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PREVENTION OF DISCRIMINATION:

**PREVENTION OF DISCRIMINATION AND PROTECTION
OF INDIGENOUS PEOPLES***

**Report of the Working Group on Indigenous Populations
on its twenty-third session
(Geneva, 18-22 July 2005)**

Chairperson-Rapporteur: Mr. Miguel Alfonso Martínez

* The annexes are being circulated in English only.

Summary

The Working Group on Indigenous Populations held its twenty-third session from 18 to 23 July 2005. The session was attended by representatives of States, United Nations bodies and specialized agencies, academics and a large number of non-governmental organizations, including participants supported by the United Nations Voluntary Trust Fund for Indigenous Populations (see annex I).

The Working Group reviewed developments pertaining to the promotion and protection of the rights of indigenous peoples, including their human rights and fundamental freedoms, with a focus on the principal theme of “indigenous peoples and the international and domestic protection of traditional knowledge”. In the field of standard setting, it held discussions on: (a) a legal commentary on the concept of free, prior and informed consent; (b) a review of the draft principles and guidelines on the protection of the heritage of indigenous peoples; and (c) future priorities for standard-setting activities.

A wealth of proposals and comments were made during the session concerning the goals and future activities for the Second International Decade of the World’s Indigenous People. The Working Group considered these proposals and elaborated a list of activities recommended for possible inclusion in the Decade’s Programme of Action. These proposals are contained in annex IV to the present report and will be submitted to the Coordinator of the Second Decade.

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Introduction

1. The Working Group on Indigenous Populations was proposed by the Sub-Commission on the Prevention of Discrimination and Protection of Minorities in its resolution 2 (XXXIV) of 8 September 1981, endorsed by the Commission on Human Rights in its resolution 1982/19 of 10 March 1982 and authorized by the Economic and Social Council in its resolution 1982/34 of 7 May 1982. In its resolution the Council authorized the Sub-Commission to establish annually a working group to meet in order to:

(a) Review developments pertaining to the promotion and protection of human rights and fundamental freedoms of indigenous populations, including information requested by the Secretary-General annually from Governments, specialized agencies, regional intergovernmental organizations and non-governmental organizations in consultative status, particularly those of indigenous peoples, to analyse such materials, and to submit its conclusions and recommendations to the Sub-Commission, bearing in mind, inter alia, the conclusions and recommendations contained in the report of the Special Rapporteur of the Sub-Commission, Mr. José R. Martínez Cobo, entitled "Study of the problem of discrimination against indigenous populations" (E/CN.4/Sub.2/1986/7 and Add.1-4);

(b) Give special attention to the evolution of standards concerning the rights of indigenous populations, taking into account both the similarities and the differences in the situations and aspirations of indigenous populations throughout the world.

I. ORGANIZATION OF THE SESSION

A. Attendance

2. The twenty-third session of the Working Group was held in Geneva from 18 to 22 July 2005. The expert members who participated in the session were: Mr. Miguel Alfonso Martínez, Mr. Gaspar Bíró and Ms. Françoise Hampson. Mr. El Hadje Guissé and Mr. Yozo Yokota could not attend the session due to unexpected personal or work situations.

3. The Working Group was attended by representatives of 42 Member States, the Holy See, three United Nations specialized agencies and a large number of indigenous delegates and non-governmental organizations. A total of 427 participants were accredited (see annex I), although the number of actual participants attending the session was larger. Two members of the United Nations Permanent Forum on Indigenous Issues, Ms. Victoria Tauli-Corpuz and Mr. Hassan Id Balkassm, attended the session and actively participated in the debates. A representative of the European Commission, Ms. Paola Amadei, and the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Mr. Rodolfo Stavenhagen, also attended the session.

B. Documentation

4. A number of documents relevant to the session were made available (see annex II), including expanded working papers on standard-setting activities and a note by the Secretariat on the human rights component of the comprehensive programme of action for the Second Decade.

C. Opening of the session

5. Mr. Dzidek Kedzia, Chief of the Research and Right to Development Branch of the Office of the United Nations High Commissioner for Human Rights, opened the twenty-third session of the Working Group. He introduced the main item, stating that, although the right to one's own cultural knowledge was protected by international human rights standards, there were still implementation gaps that still had to be filled. He reminded the participants that the Commission on Human Rights invited the Working Group last March to pay special attention to its standard-setting activities throughout the Second Decade of the World's Indigenous Peoples and to continue its consideration of ways in which the expertise of indigenous peoples can contribute to the proceedings of the Working Group. He highlighted the Working Group as the think-tank on indigenous issues that could and should elaborate its own substantive proposals in the context of the Second Decade and stated that the Office was committed to working with indigenous representatives on that matter.

D. Election of officers

6. Mr. Alfonso Martínez was elected by acclamation Chairperson-Rapporteur for the twenty-third session.

E. Adoption of the agenda

7. The Working Group considered its programme of work on the basis of the provisional agenda (E/CN.4/Sub.2/AC.4/2005/1), which was adopted with the addition of an agenda sub-item 5 (c) entitled "Future priorities in standard-setting activities" (see annex III).

F. Organization of work

8. In organizing its work, the Working Group decided to invite the Chair of the United Nations Permanent Forum on Indigenous Issues and the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people to participate in an interactive dialogue with the Working Group and the participants on how to improve the partnership between the three bodies working on indigenous rights and issues. The dialogue took place during the ninth plenary meeting, held on 22 July.

G. Adoption of the report

9. The Working Group adopted the report of its twenty-third session on 4 August 2005.

II. REVIEW OF DEVELOPMENTS PERTAINING TO THE PROMOTION AND PROTECTION OF THE RIGHTS OF INDIGENOUS PEOPLES, INCLUDING THEIR HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

A. General debate

10. A number of indigenous participants raised the issue of territorial sovereignty over their ancestral lands and the difficulty of proving their claims to them through existing governmental channels. Particular difficulties regarding nomadic peoples were brought to the attention of the Working Group. The question of sovereignty over natural resources, including forests, minerals, water and pastures, was also raised, with several speakers welcoming the final report of the Special Rapporteur, Erica-Irene A. Daes, on indigenous peoples' permanent sovereignty over natural resources (E/CN.4/Sub.2/2004/30 and Add.1).

11. Others expressed their concerns about the impact of climate change and contamination of soil and water on natural resources that cause permanent damage. Indigenous organizations from all regions of the world stated their strong objections to multinational corporations that violate indigenous peoples' rights to their land and natural resources. The extraction of natural resources in indigenous territories also exacerbates poverty. Violations cited were particularly prevalent in the mining and oil exploration sectors. Some positive progress in this regard was highlighted in relation to Canada's efforts to strengthen regulations on the overseas activities of corporations.

12. Indigenous organizations urged States to implement previous recommendations of the Working Group, as well as recommendations of the Committee on the Elimination of Racial Discrimination (CERD). Particular reference was also made to the need to continue to implement the recommendations of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples. Indigenous organizations voiced their concerns over continued violations of their most basic human rights, including killings, torture, arbitrary detention, forced eviction, and violations of women's and children's rights, in many parts of the world. Some stressed that their communities were faced with imminent extinction.

13. A number of States were urged to implement or reform their existing legislation, and to take into account international standards. The speakers further urged States that have not yet done so to ratify the International Labour Organization (ILO) Convention No. 169 (1989) concerning indigenous and tribal peoples in independent countries.

14. In the area of administration of justice, participants cited a large number of cases of unequal treatment of indigenous prisoners and detainees. They recommended that adequate interpretation be ensured, and called for a study of indigenous political prisoners.

15. Several participants voiced their objection to the misuse of their sacred sites. They cited instances of inappropriate development of sites as tourist attractions, for mining and exploitation of natural resources, as well as militarization, including as a base for the militarization of outer space.

16. The observer for Canada expressed gratitude to the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people for his presentation, and affirmed Canada's commitment to continued dialogue. She drew attention to two major developments in recent weeks which represented practical and achievable approaches to issues of concern to indigenous people. First, on 30 May 2005 the Government's representative was appointed to lead discussions toward a fair and lasting resolution of the legacy of Indian residential schools, which also included options for former students to pursue claims of abuse. Second, a policy retreat was held on 31 May 2005 between the Prime Minister, members of the Cabinet Committee on Aboriginal Affairs and the leaders of five National Aboriginal organizations. Additionally, Canada hosted a World Summit on the Information Society indigenous thematic planning conference in Ottawa in March 2005, the only indigenous-specific meeting in the lead-up to the World Summit.

17. The observer for Venezuela informed the Working Group that in 2005 it would begin finalizing property ownership for indigenous people of their territory and that the President would present first titles for 111,000 hectares. Successive granting of title was expected to involve a larger amount of territory, as the largest groups were not included in this first round. In the new Constitution, indigenous peoples had achieved the full recognition of their rights.

18. The observer for Algeria, responding to allegations by some non-governmental organizations, stated that there had been progress regarding the Amazigh issue, including the recognition of Tamazight language in the Constitution.

B. Principal theme: "Indigenous peoples and the international and domestic protection of traditional knowledge"

19. The principal theme of the twenty-third session of the Working Group was welcomed by all participants. Over 50 indigenous and governmental observers spoke under this sub-item. Indigenous organizations emphasized the sacred nature of traditional knowledge and its important contribution to the knowledge of humankind, especially in certain areas of the world, where parts of the population depended on traditional knowledge for medical needs and food supply. However, much of this heritage was currently at risk and in many cases was headed for extinction. This was particularly true for traditional medicine and languages.

20. Participants mentioned globalization and activities such as logging and mining as a threat to the preservation of traditional knowledge. In many cases, this exploitation occurred without the free, prior and informed consent of the indigenous peoples. Another factor threatening traditional knowledge was eviction of indigenous peoples from their lands, as this heritage was inextricably linked to land and the resources therein.

21. In the view of many of the indigenous participants, the lack of international political will to effectively recognize and protect traditional knowledge also hindered the protection of this heritage. They emphasized that the current systems of patents (specific mention was made of the TRIP agreements) did not favour indigenous peoples and did not recognize traditional systems of ownership.

22. Several indigenous organizations appealed to the different United Nations bodies carrying out activities related to the protection of traditional knowledge (e.g. World Intellectual Property Organization (WIPO), the working group to elaborate a draft declaration on the rights of indigenous peoples, UNESCO, and the Convention on Biological Diversity) to complete their work as soon as possible, so as to enable international legally binding instruments to be adopted in the near future. In the formulation of national and international systems of protection, the particular importance of women in the protection of traditional knowledge should not be disregarded, as they play a key role in its preservation.

23. At the national level, several indigenous organizations referred to the positive developments concerning national legislation for the protection of traditional knowledge. Examples were given, referring to legislation enacted in South Africa, Venezuela and Panama.

24. In the light of a statement previously delivered, Ms. Hampson stressed that it was for indigenous peoples (not for those non-indigenous individuals or entities who profited from indigenous know-how without the proper consent) to determine both whether the rights to traditional knowledge were to be shared and how they were to be shared.

25. The observer for Bolivia highlighted that it was her Government's view that the adoption of a binding international legal instrument for the protection of the traditional knowledge of indigenous peoples was of the utmost priority. The current situation of legal uncertainty allowed for practices that harm the interests of indigenous peoples and threatened their traditional knowledge as well as their genetic resources.

26. The observer for Canada provided information on a number of initiatives in Canada, including an 11-year plan to revitalize and promote Aboriginal languages and cultures; "bush schools" to assist troubled youth, the 1991 Nunavut Agreement provisions to allow traditional Inuit harvesting and the recently finalized land claims agreement which recognized the Nunatsiavut Government's jurisdiction over culture and language.

27. The observer for Mexico informed the Working Group of the recent constitutional reforms at the federal and state levels that provide a legal basis for the protection of indigenous peoples' rights. Mexico had also prepared a national programme on human rights further to the visit of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, and was committed to continuous dialogue with indigenous people.

28. The observer for Venezuela highlighted the relevant laws and procedures in place to protect indigenous traditional knowledge, as guaranteed in their Constitution. This included penalties for the illegal appropriation of indigenous knowledge, technology, innovations and customs. She recommended that the Working Group support the adoption of a legally binding instrument by WIPO and urged the World Trade Organization to find a positive solution to allow the disclosure of the source and country of origin of genetic resources and traditional knowledge at its ministerial meeting in Hong Kong.

29. An observer for WIPO reported on the future direction of the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC). Member States were due to consider renewal of the mandate in September 2005. There

would be a proposal to establish a trust fund for the participation of indigenous people in the IGC, the principles and guidelines of which could be found in the draft proposal. WIPO hoped to establish in that way a constructive dialogue with indigenous peoples.

C. Indigenous peoples and conflict prevention and resolution

30. A number of indigenous organizations stated that conflicts involving indigenous peoples were most often related to issues of land and resources, to the exercise of the right to self-determination, and to the undertaking of projects undertaken by non-indigenous entities either closer to or within the ancestral lands of indigenous peoples.

31. A number of indigenous participants raised the issue of militarization of ancestral lands as a cause of conflict, sometimes in connection with the exploitation of natural resources on these lands, as in the case of the Chittagong Hill Tracts of Bangladesh. Additionally conflicts might arise over the issue of multinational companies' direct exploitation of natural resources on traditional lands, as in the case of foreign mining companies in the Philippines and other countries.

32. A number of participants drew attention to the special vulnerability of indigenous peoples, and of indigenous women and children in particular, in armed conflicts. The specific case of conflicts in the Great Lakes region in Africa was highlighted. The importance of taking indigenous culture and language into consideration in conflict prevention and resolution was also stressed. A positive development reported in India was in regard to the Adivasi peoples of Assam. The Government of India had invited the United Liberation Front of Assam (ULFA) to discuss solutions to the conflict, including the core issue of the sovereignty of Assam.

33. A repeated recommendation by indigenous organizations was the creation of an international mechanism with the mandate to act as an impartial third party to help establish dialogue between States and indigenous peoples for peaceful resolutions.

III. STANDARD-SETTING

A. Legal commentary on the concept of free, prior and informed consent

34. In its resolution 2003/29, the Sub-Commission asked Ms. Antoanella-Iulia Motoc to prepare a preliminary working paper that would serve as a framework for the drafting of a legal commentary on the principle of free, prior and informed consent of indigenous peoples in relation to development affecting their lands and natural resources (E/CN.4/Sub.2/AC.4/2004/4). The paper was prepared jointly with the Tebtebba Foundation, an indigenous organization from the Philippines. At its twenty-second session, the Working Group invited Ms. Motoc to prepare an expanded working paper offering guidelines to govern the practice of implementation of the principle of free, prior and informed consent (E/CN.4/Sub.2/AC.4/2005/WP.1).

35. Ms. Motoc submitted her expanded working paper, which took into consideration the results of other work undertaken on the issue, such as the workshop on methodologies regarding free, prior and informed consent and indigenous peoples, organized by the United Nations Permanent Forum on Indigenous Issues (E/C.19/2005/3).

36. A large number of statements were made on the study, referring to the substantive and procedural elements of free, prior and informed consent. It was particularly stressed that a decision on consent could only be taken directly by the community concerned according to its own traditional decision-making processes, with full respect for the time constraints such a procedure might involve. Although the right of free, prior and informed consent was contained in international treaties and increasingly recognized, it was not clear on how to best implement it. The initiative to elaborate guidelines on how to implement the principle was supported.

37. The observer for Panama gave a recent example of practical application of the principle of free, prior and informed consent in the area of traditional knowledge, in which the Government had established a national registry for the protection of indigenous knowledge.

38. The observer for Canada stated that the concept of free, prior and informed consent was still evolving and there were differing views of its nature and application because of an extraordinary diversity of indigenous interests. A broad, flexible and inclusive policy framework, as opposed to a rigid definition, would therefore best serve the interests of the greatest number of parties; the matter being the change of behaviour on the part of all interested parties ensuring the meaningful involvement of indigenous peoples and the development of processes supporting the fair and equitable balance of interests.

39. Mr. Bíró stressed the organic relationship between self-determination and the principle of free, prior and informed consent. In his view, it was critical who decided in matters directly related to the survival of the community and how these decisions were taken.

40. The representative of the Tebtebba Foundation, in her concluding remarks, recommended that the present paper be used as a background paper. The next step would be to distil legal principles and guidelines from the best practices submitted. She agreed that the questions raised concerning the appropriate decision-making body or process, identifying the interest of the community, involved required careful consideration and context-specific analysis. The study was not meant to become a rigid type of application of the principle but to provide clear guidance to its use. She shared the views expressed concerning the critical issue of information as a necessary precondition for making an informed choice, as well as the issues of oversight bodies and resource mechanisms.

41. Ms. Hampson noted that the concept of equitable sharing encompassed both the sharing of benefits as well as participation in the decision-making on whether exploitation of natural resources was possible. She highlighted that, if the rights in traditional knowledge were to be treated analogously to land rights, it was then not a question of the State having the right to exploit the knowledge. It was for indigenous peoples to determine both *whether* the rights were to be shared and also *how* they were to be shared. She further referred to the document prepared by the secretariat of the Convention on Biological Diversity and Traditional Knowledge, which said that “the benefits of traditional knowledge should be shared equally with the indigenous communities concerned”. This implied that that sharing was non-negotiable. She regretted that article 8 (j) of the Convention, which provided for the application of traditional knowledge “with the approval and the involvement” of the holders of the knowledge, failed to give them a right of veto. She concluded that the Convention was not consistent with article 29 of the draft

declaration on the rights of indigenous peoples. Indigenous knowledge belonged to indigenous peoples and any exploitation of indigenous knowledge should only be made with their free, prior and informed consent. They should have a right of veto. Their consent was to be not only free and prior, but also informed.

B. Review of the draft principles and guidelines on the protection of the heritage of indigenous peoples

42. The Working Group on Indigenous Populations also decided, as part of its standard-setting activities, to review the draft principles and guidelines for the protection of the heritage of indigenous peoples (document E/CN.4/Sub.2/1995/26) drafted by Mrs. Erica-Irene Daes, Special Rapporteur of the Sub-Commission. In its resolution 2003/29, the Sub-Commission invited Mr. Yokota to prepare a working paper that would serve as a guideline for the review of the draft principles and guidelines by the Working Group under its agenda item on standard-setting (E/CN.4/Sub.2/AC.4/2004/5). The paper was prepared jointly with the Saami Council, an organization of the indigenous peoples from Fennoscandinavia and the Kola Peninsula in the Russian Federation. At its twenty-second session, the Working Group invited Mr. Yokota to prepare an expanded working paper to serve as a guideline for the review of the draft principles and guidelines on the heritage of indigenous peoples.

43. Mr. Matthias Ahren (Saami Council) introduced the expanded working paper (E/CN.4/Sub.2/AC.4/2005/3). The paper invited the Working Group to consider the draft guidelines as a starting point, which could, at a later stage, be transformed into an international legally binding instrument. The Working Group should also consider whether a comprehensive protection system should be developed which would integrate the work undertaken by, and involve the different United Nations bodies working on this issue, ensuring a human rights-based approach to the issue of protection for indigenous peoples' heritage.

44. Indigenous organizations congratulated Mr. Yokota and the Saami Council for their valuable work; commended the joint methodology between experts and indigenous organizations in drafting this kind of papers; welcomed the holistic approach to this particular issue, and supported the recommendations presented therein. They also expressed their appreciation that the criteria and objectives established by the guidelines reflected the concerns of indigenous peoples.

45. They stressed the importance of a timely completion of the guidelines, especially in the light of the numerous international processes already elaborating international standards on specific elements of indigenous knowledge and cultural heritage. When finalized, the guidelines should be provided to the other United Nations bodies working on this issue for their consideration, in particular to the working group on article 8 (j) of the Convention on Biological Diversity and the Permanent Forum on Indigenous Issues, so as to ensure a human rights-based approach in the protection of the heritage of indigenous peoples. Indigenous observers also reiterated the urgent need for the adoption of the declaration on the rights of indigenous peoples as an instrument for the comprehensive protection of indigenous knowledge and cultural heritage.

46. Indigenous participants affirmed that the preservation of their heritage should not be seen as a separate issue from their struggle for economic development, their land rights and from the recognition of their right to self-determination, as all these factors were intrinsically linked. Specific recommendations were made in relation to the draft guidelines and principles, inter alia, (a) that the guidelines should further elaborate on the roles of indigenous women and of elders in heritage protection; (b) that language was to be considered not only as a means of communication, but as the basis of identification for an ethnicity, and as a repository of knowledge of history, myths and legends. The importance of preservation of indigenous languages should be better reflected in the guidelines. It was also suggested that the definition of cultural heritage should be broadened to include archives and traditional registries, food and organic fertilizer storage spaces, hydraulic canals and techniques for soil cultivation. Further, an indigenous organization suggested that UNESCO conventions should be mentioned as part of the human rights standards and consideration should be given to the World Heritage Convention where the interests of indigenous peoples were often included in the protection regime of the World Heritage List.

47. The observer for Mexico welcomed the paper and expressed the Government's support for the proposal that the guidelines become legally binding. Ms. Hampson pointed out that although the protection of the cultural heritage and traditional knowledge of indigenous peoples could overlap, they represented different dimensions of heritage protection. When protecting cultural heritage, it was mostly internal aspects of the culture of indigenous peoples that were being protected. On the other hand, when speaking of traditional knowledge, the protection granted was mostly from external factors. She identified several areas to which further attention needed to be given by the guidelines, such as protection of languages and discrimination measures. She suggested that the concept of compensation for continuing exploitation should be introduced in the guidelines, as should a reference to the establishment of a means by which indigenous groups could have access to expert legal assistance in vindicating their rights.

48. Mr. Bíró commended Mr. Yokota and the Saami Council for the work done, and suggested that the practice of having joint papers (between experts and indigenous organizations) should be intensified. He stressed that States should be called upon to take more positive measures to protect the heritage of indigenous peoples. The guidelines should also focus more attention on the preservation of indigenous languages. With regard to the duration of protection, Mr. Bíró suggested that protection of indigenous heritage should not have a time limit.

C. Future priorities for standard-setting activities

49. Several comments and suggestions were made concerning the future priorities for standard-setting activities within the Working Group. In this context, the crucial role of the Working Group in standard-setting activities was repeatedly underlined. Indeed, standard-setting continued to be one of the major mandates of the Working Group. It was suggested that future standard-setting work should focus on specific provisions of the United Nations draft declaration on the rights of indigenous peoples and further elaborate on its provisions. The partnership approach adopted by the Working Group in elaborating its studies jointly with indigenous organizations was highly praised and a number of participants recommended to continue this practice.

50. Among the priorities mentioned for further standard-setting activities, many referred to the relationship between the work of international financial institutions and indigenous peoples, in particular the impact of the policies and practices of those institutions on indigenous peoples, the nature and extent of their obligations stemming from national and international human rights standards, and the need for effective remedies and conflict resolution mechanisms. Another related to standards by which international or bilateral development agencies operate. A further suggestion concerned the need to preserve certain minimum standards and practices with regard to consultation procedures and dialogues. In this context, a study on the issue of extractive industries and the human rights impacts of mining was proposed.

51. Ms. Hampson stated that standard-setting was not only about creating binding legal norms, but also about creating standards or guidelines for the implementation of these norms, which played an important role in shaping the interpretation of norms. She suggested that the Working Group should focus on sets of guidelines.

52. Ms. Hampson proposed in particular three groups of issues on which standard-setting work in the form of guidelines could be tackled:

(a) All those issues where the concept was well understood but where, in the case of indigenous issues, the implications of the collective dimension of indigenous rights meant that the issue needed to be considered separately, such as discrimination in the context of indigenous issues, the right of development in this context, issues surrounding citizenship and badges of identity, population removal/transfers/relocation, taking into account the special character of indigenous land and the relationship between indigenous people and their land, the right to a remedy in the context of the collective dimension of indigenous rights, the obligation of States to protect the rights of indigenous people and to protect them from violations at the hands of third parties;

(b) Issues where the concept was well understood but where there were particular implications for certain groups, including but not confined to indigenous people. The most obvious such other groups were national minorities. It was important that any guidelines drafted in the indigenous context, should, so far as possible, be consistent with those appropriate to national minorities. Any differences should not be the result of inadvertence but of deliberate decision. Relevant issues in this regard included the enjoyment in practice of the right to education, the protection of minority and indigenous languages, the protection of cultural heritage, and maintaining contact with fellow members of the group across borders;

(c) Issues seen as particular to the indigenous context, even if they contained elements of more general application. She would include issues surrounding self-determination, autonomy, self-government and participation in decision-making, the involvement of indigenous groups prior to a State's undertaking an international agreement which would foreseeably have an impact on indigenous people, land rights, free, prior and informed consent, to what free, prior and informed consent was applicable, including any use, exploitation or activity on or in relation to indigenous lands and resources and, separately, the exploitation of traditional knowledge, recognition of indigenous laws, including the determination of the responsibilities of individuals to their communities, and systems of dispute resolution and their application.

IV. INTERNATIONAL DECADE OF THE WORLD'S INDIGENOUS PEOPLE

53. In its resolution 59/174 of 20 December 2004, the General Assembly decided that the goal of the Second Decade should be the further strengthening of international cooperation for the solution of problems faced by indigenous people by means, inter alia, of relevant standard-setting activities. In this respect, the Working Group decided to consider possible new studies and had also taken the initiative to build research partnerships with indigenous organizations for the preparation of the working papers on standard-setting.

54. In the same resolution, the General Assembly welcomed the contributions to the realization of the goals of the Decade for the World's Indigenous People made by the Working Group on Indigenous Populations and requested the Coordinator of the Second Decade to fulfil the mandate in full cooperation and consultation with the Office of the High Commissioner for Human Rights and other relevant bodies and mechanisms of the United Nations system.

55. In its resolution 2005/49, the Commission on Human Rights recognized the valuable contribution made by the High Commissioner for Human Rights in coordinating the International Decade of the World's Indigenous People and invited the Working Group on Indigenous Populations to submit in due course to the Coordinator of the Second Decade, through the Office of the High Commissioner for Human Rights, a list of activities to be considered for possible inclusion. These would be part of the human rights component of the comprehensive programme for the Second Decade that the Secretary-General has been requested to submit to the General Assembly at its sixtieth session (see E/CN.4/Sub.2/AC.4/2005/WP.2).

56. A wealth of proposals and comments concerning the goals and future activities for the Second International Decade of the World's Indigenous People were made by numerous observers for indigenous organizations. These comments and proposals took into account the achievements, shortcomings and lessons learned from the first Decade.

57. Although positive changes were recognized, a number of participants stated that the first Decade did not succeed in improving the living conditions of many indigenous peoples worldwide. Indeed many continued to be deprived of their basic rights and freedoms. They are discriminated against and were not making socio-economic progress. The second Decade should therefore be a Decade of real progress at the national level, reshaping the relationship between States and indigenous peoples and contributing to the betterment of the living conditions and the full realization of the rights of indigenous peoples, including their human rights. It was stressed that the goals of the new Decade should be clearly defined, practical and achievable.

58. Some of the proposals were put forth in the context of the broader United Nations reform process, highlighting the importance of ensuring both appropriate participation by indigenous peoples in this process and its outcome as well as maintaining the existing international mechanisms available to indigenous peoples, such as the Working Group on Indigenous Populations. Implementing the recommendations pertaining to indigenous peoples from the major international conferences was also underlined as being of crucial importance. The most frequently proposed objective of the Second Decade was the adoption of the draft United Nations declaration on the rights of indigenous peoples.

59. Participants also stressed the need to further develop international as well as national standards for the promotion and protection of the rights of indigenous peoples. States were called on to ratify, as soon as possible, the International Labour Organization Convention No. 169 (1989) concerning indigenous and tribal peoples in independent countries.

60. Certain areas were identified as requiring specific attention or as needing to be the subjects of studies during the Second Decade, inter alia, on the rights of indigenous peoples to land and natural resources, to effective access to clean water, sanitation and primary education; to the eradication of poverty and hunger; and to the exercise of self-governance as a means to materialize their right to self-determination. Further, the need to arrive to a clear definition of free, prior and informed consent - in particular with respect to cultural heritage, mining and extractive industries - the protection of traditional knowledge, and the present-day impact of colonization on indigenous peoples' lives were also mentioned as much-needed, subjects for study. It was recommended that particular attention be given to the status of indigenous women and to identify effective ways and means to integrate indigenous women into the decision-making, coordination and implementation of plans, programmes and activities of the Second Decade.

61. Improved communication facilities and access to media were regarded as important tools to ensure the effectiveness of the Decade programme. In this context, there were suggestions to launch and disseminate publications on indigenous peoples' rights, to translate international human rights instruments into indigenous languages, as well as to develop training programmes and materials.

62. A number of recommendations were addressed to the Office of the High Commissioner for Human Rights, such as to investigate serious cases of human rights abuses against indigenous peoples; to assist in researching various topics, such as the concept of indigenous peoples' rights in Africa and other continents; and to grant support to the building of human rights capacity of indigenous peoples' organizations.

63. The observer for Argentina, while noting the progress made during the First Decade, recognized that its objectives have not been fully achieved. His Government proposed that specific emphasis be placed on wide and active participation of indigenous peoples in the planning and implementation of all the activities to be undertaken during the Second Decade. Participation was equally important at the national level and the Government therefore proposed to ensure effective participation in the elaboration and implementation of the policies affecting them, taking into account the customs and traditions of indigenous communities.

64. The observer for Guatemala provided information on recent progress in Guatemala and ongoing efforts to further ensure effective political participation and awareness-raising programmes, the challenges still faced and the Government's readiness to work on these challenges together with indigenous groups.

65. The observer for Mexico underlined the importance of building partnerships to overcome the challenges faced by indigenous peoples. Specific training for indigenous peoples on negotiation techniques would be a particularly valuable contribution. Support should also be

provided to existing national institutions to put into practice the commitments made by Governments, therefore pragmatic, action-oriented approaches were needed, such as identification and sharing of best practices.

V. OTHER MATTERS

A. Cooperation with other United Nations bodies in the sphere of indigenous issues

66. A most engrossing and fruitful interactive dialogue took place between the Chair of the Permanent Forum on Indigenous Issues, the members of the Working Group on Indigenous Populations and the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples.

67. Ms. Victoria Tauli-Corpuz stated that there is an imperative for these three bodies to closely coordinate with each other and build upon each other's strengths and mandates. She considered that it was important to stress the magnitude of the problem. In this coordination, the basic principles of mutual respect, synergy and complementarity should be the basis for partnership. There should be concrete efforts to ensure that different bodies build on each other's achievements and discuss the challenges and constraints they face in realizing their respective, different mandates. There should be more opportunities for the three chairs to have formal discussions about difficulties and gaps and try to sort out means of complementarity and cooperation.

68. She stated that there were many issues that overlap. This was natural. The issue of the principle of free, informed and prior consent showed that none of these bodies could deal comprehensively with the subject in such a way as to ensure that such principles would be effectively implemented and that the standard-setting mandate of the Working Group was vitally important. It provided a basis for the development of guidelines, methodologies and procedures for the principle of free, informed and prior consent to be implemented. It would ensure that different bodies were guided by standards and frameworks that were framed in consultation with indigenous peoples. The Special Rapporteur was gathering more data on how this was to be implemented. She further stressed the important role of the Inter-Agency Support Group (IASG).

69. Mr. Rodolfo Stavenhagen reminded the Working Group that his thematic topic of this year was the subject of implementation of constitutional reform and laws. Laws had been adopted in many countries concerning the rights of indigenous peoples but there was still a big gap that had not yet been bridged between laws that had been made and that which was applied in practice. How could legislation be put into practice? He stressed that these three bodies needed to strengthen each other's efforts and enhance cooperation between established mechanisms. This was particularly true for two major challenges:

(a) The Second Decade would be coordinated by the Department for Economic and Social Affairs which, in his view, provided an excellent opportunity for Geneva to define the specific tasks which the human rights sector had to perform to consolidate contributions in terms of human rights;

(b) In his opinion, the effects that the eventual restructuring of the United Nations system and those of the possible transformation of the Commission on Human Rights into a Human Rights Council, would have on the fate of indigenous peoples' was still unclear. The activities related to indigenous peoples should be defined in a very precise and coordinated way within this new structure. Civil society, the indigenous peoples and human rights organizations provided a deluge of information regarding current trends facing indigenous peoples in the world, which was reported to the Working Group on Indigenous Populations every year under agenda item 4. This had been the case for more than 20 years. The Permanent Forum on Indigenous Issues had been privy to the same information during its four years of existence. However, one of the main areas of frustration was how to process, coordinate and communicate this information in a meaningful way.

70. Ms. Françoise Hampson stated that she had always been puzzled by those who said the functions of the Working Group were duplicated by other mechanisms. We were used to the separation of powers. No one suggested there was duplication because a parliament, courts and the executive all dealt with a particular issue. She stressed that there would be a gap if they did not. She said that the Permanent Forum on Indigenous Issues was the executive, the Special Rapporteur was a quasi-judicial body and the Working Group on Indigenous Populations was a quasi-judicial legislative body. There was no duplication, she stressed.

71. Another distinction was that the Permanent Forum had a very wide range of responsibilities. These were not limited to human rights. Standard-setting could not be transferred to the Permanent Forum. She believed it would be helpful to find ways to deliver more effective cooperation along the lines of this rough demarcation. The Working Group had the role of determining standards of a legislative kind along with non-legally binding kinds of guidelines. Those guidelines and legally binding norms did not need to relate solely to the underlying right. Guidelines and remedies needed to be adopted. The problems were not with regard to norms themselves but what happened to them.

72. Sometimes there was a gap in the normative framework. In other areas, there was a failure in implementation. In her view, a three-pronged approach was required: normative standards; legislative and executive implementation; and remedies for inadequacies in implementation. She was of the opinion that the bodies that could alert this Working Group to deficiencies and gaps are the Permanent Forum and the Special Rapporteur.

73. She believed that if demarcation lines were to be established, it would be helpful to other bodies to assist in identifying standards. There were several substantive areas for cooperation. The Second Decade was a case in point. Ms. Hampson pointed out that the coordination of the Decade was centred in New York, while human rights concerns were traditionally dealt with in Geneva. Under these circumstances, there was a risk that the Decade would fail to address human rights. She wondered if consideration had been given to the continuation of the Permanent Forum if a Human Rights Council was created. She noted that, at present, the Permanent Forum depended on the Economic and Social Council but the Working Group and the Special Rapporteur depended on the Commission on Human Rights.

74. Another substantive issue was the question of how to handle information. She stated that it would be useful if there was some sort of depository of information received. That would allow for parallels to be drawn on issues that were often neglected. For example, the issue of militarization of indigenous lands had been raised in completely different areas of the globe but communications within the United Nations system on this issue was lacking.

75. Mr. Gaspar Bíró acknowledged that overlap in the United Nations system was inevitable. He stressed that, in the case of indigenous peoples, the seriousness and magnitude of the problems negatively affecting indigenous peoples were quite significant and deserved to reach a global audience.

76. Mr. Alfonso Martínez reminded the participants that the Working Group was intended to cover issues and situations of indigenous peoples and also to analyse the new developments - both good and bad - in the day-to-day lives of indigenous communities. Many years before, the Commission on Human Rights created the post of Special Rapporteur to analyse situations and possible violations of human rights. The separation of functions was quite clear. Any development of cooperation must come from the bodies themselves. He acknowledged that the three bodies had no shared superior body. If a Human Rights Council was created, then it was anybody's guess how this particular issue would be tackled and resolved.

77. The observer for Canada warmly congratulated the Working Group on this initiative to bring together the three bodies, stating that a clear, political and powerful message was sent on the public stage and the rest of the United Nations system on the need to further strengthen the practical cooperation among them. The observer agreed that there was some overlap. However, the issues were being dealt with in a comprehensive fashion. It was important to individual States to see the unity of ultimate purposes shown by the three bodies.

78. The observer for Mexico also commended the initiative of organizing this interactive dialogue on the three bodies related to indigenous peoples' issues. He stated that there was no overlap between the three bodies and that Mexico could not propose that one of these bodies be dissolved.

79. Many indigenous representatives stressed that the Working Group had a separate and distinct mandate from any other body in the United Nations system. It should be seen as a body that assisted States in recognizing problems and identifying solutions to the problems confronting indigenous peoples. As such, it was vitally important that the Working Group continued to review issues that were important for the peace and security of indigenous peoples and nations and for their development of friendly relations among nations and peoples and other actors in the international community.

80. A number of indigenous participants highlighted the need to create an effective mechanism to address violations of the human rights and fundamental freedoms of indigenous peoples. The Working Group should assist in seeking ways of restoring or addressing their concerns by sending them to the appropriate United Nations bodies.

81. An indigenous observer stressed that the Working Group was more than just a temporary standard-setting body. It was the contact point for complaints from around the world. He noted 44 complaints and most of these complaints did not make it to the agenda of the Human Rights Committee, the Commission on Human Rights or any other bodies. He further referred to the United Nations reform, stating that it could be the opportunity to revisit the Working Group, which could report directly to the Human Rights Council.

82. The observer for the World Bank reminded the participants that the institution was eager to continue working with the United Nations for a better, more extended cooperation. He stated that the Working Group on Indigenous Populations and the Permanent Forum have played a critical role in bringing indigenous peoples' issues to the attention of international financial institutions. He referred to the World Bank strategy of direct engagement with indigenous peoples, stating that the grant facility launched in 2003 was assisting 237 investment projects involving indigenous projects around the world.

B. State of the United Nations Voluntary Fund for Indigenous Populations

83. On behalf of the Board of Trustees of the United Nations Voluntary Fund for Indigenous Populations, Ms. Tauli-Corpuz welcomed the 25 beneficiaries of travel grants of the Voluntary Fund present in the session.

84. She noted a considerable increase in applications to attend the United Nations meetings, recalling that in 1997 a total of 52 applications were received whereas in recent years OHCHR received about 500 applications from all regions of the world. Unfortunately, this increase in demand and the expansion over the years of the mandate of the Voluntary Fund - which initially only covered the Working Group on Indigenous Populations and now covers also travel grants to participate in the Commission's Working Group on the Draft Declaration as well as the Permanent Forum - was not met with a commensurate increase of available funds. She further stated that approximately half of the funds available for allocation to travel grants were now used for the beneficiaries to attend the Permanent Forum.

C. The human rights situation of indigenous peoples in States and territories threatened with extinction for environmental reasons

85. Ms. Hampson introduced her expanded working paper on the human rights situation of indigenous peoples in States and other territories threatened with extinction for environmental reasons (E/CN.4/Sub.2/2005/28), which refined, clarified and updated the conference room paper considered last year.

86. The paper examined the situation of populations of sovereign States that faced the likelihood of the disappearance of the whole or a significant part of their surface area for environmental reasons. It also considered the risk of natural disasters that required permanent displacement of a part of the population. The need for the evacuation in such cases gave rise to a variety of human rights issues, including questions of citizenship and statelessness, and what rights affected people would have as refugees and internally displaced persons, as such cases were not covered by existing international law.

87. In a situation in which indigenous people were forcibly displaced because of the disappearance of their land, there were a number of questions regarding their collective rights, land rights and recognition as indigenous people, as they would evidently not be indigenous in relation to receiving countries. A questionnaire was being prepared to determine the scope of the problem and establish which would be the States affected.

88. Indigenous participants shared their comments on the paper. They called attention to the imminent threat to particular States or Territories, in particular Tuvalu, which is the State at most risk of losing its territories through the rise in sea levels. They supported the recommendations made in the document, and in particular the intention to continue the study and to obtain more information through a questionnaire to be submitted to the interested parties.

89. The Pacific Caucus said that it would include this issue on its agenda and would consider the document at its next proposed meeting in March 2006. Indigenous organizations raised a variety of relevant issues of importance to them, including the link between loss of land and their extinction as a people, the importance of guarantees to the right of self-determination, and the need for preventive measures.

90. It was further stressed that the working paper and its subsequent proposals for future actions had to move beyond the current agenda of action of the United Nations and address the immediate impact on indigenous peoples relating to environmental threats induced by climate change. The paper could also propose solutions seeking a preventative process to protect and promote the human rights of indigenous peoples determining specific analysis and subsequent action.

91. In the course of the debate, mention was made of the fact that, in a number of cases, the extreme conditions of the environment would nullify the right to self-determination for indigenous peoples in the Pacific as well as in the Caribbean and Asia. The United Nations is focusing on how to eradicate extreme poverty and hunger, yet this issue was to assure existence. It was noted that the paper illustrated the necessity of the continuation of the existence of the Working Group. Nowhere else in the United Nations were the human rights of indigenous peoples the basis for examination of an environmental catastrophe.

92. Emphasis was placed on several important aspects of the working paper that referred to existing Member States of the United Nations, but also to indigenous peoples and territories that could be classified as colonies, non-self-governing territories or States in free association with another State. The questionnaire was a necessary step to procure accurate data on the nature, scale and imminence of the issue.

93. Some participants pointed out that, if indigenous peoples were able to exercise the right of self-determination, but then would be forced to evacuate their sacred lands due to rising waters, it would defeat their entire struggle for self-determination. International legal remedies must be explored. This was a global responsibility. The process of participation for indigenous peoples should create the space to include their direct involvement in dialogue and decision-making from the grass-roots to the global level.

94. Ms. Hampson reiterated that the study was not about the environment, nor about adverse environmental impacts on indigenous land or displacement of indigenous people on account of development projects. Those issues might call for studies, but they were not this study. She clarified that this study sought to get information about indigenous peoples that eventually would have to move within one State on account of the complete disappearance of their territory, and it would definitely be seeking information and proposing action with regard to entire States which would disappear.

95. She expressed deep appreciation regarding the interventions of the Pacific Caucus, and from the Hawaii Institute for Human Rights and was looking forward to cooperating with them in relation to their meeting in March 2006.

VI. CONCLUSIONS AND RECOMMENDATIONS

Organization of work

96. **The Working Group, in reviewing the organization of work of the twenty-third session, considered that the initiative to cooperate in concordance with indigenous organizations in the preparation of working papers related to standard-setting should be maintained and expanded to other activities of the Working Group. However, it reiterated the position expressed last year that it was up to each of its members to determine the specific ways in which such a useful cooperation was to be materialized.**

97. **The Working Group noted the valuable contribution of the interactive dialogue organized in partnership with other bodies dealing with the promotion of indigenous issues and underlined the need to continue inviting the Chair of the Permanent Forum on Indigenous Issues and the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, and any other relevant bodies, to the session of the Working Group. In particular, the Working Group was informed about the ad hoc meeting organized with the Chairperson/Rapporteur of the Working Group on Indigenous populations/communities of the African Commission in April 2005, and agreed to extend an invitation to the Chairman of the ACHPR Working Group Communities with the aim of initiating an ongoing dialogue between the two mechanisms.**

98. **The Working Group noted the constructive discussion under the new agenda item 5 (c) "Future priorities for the standard-setting activities" and decided to continue the debate under this sub-item at its twenty-fourth session.**

Review of developments pertaining to the promotion and protection of the rights of indigenous peoples, including their human rights and fundamental freedoms

General debate

99. **The Working Group welcomed the positive developments that were reported by non-governmental organizations, indigenous representatives and States stemming from discussions at last year's session. However, the Working Group also noted the continuing manifestations of discrimination still faced by indigenous peoples throughout the globe**

as well as their difficulties in exercising their rights. The Working Group decided to take practical steps to further strengthen the practical aspects of its cooperation with the Special Rapporteur, Mr. Stavenhagen. In this connection, it also decided to recommend to the Sub-Commission to authorize the Working Group to share the information imparted by States and indigenous representatives under this agenda item.

100. As had been the case in most of the Group's recent sessions, the lack of actual realization of their rights to land and its natural resources emerged this year too as the ultimate cause of most of the present-day difficult situations faced by indigenous peoples.

Principal theme: "Indigenous peoples and the international and domestic protection of traditional knowledge"

101. The Working Group took note of the discussion under the agenda item and the information provided by WIPO, the secretariat of the Convention on Biological Diversity and Traditional Knowledge, the European Commission and the Permanent Forum on Indigenous Issues. In particular, the Working Group decided to encourage any relevant bodies and States to ensure that the principle of free, prior and informed consent applies when protecting traditional knowledge of indigenous peoples.

102. The Working Group further decided to continue the dialogue on this issue by inviting interested bodies to discuss that matter in depth at the next session of the Working Group and to invite the United Nations treaty bodies to pay specific attention to the promotion and protection of traditional knowledge.

103. The Working Group took note of the invitation by the secretariat of the Permanent Forum on Indigenous Issues to the workshop on traditional knowledge to be held in Panama City from 21 to 23 September 2005, and decided to authorize the current Chairman/Rapporteur to represent the Group in this workshop.

Indigenous peoples and conflict prevention and resolution

104. The Working Group reiterated its decision to accept the invitation extended by representatives of indigenous peoples from parties to Treaty 6 in Canada to a seminar on the implementation of treaties, agreements and other constructive arrangements to take place on their lands in September 2006. In this connection, it decided to request the Office of the High Commissioner to establish, as soon as possible, the necessary contacts and coordination with the organizers of this event in Canada, so as to take all steps required to secure the success of this most welcome initiative.

105. The Working Group also decided to invite all Member States to submit information during its upcoming twenty-fourth session on the conflict prevention/resolution mechanisms existing within their respective territories available to indigenous peoples in case of existing or potential conflicts with non-indigenous individuals or entities based on the exercise of their rights.

106. **The Working Group further decided to recommend to the Sub-Commission to appoint one of its members to prepare a preliminary report on the present-day sequels of colonialism that continue to affect the lives of indigenous peoples, for submission to the Sub-Commission's fifty-ninth session in 2007 and to the Working Group's twenty-fifth session in 2007.**

Standard-setting

107. **The Working Group took note of General Assembly resolution 59/174 of 20 December 2004, which decided that the goal of the Second Decade should be the further strengthening of international cooperation for the solution of problems faced by indigenous people by means, inter alia, of relevant standard-setting activities.**

108. **The Working Group noted that it is, at the moment, the sole United Nations body exclusively concerned with the *rights* situation of indigenous peoples (including their *human rights*), with the mandate to creating international standards and potential norms in relation with indigenous peoples' rights.**

109. **The Working Group decided to focus its own contributions on sets of guidelines, adopting a holistic approach and to work on comprehensive guidelines authored by members of the Working Group in close cooperation with indigenous organizations and interested Governments, basically taking into account the views advanced by indigenous peoples on the ways in which the matter subjected to a process of standard-setting affects their present-day situation.**

Legal commentary on the concept of free, prior and informed consent

110. **The Working Group expressed appreciation to Ms. Motoc and the Tebtebba Foundation that had collaborated in the expanded working paper on the principle of free, prior and informed consent.**

111. **The Working Group decided to recommend that the Sub-Commission request the Office of the High Commissioner for Human Rights to invite Governments to submit to the Working Group at its twenty-fifth session any contribution they would see fit on best practices to govern the implementation of the principle of free, prior and informed consent of indigenous peoples in relation to developments affecting their lands and natural resources.**

112. **The Working Group further decided to invite the Office of the High Commissioner for Human Rights to prepare a draft publication drawing, inter alia, on the working papers on the legal commentary and guidelines prepared by Ms. Motoc and the Tebtebba Foundation as well as the information provided by States on best practices of implementation of the principle of free, prior and informed consent of indigenous peoples in relation to development affecting their lands and natural resources, for consideration by the Working Group at its twenty-fourth session.**

Review of the draft principles and guidelines on the protection of the heritage of indigenous peoples

113. The Working Group expressed appreciation to Mr. Yokota and the Saami Council for the preparation of the expanded working paper on the substantive proposals on the draft principles and guidelines on the heritage of indigenous peoples.

114. The Working Group decided to request the Office of the High Commissioner for Human Rights to organize, in consultation with indigenous organizations interested in the issue of indigenous heritage, as well as other United Nations bodies such as WIPO and the Secretariat on the Convention on Biological Diversity, an expert seminar on this matter, to be held in Geneva before the upcoming twenty-fourth session of the Working Group.

Future priorities for standard-setting activities

115. The Working Group decided to consider possible new studies at its twenty-fourth session. In addition, it also decided to explore, at its twenty-fourth session, the most suitable way to produce a brochure that will fully explain the legal rights and remedies available to indigenous persons in all Member States.

International Decade of the World's Indigenous People

116. The Working Group welcomed resolution 2005/49 whereby the Commission on Human Rights recognized the valuable contribution made by the High Commissioner for Human Rights in coordinating the International Decade of the World's Indigenous People and invited the Working Group on Indigenous Populations to submit in due course to the Coordinator of the Second Decade, through the Office of the High Commissioner for Human Rights, a list of activities to be considered for possible inclusion as part of the human rights component of the comprehensive programme for the Second Decade that the Secretary-General has been requested to submit to the General Assembly at its sixtieth session.

117. The list of the activities suggested by the Working Group to the Coordinator of the Second Decade appear in annex IV.

118. The Working Group requested the Office of the High Commissioner to forward as soon as possible the contents of annex IV of this report to the Coordinator, so as to allow the Working Group to comply with Commission resolution 2005/49.

Other matters

Cooperation with other United Nations bodies in the sphere of indigenous issues

119. The Working Group expressed appreciation to the President of the Permanent Forum on Indigenous Issues and to the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people for their most valuable contributions to the debates during the twenty-third session of the Working Group.

120. **The Working Group further recommended to its parent bodies to decide that the Chairperson-Rapporteur of its twenty-third session should submit the present report to the fifth session of the Permanent Forum, to be held in New York in May 2006.**

State of the voluntary fund for indigenous populations

121. **The Working Group decided to invite all Member States and other potential donors to contribute to the Voluntary Fund for Indigenous Populations in 2006.**

The human rights situation of indigenous peoples in States and territories threatened with extinction for environmental reasons

122. **The Working Group expressed appreciation to Ms. Hampson for the additional working paper on the human rights situation of indigenous peoples in States and territories threatened with extinction for environmental reasons and decided to recommend to the Sub-Commission to appoint Ms. Hampson as the Special Rapporteur to produce a study on this important matter.**

Twenty-fourth session of the Working Group

123. **The Working Group decided that its principal theme at its twenty-fourth session would be “Utilization of indigenous peoples’ lands by non-indigenous authorities, groups or individuals for military purposes”. The Working Group invited Governments, indigenous peoples, the United Nations system and NGOs to provide in advance relevant information to contribute to the discussion on that item.**

124. **The Working Group decided that the agenda for its twenty-fourth session will be as follows:**

1. **Election of officers.**
2. **Adoption of the agenda.**
3. **Organization of work.**
4. **Review of development:**
 - (a) **General debate;**
 - (b) **Principal theme, “Utilization of indigenous peoples’ lands by non-indigenous authorities, groups or individuals for military purposes”;**
 - (c) **Indigenous peoples and conflict prevention and resolution.**
5. **Standard-setting:**
 - (a) **Future priorities for standard-setting activities.**

- 6. Other matters:**
 - (a) Second International Decade of the World's Indigenous People;**
 - (b) Cooperation with other United Nations bodies;**
 - (c) State of the United Nations Voluntary Fund for Indigenous Populations, and**
 - (d) The human rights situation of indigenous peoples in States and territories threatened with extinction for environmental reasons.**
- 7. Adoption of the report.**

Annex I

LIST OF PARTICIPANTS

The following 41 States Members of the United Nations were represented by observers: Algeria, Argentina, Austria, Bahrain, Bangladesh, Belgium, Bolivia, Brazil, Canada, Chile, China, Colombia, Costa Rica, Cuba, Denmark, Ecuador, El Salvador, Estonia, Finland, France, Guatemala, Hungary, Ireland, Japan, Kenya, Lithuania, Mauritius, Mexico, Morocco, Nicaragua, Nigeria, Panama, Philippines, Russian Federation, South Africa, Sweden, Switzerland, Turkey, Uganda, Ukraine, Venezuela.

The following non-Member State was represented by an observer: Holy See.

The following United Nations bodies and specialized agencies were also represented by observers: International Fund for Agricultural Development (IFAD), World Bank, World Intellectual Property Organization (WIPO).

The following intergovernmental organization was represented by an observer: European Commission.

The following non-governmental organizations in consultative status with the Economic and Social Council (general consultative status, special consultative status and Roster) were represented by observers: Association of Indigenous Peoples of the North, Siberia and Far East of the Russian Federation (RAIPON), Association of World Citizens, Comisión Jurídica para el Auto-desarrollo de los Pueblos Originarios Andinos (CAPAJ), Ecospirituality Foundation, Foundation for Aboriginal and Islander Research Action (FAIRA), Indian Council of South America (CISA), Indigenous Peoples' Centre for Documentation, Research and Information (DOCIP), Indigenous World Association, Innu Council of Nitassinan, International Conference Volunteers, International Federation of Rural Adult Catholic Movements (FIMARC), International Indian Treaty Council, International League for the Rights and Liberation of Peoples, International Movement Against All Forms of Discrimination And Racism (IMADR), International Movement for Fraternal Union among Races and Peoples, International Organization for the Development of Freedom of Education (OIDEL), International Service for Human Rights, International Work Group on Indigenous Affairs (IWGIA), Inuit Circumpolar Conference, Shimin Gaikou Centre, Society for Threatened Peoples, Worldwide Organization for Women, World Council of Churches.

The following indigenous peoples' organizations and nations, as well as other organizations and groups, were represented at the twenty-third session: Action chrétienne pour la promotion des dévaforisés (ACPRDD), Action pour la promotion des droits des minorités autochtones en Afrique centrale (APDMAC), Action pour la recherche et le développement, African Indigenous Women Organization, Agencia Internacional de Prensa India, African Indigenous And Minority Peoples, Aktionsgruppe Indianer und Menschenrechte, Alianza Comunitaria De Acciones Nacionales Para el Trabajo y Educación (A.L.I.C.A.N.T.E), All Arunachal Pradesh Students Union, Alliance for the Rights of Indigenous Peoples in Niger Delta, Amazighe - Maroc, Aram Naharaim Foundation, Assam Watch, Association culturelle Ath Koudia, Association for Backward Areas Agricultural and

Rural Development, Association for the Reconstruction and Development of the Moko Peoples, Association of Indigenous Peoples in the Ryukyus, Association of World Reindeer Herders, Association pour la Promotion Durable de la Femme Défavorisée, Association Tamaynut, Bangladesh Adivasi, Bangladesh Hindu Buddhist Christian Unity, Bangsmoro Peoples' Consultative Assembly, Canadian Friends Service Committee, Casa Nativa Tampa Alqo, Centro de Desarrollo Kuna Yala (CEDEKY) Panamá, Chemudep Organization - Kenya, CNDPA - Kanaky, Comisión de Maestro Indígena de Pernambuco, Comité Inter-Tribal, Comunidad Indígena del Pueblo Tupi Guzeri, Confédération des Associations Amazighes du Sud Marocain, Csia-Nitassinan, Culture of Afro-Indigenous Solidarity, Embajadora de los Pueblos Indígenas de Venezuela, Fondation Batwa, FPCN - Germany, Friends of People Close To Nature, Fundación de Ayuda y Promoción de las Culturas Indígenas (FAPCI), Greater Sylhet Indigenous Peoples Forum, Hawai'i Institute For Human Rights, Incomindios, Indian Confederation of Indigenous and Tribal Peoples, Indian Movement "Tupac Katari", Indigène, Indigenous Peoples and Nations Coalition, Indigenous Peoples Links, Indigenous Peoples of Africa Coordination Committee (IPACC), Iraqi Turkinen Human Rights Research Foundation, International Programme for Funding Indigenous Leaders, International Scholars for Indigenous Americans, International Society for Human Rights, Jharkhandis Organization for Human Rights, Jumma Peoples Network International, Kirat Chamling Language and Cultural Development Association - Nepal, Koani Foundation, Krimchak Cultural Society, Kuki Indigenous People, Kwia, Flemish Support Group for Indigenous Peoples, Lao Human Rights Council, Lauravetlan Information and Education Network for Indigenous Peoples (LIENIP), Leonard Peltier Defense Committee, Mena Muria Foundation, Mapuche International Link, Mohawk Nation at Kahnawake, Movimiento Indígena Pachakuti, Mundari Literary Council, Native Women's Association of Canada, Negev Coexistence Forum, Philippine Indigenous Peoples Links, Pigsalabukari Bansa Subanion, Pueblo Wayou - Colombia, Quaker Aboriginal Affairs Committee, Rehab Hope Fund, Rehoboth Community of Namibia, Solidarité avec les peuples autochtones d'Amérique (SOPAM), Rosebud Sioux Tribe, Servicios del Pueblo Mixe, Tebtebba Foundation, Teton Sioux Nation Treaty Council, The Winged Horse Trust, Tigmi, Ti Tlanizke, Unissons-nous pour la promotion des Batwa (UNIPROBA), United Hmong International, United Zo Indigenous Peoples (UZIP), Unrepresented Nations and Peoples Organizations, West Africa Coalition for Indigenous Peoples' Rights (WACIPR), Wimsa, Working Circle Indians Today, World Adivasi Council, World Hmong Peoples Congress, Worldwide Organization for Women.

In addition to the above-mentioned participants, a number of individual scholars and observers attended the meetings.

Annex II

LIST OF DOCUMENTS

Document symbol	Title	Item
E/CN.4/Sub.2/AC.4/2005/1	Provisional agenda	1
E/CN.4/Sub.2/AC.4/2005/1/Add.1	Annotated agenda	1
E/CN.4/Sub.2/AC.4/2005/2	Not submitted	
E/CN.4/Sub.2/AC.4/2005/3	Expanded working paper submitted by Yozo Yokota and the Saami Council on the substantive proposals on the draft principles and guidelines on the heritage of indigenous peoples	5 (b)
E/CN.4/Sub.2/AC.4/2005/4	Not submitted	
E/CN.4/Sub.2/AC.4/2005/5	Note by the Secretariat on the Voluntary Fund for Indigenous Populations	7 (b)
E/CN.4/Sub.2/AC.4/2005/6	Not submitted	
E/CN.4/Sub.2/AC.4/2005/CRP.1	Note by the Secretariat - Report on the technical seminar to evaluate the United Nations Voluntary Fund for Indigenous Populations and the Voluntary Fund for the International Decade of the World's Indigenous People	7 (b)
E/CN.4/Sub.2/AC.4/2005/CRP.2	Working paper prepared by the Secretariat of the Convention on Biological Diversity and Traditional Knowledge	
E/CN.4/Sub.2/AC.4/2005/CRP.3	Joint Statement from the Indigenous World Association and Indigenous Media Network	
E/CN.4/Sub.2/AC.4/2005/CRP.4	Working paper prepared by the Secretariat of the Permanent Forum on Indigenous Issues	
E/CN.4/Sub.2/AC.4/2005/CRP.5	Working paper submitted by the Indian Movement Tupac Katari	

E/CN.4/Sub.2/AC.4/2005/WP.1	Expanded working paper submitted by Mrs. Antoanella-Iulia Motoc and the Tebtebba Foundation offering guidelines to govern the practice of implementation of the principle of free, prior and informed consent of indigenous peoples in relation to developments affecting their lands and natural resources	5 (b)
E/CN.4/Sub.2/AC.4/2005/WP.2	Note by the Secretariat on the Human Rights Component of the Comprehensive Programme of Action for the Second Decade	6

Annex III

AGENDA OF THE WORKING GROUP AT ITS TWENTY-THIRD SESSION

1. Election of officers.
2. Adoption of the agenda.
3. Organization of the work of the session.
4. Review of developments pertaining to the promotion and protection of the rights of indigenous peoples, including their human rights and fundamental freedoms:
 - (a) General debate;
 - (b) Principal theme: “Indigenous peoples and the international and domestic protection of traditional knowledge”;
 - (c) Indigenous peoples and conflict prevention and resolution.
5. Standard-setting:
 - (a) Legal commentary on the concept of free, prior and informed consent;
 - (b) Review of the draft principles and guidelines on the protection of the heritage of indigenous peoples;
 - (c) Future priorities in standard-setting activities.
6. International Decade of the World’s Indigenous People.
7. Other matters:
 - (a) Cooperation with other United Nations bodies;
 - (b) State of the Voluntary Fund for Indigenous Populations;
 - (c) The human rights situation of indigenous peoples in States and territories threatened with extinction for environmental reasons.
8. Presentation of elements for the conclusions and recommendations.
9. Adoption of the report.

Annex IV

**ACTIVITIES RECOMMENDED BY THE WORKING GROUP ON
INDIGENOUS POPULATIONS FOR POSSIBLE INCLUSION IN
THE DECADE'S PROGRAMME OF ACTION, SUBMITTED TO
THE COORDINATOR OF THE SECOND DECADE OF THE
WORLD'S INDIGENOUS PEOPLE THROUGH THE OFFICE
OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS IN
COMPLIANCE OF COMMISSION ON HUMAN RIGHTS
RESOLUTION 2005/49 OF 20 APRIL 2005**

International level

- Proclamation by the General Assembly of the draft United Nations Declaration on the Rights of Indigenous Peoples at the earliest possible date;
- Continuation and strengthening of the Indigenous Fellowship Programme;
- Securing the regular monitoring of the situation of the rights of indigenous peoples by the Commission's Special Rapporteur on their human rights, as well as by other special procedures of the Commission within their respective mandates, and by the United Nations treaty bodies;
- Continuous promotion of a human rights approach to development throughout the whole United Nations system and other international and regional governmental organizations;
- Ample diffusion of the standards, guidelines, principles and general comments issued by United Nations treaty bodies on issues relating to the rights of indigenous peoples, including their human rights;
- The holding of at least one annual action-oriented expert seminar on different issues which adversely affect or may adversely affect the situation of indigenous peoples in plural societies; and
- The holding in 2007, in celebration of 25 years of the presence of indigenous peoples at the United Nations, of an expert seminar to identify the progress made during this period as well as the still-unresolved challenges faced by them.

Regional level

- Continuous promotion and strengthening of the cooperation between the United Nations bodies and regional human rights mechanisms dealing with the rights of indigenous peoples.

National level

- Continuous promotion of activities intended to ensure the full compliance by States of the responsibility accepted when adopting by consensus the Declaration and Programme of Action of the 1993 World Conference on Human Rights to ensure the full and free participation of indigenous peoples in all aspects of society, in particular in matters of concern to them; and

- Continuous support for the activities included in the National Program of Action for the Second Decade which should be drafted, approved and implemented by all Member States with the full participation of the indigenous peoples living under their present territory.
