in accordance with principles of equity and justice”.

106. One governmental delegation expressed its support for the proposal. If it could not be accepted, he suggested deleting the expression “and other constructive arrangements” from the two phrases of the first sentence of the article.

107. All indigenous representatives expressed their preference for the article as originally drafted as essential for upholding treaty rights and obligations. Many governmental delegations also expressed a similar preference. However, several governmental delegations expressed their willingness to consider alternative language in order to achieve consensus, provided such language would keep as close as possible to the original draft.

108. An informal discussion on articles 25-28, pertaining to the rights to land and resources took place. At the beginning of the debate, the representative of Australia proposed alternative language for those articles which was endorsed by the representative of Canada and generally supported by the representative of the United States.

109. The Chairperson-Rapporteur stated, without referring to the substance of the proposal by Australia, that the way it was formulated differed from the wording of the draft where rights to lands, territories and natural resources were addressed in separate articles. Therefore, he proposed discussing articles 25-28 as originally drafted in order to receive comments from other delegations, and then consider the Australian proposal. All indigenous and many governmental representatives objected to this proposal as a basis for discussion.

Article 25

110. One indigenous representative introduced three main proposals for the amendment of article 25. The first consisted of highlighting the special relationship that indigenous peoples have not only with their lands, but also with the total environment, including surface and subsurface resources. The second was to be more specific concerning the lands that the declaration aimed to protect. In that context, the representative suggested that the declaration should also protect indigenous peoples who had acquired lands not traditionally theirs, such as in the case of relocated peoples. The third was to include in the article references to the need for demarcation of indigenous lands in order to protect them effectively.

111. Some indigenous representatives reserved their right to comment on this proposal later since it introduced into the discussion the concept of “recognition” and various levels of land title. One indigenous representative said that “purchased land” should also be protected.

112. Some governmental delegations and some indigenous representatives supported the above-mentioned proposals. One governmental delegation, while expressing concern over the real meaning of the words “total environment” and the listing of specific areas of special relations for indigenous peoples, supported including references to land demarcation in article 25. Few governmental delegations objected to the inclusion of surface and subsurface resources in the article.

113. A third proposal, introduced by a governmental delegation, was to replace the comma between “lands” and “territories” with the word “or”. No comments were made on this proposal.

Article 26

114. An indigenous representative proposed that this article should guarantee equal treatment under the law to traditional land rights titles and that such protection would require demarcation and titling of land.

115. There was broad agreement by indigenous representatives on the need to equal treatment in law to traditional land rights titles; however, some concerns were raised on the criteria that would apply for demarcation.

116. A governmental delegation proposed deleting the word “full” before the word “recognition” and inserting “unwarranted” before “interference” in the last sentence of the article.

Article 27

117. The discussions on article 27 also centred around the question of whether to maintain or eliminate specific areas in which indigenous peoples would have a special relationship and on whether there was a need to introduce a provision for the protection of lands currently owned by indigenous peoples but not traditionally occupied by them. An indigenous representative proposed adding a provision stipulating that States shall not take or expropriate indigenous lands or resources under any circumstances.

118. Concerns were expressed by one governmental delegation about the use of the term “compensation”, suggesting it be replaced by the word “redress”. Following a suggestion by an indigenous representative, he proposed keeping the first sentence unchanged and substituting the second one by “Where this is not possible they have the right to just, fair and agreed redress”. He defined redress as compensation, restitution and reparation. Another governmental delegation stressed the relevance of the article as originally drafted for its domestic process and therefore supported the proposal to keep the text in its original form, including the word “restitution”. Some indigenous representatives stressed the importance of the elements of the last sentence and supported the text of the article as adopted by the Sub-Commission.

Article 28

119. Discussions on article 28 concentrated on the concerns expressed by one governmental delegation regarding the scope of the term “conservation”, as used in the original text, as well as on the real possibilities for “restoration” in the areas mentioned in the article. In this context, that delegation introduced proposals on article 28, suggesting deleting the word “restoration” in the first sentence and the word “total” before the word “environment”. He also proposed including the words “an equal right to any assistance available” before the words “for this purpose”.

120. Most of the indigenous representatives objected to the proposed deletions and addition of the word “available” and expressed their support for the original text of the article, saying that it was in compliance with existing international law and with ILO Convention No. 169. Indigenous representatives referred to the “total environment” as an important expression of their cosmovision.

121. Concerning the proposal introduced by Australia, a discussion took place about whether the working group should consider a proposal that contained a significant number of changes with respect to the draft that served as the basis for discussion. The Chairperson-Rapporteur suspended the meeting in order to find the most appropriate manner to continue the discussion on the articles in question and at the same time preserve the right of all participants to submit proposals.

122. Following consultations, the Chairperson-Rapporteur adjourned the debate on articles 25-28 and 30. He himself would draft a document based on the text of those articles as adopted by the Sub-Commission, in which he would include as many suggestions as possible from among those received at the present as well as previous sessions of the working group to serve as a basis for future discussion. Informal consultations among participants during the intersessional period were also strongly encouraged.

123. At the last formal meeting, the representative of Norway presented a proposal on articles 14, 16, 18, 44 and 45 and requested the working group to adopt them on a provisional basis.

124. The representative of Italy, on behalf of the European Union as well as the delegations of Canada, New Zealand, the Russia Federation, Switzerland and the United States, supported that proposal. Support was also expressed by an indigenous representative in the name of the Foundation for Aboriginal and Islander Research Action, the Aboriginal and Torres Strait

Islander Commission, the Torres Strait Regional Authority, the Aboriginal and Torres Strait Islander Social Justice Commission and the National Aboriginal and Islander Legal Services Secretariat, as well as by representatives of the Saami Council, the Metis National Council, Haudenosaunee and the Indian Law Resource Center.

125. The delegations of China, Ecuador, Egypt, Guatemala, Mexico and South Africa said that they could not support the proposal. An indigenous representative, in the name of the Fundación para la Promoción de Conocimiento Indígena, the Asociación Nabguana and the Consejo de Todas las Tierras, as well as representatives of the International Indian Treaty Council, the Indigenous Peoples and Nations Coalition, the Association Tamaynut and the Consejo Indio de Sud America, expressed a similar position.

126. The representatives of Brazil, Bolivia, Chile and Venezuela, as well as the representative of Te Kawau Maro, said that they would need more time to study the proposal. The representative of Peru said that he would support any proposal based on consensus, which was not yet the case.

127. The discussions on the proposal ended without consensus being achieved. However, the Chairperson-Rapporteur informed the working group that he would include this proposal in the report, because it could serve as a basis for future consensus.

IV. CLOSURE OF THE SESSION

128. The representative of Costa Rica, on behalf of the Latin American Group, said that progress had been made during the session and that concerns and interests had been identified which would make it easier to find solutions leading to the adoption of the declaration. However, the working group still had a long way to go in a short amount of time.

129. The representative of the United States of America expressed his support for the adoption of a declaration before the end of the International Decade, but also stressed that his Government could not support the current text of the draft declaration.

130. The Chairperson-Rapporteur closed the last formal session by thanking all participants saying that though no consensus had been achieved for the adoption of articles during this session of the Working Group, progress had been made. According to him, substantive progress had been achieved on the subject of self-determination, an open and constructive dialogue had been established and the problems around the 26 articles discussed were now clearly identified which would facilitate future discussion.

131. The working group decided to request the Commission on Human Rights that its next session be scheduled from 13 to 24 September 2004.

Annex

CHAIRPERSON'S SUMMARY OF PROPOSALS

The present summary is intended to reflect the debate on the draft declaration at the present session of the working group. Specific proposals submitted to the working group for its consideration have been inserted in the text adopted by the Sub-Commission, whenever possible. Otherwise, alternative language is presented separately.

Preambular paragraph 14

Acknowledging that the Charter of the United Nations, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights affirm the fundamental importance of the rights of self-determination of all peoples, [by virtue of which they freely determine their political status and freely pursue their economic, social and cultural development] [and that this right applies equally to indigenous peoples]

Preambular paragraph 15

Bearing in mind that nothing in this Declaration may be used to deny any peoples their right of self-determination, [exercised in accordance with principles of international law, including the principles contained in this Declaration]

Additional preambular paragraph

Acknowledging that the rights and freedoms declared herein shall be subject only to such limitations as are determined by law and are necessary in a democratic society for purposes of securing due recognition for the rights and freedoms of others and [or] for meeting the just requirements of a national emergency threatening the life of the nation, [national security], public order, and public health, and which are consistent with the other rights in the present Declaration.

Article 1

Indigenous peoples [and individuals] have the right [collectively and individually] to the full and effective [collective and individual] enjoyment of all human rights and fundamental freedoms recognized in the Charter of the United Nations [and in applicable international human rights law.]

OR

Indigenous individuals have the right to the full and effective enjoyment of all human rights and fundamental freedoms and indigenous peoples have the right to the full and effective enjoyment of the rights set forth in this Declaration.

Article 2

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

Article 3

Indigenous peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

[Everyone has the right to take part in the exercise of this right, directly or through freely chosen representatives]

[In accordance with the Declaration on Principles of International Law concerning Friendly Relations and Cooperation Among States in accordance with the Charter of the United Nations, this shall not be constructed 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 4

Indigenous peoples [have the right/are free] to maintain and strengthen their distinct political, [legal], economic, social and cultural characteristics, ~~[as well as their legal systems]~~, while retaining their rights to participate fully, [if they so choose,] in the political, economic, social and cultural life of the State.

Article 8

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.

OR

Indigenous peoples are free to maintain and develop their distinct identities. Indigenous individuals are free to identify themselves as indigenous.

Article 10

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

OR

No arbitrary removal or relocation of indigenous peoples shall take place.

Forced removal or relocation shall only take place in accordance with the principles of due process and just compensation, and, where possible, with the option of return.

Article 13

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 [reasonable] 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 human remains.

States shall/should take effective measures, in conjunction with the indigenous peoples concerned, to ensure that indigenous sacred places, including burial sites, be preserved, respected and protected.

Article 14

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.

States shall/should take [effective] [reasonable] measures, [~~whenever any right of indigenous peoples may be threatened,~~] to ensure this right is protected and also to ensure that they can understand and be understood in political, legal and administrative proceedings, where necessary through the provision of interpretation or by other appropriate means.

Article 15

All indigenous peoples [~~also~~] have [~~this right and~~] 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 [in consultation with competent authorities in the State, and in accordance with applicable educational laws and standards] [and which meet agreed educational standards].

[To the fullest extent possible] Indigenous [individuals, particularly] children have the right to all levels and forms of education of the State [on the same basis as other members of the society].

Indigenous [individuals, particularly] children living outside their communities have the right to be provided access to education in their own culture and language.

States shall take effective measures to provide appropriate resources for these purposes.

Article 16

~~[Indigenous peoples have the right to have]~~ The dignity and diversity of indigenous peoples' ~~[their]~~ cultures, traditions, histories and aspirations should be appropriately reflected in all forms of education and public information.

States shall/should take effective measures, in consultation with the indigenous peoples concerned, to ~~[eliminate]~~ combat prejudice and discrimination and to promote tolerance, understanding and good relations among indigenous peoples and all other segments of society.

Article 17

Indigenous peoples have the right to establish their own media in their own languages [and] ~~[They also have the right]~~ to ~~[equal]~~ access ~~[to]~~ all forms of non-indigenous media, [on the same basis as the other members of the society].

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].

Article 18

Indigenous [individuals] ~~[peoples]~~ ~~[have the right to]~~ ~~[shall]~~ enjoy fully all rights established under international labour law and national labour legislation.

States should take all appropriate measures to protect indigenous children from economic exploitation and 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.

Indigenous individuals have the right not to be subjected to any discriminatory conditions of labour, inter alia, employment or salary.

Article 19

Indigenous peoples have the right to participate fully, if they so choose, at all levels of decision-making in matters which may affect their rights, lives and destinies through representatives chosen by [themselves/their members] in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.

Article 20

Indigenous peoples have the right to participate fully, if they so choose, through procedures determined by them, in devising legislative or administrative measures that may affect them.

States shall obtain the free and informed consent of the peoples concerned before adopting and implementing such measures.

OR

Articles 19-20

Indigenous peoples have the right to participate, through representatives chosen by them, in decision-making processes of the State in relation to matters which directly affect their rights, in a manner not incompatible with national legislation.

Article 21

Indigenous peoples have the right [~~to maintain and develop their political, economic and social systems~~], 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. [Indigenous peoples who have been deprived of their means of subsistence and development are entitled to just and fair compensation/just, fair and agreed redress].

Article 23

Indigenous peoples [and individuals] have the right/are free to determine and develop priorities and strategies for exercising their right to development. In particular, indigenous peoples have the right to [~~determine and develop all~~] [be involved [actively] in determining and developing] health, housing and other economic and social programmes affecting them and, [as far as possible,] [to administer/to participate in the administration of] such programmes through their own institutions.

OR

Indigenous individuals and peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized.

Indigenous peoples have the right to participate in the development and delivery of special measures designed to assist their economic, social, cultural and political development.

Indigenous peoples have the right to determine and develop priorities and strategies for their development.

Indigenous individuals and peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development.

Article 25

Indigenous peoples have the right to maintain and strengthen their distinctive spiritual and material relationship with the lands[;] [or] territories, waters and coastal seas and other resources [including the total environment of the lands, air, waters, coastal seas, sea ice, flora and fauna and other surface and subsurface resources,] [which they have traditionally owned or otherwise occupied or used] [as well as other lands, territories and resources they have otherwise acquired], and to uphold their responsibilities to future generations in this regard.

Article 26

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], [as well as other lands, territories, and resources they have otherwise acquired]. 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.

[Indigenous ownership based on traditional or aboriginal use and occupancy shall be given the same legal respect and protection as other forms of full and complete property ownership, and such indigenous lands, territories, and waters shall be promptly demarcated and titled with the free and informed consent of the indigenous people or peoples concerned. Indigenous peoples have the right to the full recognition of the laws, traditions and customs, land tenure systems of the indigenous peoples concerned as well as their institutions for the development and management of lands, territories and resources, and the right to effective measures by States to prevent any interference with, alienation of, encroachment upon these rights]

Article 27

Indigenous peoples have the right to the restitution of the lands, territories and resources which they have traditionally owned or otherwise occupied or used [or which they have otherwise acquired], 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 [, fair and agreed redress determined through fair procedures] [~~and fair compensation~~]. [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.]

[States shall not take or appropriate the lands, territories, or resources of indigenous peoples under any circumstances]

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 [an equal right] to [any] assistance [available] 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 [or transportation] of hazardous materials shall take place in the lands and territories of indigenous peoples.

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.

Article 30

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~~ [seek] 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 [their] mineral, water or other resources. ~~Pursuant to agreement with the indigenous peoples concerned,~~ just and fair [and agreed] ~~compensation~~ [redress] shall be provided for any such activities and measures [shall be] taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.

OR

Merged articles 25, 26, 27, 28 and 30

General principle

1. Indigenous peoples have the right to the recognition of their distinctive and spiritual relationship with the land.
2. States should take this distinctive relationship into consideration in developing laws and policies concerning the use and development of land and resources, including environmental protection.

Recognition and protection of Aboriginal title

3. States should provide fair and equitable processes to recognize, determine, adjudicate or agree upon the rights or interests of indigenous peoples in relation to lands and resources to which they have a traditional connection.
4. States should, as appropriate, provide for the identification, recording or registration of such rights and interests.

5. Indigenous peoples have the right to due process and fair compensation for any future acquisition or expropriation of such rights and interests in lands or resources. With the agreement of the indigenous peoples concerned, compensation may be in the form of equivalent lands.

Exclusive possession or use

6. Where indigenous peoples, through the processes provided under paragraphs 3 and 4 or otherwise under domestic law, have ownership, exclusive use or possession of lands or resources as a result of their traditional connection:

- (a) Indigenous peoples have the right to use, develop or exploit such lands and resources in a manner not inconsistent with domestic law; and
- (b) States should, as appropriate:
 - (i) respect their customs, traditions and practices relating to such lands or resources;
 - (ii) take measures to prevent interference with, involuntary alienation of, or encroachment upon their use of such lands or resources by other parties.

7. In situations where minerals or other resources existing on or under such lands are the property of the State, or the State otherwise controls their use or exploitation, the indigenous peoples concerned should:

- (a) be consulted on the impact on the use and enjoyment of such lands of any proposed use or exploitation of these resources on their lands;
- (b) have the opportunity to benefit from such use or exploitation; and
- (c) where appropriate, receive fair and reasonable compensation for any adverse impact on their use and enjoyment of the lands arising from such use or exploitation.

Military activities

8. Such lands should not be used for military activities except on the same basis as other lands not owned by the State. Where appropriate, the prior informed consent of the indigenous peoples concerned should be sought.

Hazardous materials

9. Such lands should not be used for the storage or disposal of hazardous materials, except with the prior informed consent of the indigenous peoples concerned.

Shared use

10. Where indigenous peoples, through the processes provided under paragraphs 3 and 4 or otherwise under domestic law, have non-exclusive rights or interests in lands or resources as a result of their traditional connection to such lands or resources, States should, as appropriate:

- (a) facilitate the continued use and enjoyment of those rights or interests;
- (b) respect their customs, traditions and practices relating to such rights or interests;
- (c) take into account the impact on the enjoyment of those rights or interests of any proposed use or exploitation of these lands or resources.

Redress

11. States should take measures, as appropriate, to increase indigenous peoples' ownership of, or access to, land and resources, taking into account historical circumstances and their traditional use of land.

Article 31

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/inter alia/but not limited to 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/including ways and means for financing these autonomous functions].

OR

Indigenous peoples have the right to self-government of their internal and local affairs, including through their institutional structures. The exercise of this right shall be a matter for arrangement/agreement/negotiation/resolution between indigenous peoples and States.¹

Article 33

Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive [~~juridical~~] customs, traditions, procedures and practices [and juridical characteristics], in accordance with internationally recognized human rights standards.

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~~/the] original spirit and intent [of the parties], and to have States

¹ Alternatively, this paragraph could be considered in the discussion of article 3.

honour and respect such treaties, agreements and other constructive arrangements. [Conflicts and disputes which cannot otherwise be settled should be submitted to competent [national bodies or processes for negotiation and resolution or, where they do not exist, to] international bodies agreed to by all parties concerned.]

Article 44

Nothing in this Declaration may be construed as diminishing or extinguishing the rights indigenous peoples have now or may acquire in the future.

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.

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 aimed at the destruction of any of the rights or freedoms recognized in applicable international human rights law, or at their limitations to a greater extent than is provided for therein.
