

Permanent Mission of Canada
Permanent Mission of Colombia
Permanent Mission of New Zealand
Permanent Mission of the Russian Federation

Excellency,

Re: Draft Declaration on the Rights of Indigenous Peoples

The Permanent Missions of Canada, Colombia, New Zealand and the Russian Federation are pleased to forward to you the attached non-paper on the Draft Declaration on the Rights of Indigenous Peoples.

This non-paper is a contribution to the ongoing discussions. It has been prepared by a cross-regional group of States, and offers possible amendments to address key concerns with the current Declaration text. These suggestions focus on a limited number of key Articles, with a view to providing "clear and tangible adjustments" to the text using a "minimal change" approach. As has been observed by the Facilitator, "action on the current text of the Declaration, without allowing room for certain adjustments to address the concerns raised, might result in wide-ranging polarizations ... among Member States." We are committed to finalizing the text of the Declaration during UNGA61, and we stand ready to discuss our proposals with other delegations. It is in this spirit that we add these suggestions to other proposals for change that are being considered, and reiterate our desire for negotiations as the best means to build a greater consensus for a final Declaration text.

August 13, 2007

[Please note that this document does not place Articles of the *UN Declaration on the Rights of Indigenous Peoples* in numerical order.]

Draft UN Declaration on the Rights of Indigenous Peoples

Non-Paper on Proposed Amendments

Articles: 3, 4, 10, 11, 19, 26, 27, 28, 29, 30, 31, 32(2), 46 (13Articles)

International Law, National Constitutional Frameworks and Third Party Rights

Article 46

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

3. The provisions set forth in this Declaration shall be interpreted in accordance with **international law, constitutional frameworks and** the principles of justice, democracy, respect for human rights, equality, non-discrimination, good governance and good faith. **The Declaration shall not be construed as authorising or encouraging any actions to nullify or impair agreements, arrangements or settlements between indigenous peoples and the State.**

Self-Determination, Self-Government and Indigenous Institutions

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.

2bis 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 construed as authorising 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 population belonging to the territory without distinction of any kind.

Article 4

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

Lands, Territories and Resources

Article 26

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

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

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

Article 29

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

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

Veto Power over the State

Article 19

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

Article 32(2)

2. States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions **in order to obtain their free, prior and informed consent** prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of their mineral, water or other resources.

Military Issues and the Protection of People on the Territory of the State

Article 10

Indigenous peoples shall not be forcibly removed from their lands or territories, **unless justified by a significant public interest**. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned **where possible**, and just and fair compensation and, where possible, with the option of return.

Article 30

1. Military activities shall **not only** take place in the lands or territories of indigenous peoples, **unless where** justified by a significant **threat to relevant** public interest or otherwise freely agreed with or requested by the indigenous peoples concerned, **in accordance with constitutional frameworks**.

2. **Where military activities take place by agreement or upon request**, States shall undertake effective consultations with the indigenous peoples concerned, through appropriate procedures and in particular through their representative institutions, prior to using their lands or territories for military activities.

Consistency with International Intellectual Property Rights

Article 11

1. Indigenous peoples have the right to practice and revitalize their cultural traditions and customs. This includes the right to maintain, **protect preserve** and develop the past, present and

future **tangible** manifestations of their cultures, **such as that may include** archaeological and historical sites, artifacts, designs, ceremonies, technologies and visual and performing arts and literature.

Article 31

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

Redress and Restitution

Article 11.

2. States shall provide **redress through** effective mechanisms **for redress**, which may include restitution, developed in conjunction with indigenous peoples, with respect to their cultural, **intellectual**, religious and spiritual property taken without their free, prior and informed consent **or in violation of their laws, traditions and customs.**

Article 27

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

Article 28

1. Indigenous peoples have the right to **pursue claims for** redress, **by means** that can include restitution or, when this is not possible, of a just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.

2. **Unless otherwise freely agreed upon by the peoples concerned, Compensation shall may** take the form of lands, territories and resources equal in quality, size and legal status or of monetary compensation or other appropriate redress