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

CLASSIFICATION OF PROVISIONS THAT COULD FACILITATE CONSENSUS

(Reference document prepared by the Department of International Law)

[Updated upon the conclusion of the Thirteenth Meeting of Negotiations]

## **Classification of provisions that could facilitate consensus**

This working document seeks to classify provisions of the Draft American Declaration on the Rights of Indigenous Peoples according to their level of difficulty in obtaining a consensus at the Meetings of Negotiations in the Quest for Points of Consensus held so far.

The reference document is the “Record of the Current Status of the Draft American Declaration on the Rights of Indigenous Peoples (Outcomes of the Twelve Meetings of Negotiations in the Quest for Points of Consensus, held by the Working Group)” [GT/DADIN/doc.334/08 rev. 6 corr. 1, March 20, 2011].

Provisions of the “Record of the Current Status” have been organized in four groups:

- Texts on which consensus has been reached or that have been approved;
- Texts where consensus could be reached easily;
- Texts where consensus could be reached with some difficulty;
- Complex texts.

The current classification is an attempt by the technical secretariat to establish groups of provisions according to the level of difficulty in obtaining a consensus; therefore it is open to changes and is subject to the final decisions by members of the working group. Within this context, delegations are requested to address their comments and suggestions to the Chair of the Working Group.

This new version includes all completely approved provisions during the Thirteenth Meeting of Negotiations in the Quest for Points of Consensus.

## **Texts on which consensus has been reached or that have been approved**

### **Article I.**

1. The American Declaration on the Rights of Indigenous Peoples applies to the indigenous peoples of the Americas. (Consensus reached on March 25, 2006 – Seventh Meeting of Negotiations in the Quest for Points of Consensus)

2. Self-identification as indigenous peoples will be a fundamental criterion for determining to whom this Declaration applies. The States shall respect the right to such self-identification as indigenous, individually or collectively, in keeping with the practices and institutions of each indigenous people. (Consensus reached on March 25, 2006 – Seventh Meeting of Negotiations in the Quest for Points of Consensus)

### **Article II.**

The States recognize and respect the multicultural and multilingual character of the indigenous peoples, who are an integral part of their societies. (Approved on April 16, 2008 – Eleventh Meeting of Negotiations in the Quest for Points of Consensus)

### **Article V. Full effect and observance of human rights**

Indigenous peoples and persons have the right to the full enjoyment of all the human rights and fundamental freedoms, as recognized in the Charter of the United Nations, the Charter of the Organization of American States, and international human rights law. (Approved on April 16, 2008 – Eleventh Meeting of Negotiations in the Quest for Points of Consensus)

### **Article VII. Gender equality**

1. Indigenous women have the right to the recognition, protection, and enjoyment of all human rights and fundamental freedoms provided for in international law, free of all forms of discrimination. (Consensus reached in March 2006—Seventh Meeting of Negotiations in the Quest for Points of Consensus)

2. The States recognize that violence against indigenous peoples and persons, particularly women, hinders or nullifies the enjoyment of all human rights and fundamental freedoms. (Consensus reached in March 2006—Seventh Meeting of Negotiations in the Quest for Points of Consensus)

3. The States shall adopt the necessary measures, in conjunction with indigenous peoples, to prevent and eradicate all forms of violence and discrimination, particularly against indigenous women and children. (Consensus reached in March 2006—Seventh Meeting of Negotiations in the Quest for Points of Consensus)

**Article VIII.** Right to belong to the indigenous peoples

Indigenous persons and communities have the right to belong to one or more indigenous peoples, in accordance with the identities, traditions, customs, and systems of those peoples. [No form of discrimination whatsoever may result from the exercise of that right.] (Approved on November 30<sup>th</sup>, 2009 – Twelfth Meeting of Negotiations in the Quest for Points of Consensus)

**Article IX.** Juridical personality

The States shall recognize fully the juridical personality of the indigenous peoples, respecting indigenous forms of organization and promoting the full exercise of the rights recognized in this Declaration. (Consensus reached on December 7, 2006—Eighth Meeting of Negotiations in the Quest for Points of Consensus)

**Article X.** Rejection of assimilation

1. Indigenous peoples have the right to maintain, express, and freely develop their cultural identity in all respects, free from any external attempt at assimilation. (Consensus reached on November 11, 2003—First Meeting of Negotiations in the Quest for Points of Consensus)

2. The States shall not carry out, adopt, support, or favor any policy to assimilate the indigenous peoples or to destroy their cultures. (Consensus reached on November 11, 2003—First Meeting of Negotiations in the Quest for Points of Consensus)

**Article X bis.** Protection against genocide

Indigenous peoples have the right to not be subjected to any form of genocide or attempts to exterminate them. (Consensus reached on November 11, 2003—First Meeting of Negotiations in the Quest for Points of Consensus)

**Article XI.** Guarantees against racism, racial discrimination, xenophobia, and other related forms of intolerance

Indigenous peoples have the right not to be subject to racism, racial discrimination, xenophobia, and other related forms of intolerance. The States shall adopt the preventive and corrective measures necessary for the full and effective protection of this right. (Approved on April 18, 2008 – Eleventh Meeting of Negotiations in the Quest for Points of Consensus)

**Article XIII. Systems of knowledge, language, and communication**

1. Indigenous peoples have the right to preserve, use, develop, revitalize, and transmit to future generations their own histories, languages, oral traditions, philosophies, systems of knowledge, writing, and literature; and to designate and maintain their own names for their communities, individuals, and places.<sup>1/</sup> (Consensus reached on January 24, 2007 – Ninth Meeting of Negotiations in the Quest for Points of Consensus)

The States [shall] [will] adopt adequate [and effective] measures to protect the exercise of this right [, in consultation with the peoples concerned] (Approved on November 30<sup>th</sup>, 2009 – Twelfth Meeting of Negotiations in the Quest for Points of Consensus)

2. Indigenous peoples [, on an equal basis with the rest of society,] have the right to promote and develop all their systems and media of communication, including their own radio and television programs, and to access all other means of communication and information. The States shall take measures to promote the broadcast of radio and television programs in indigenous languages, particularly in areas with an indigenous presence. The States shall support and facilitate the creation of indigenous radio and television stations, as well as other means of information and communication. (Approved on November 30<sup>th</sup>, 2009 – Twelfth Meeting of Negotiations in the Quest for Points of Consensus)

3. The States, in conjunction with indigenous peoples, shall make efforts to ensure that those peoples can understand and be understood in their languages in administrative, political, and judicial proceedings, where necessary through the provision of interpretation or by other effective means. (Consensus reached on January 26, 2007 – Ninth Meeting of Negotiations in the Quest for Points of Consensus)

**Article XIV. Education**

1. The indigenous peoples and persons, particularly indigenous children, have the right to all levels and forms of education, without discrimination. (Approved on November 30<sup>th</sup>, 2009 – Twelfth Meeting of Negotiations in the Quest for Points of Consensus)

2. The States and indigenous peoples, in keeping with the principle of equality of opportunity, shall promote the reduction of disparities in education between indigenous and non-indigenous peoples. (Approved on April 27, 2007 – Tenth Meeting of Negotiations in the Quest for Points of Consensus)

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1. After participating in Working Group meetings regarding Section Three, it is the understanding of the United States that this section does not concern intellectual property rights, which are addressed exclusively under Article XXVIII of this Declaration.

3. Indigenous peoples have the right to their own educational systems and, by virtue of this right, they can define, prepare, apply and control their own programs, plans, curricula, methodologies, and teaching materials; and educate, train, and accredit their teachers and administrators [, in coordination with the State]. (Approved on December 1st, 2009 – Twelfth Meeting of Negotiations in the Quest for Points of Consensus)

4. The States shall, in conjunction with indigenous peoples, take [effective] measures to provide access for indigenous individuals, particularly children, living outside their communities to an education in their own languages and cultures. (Approved on December 1st, 2009 – Twelfth Meeting of Negotiations in the Quest for Points of Consensus)

5. The States shall promote harmonious intercultural relations, ensuring in State educational systems curricula with contents that reflect the pluricultural and multilingual nature of their societies and that encourage respect for and knowledge of the different indigenous cultures. The States shall, in conjunction with indigenous peoples, promote intercultural education that reflects the world view, histories, languages, knowledge, values, cultures, practices, and ways of life of those peoples. (Approved on April 27, 2007 – Tenth Meeting of Negotiations in the Quest for Points of Consensus)

6. The States shall adopt necessary and effective measures to ensure the exercise and observance of these rights. (Approved on December 1st, 2009 – Twelfth Meeting of Negotiations in the Quest for Points of Consensus)

## **Article XVII. Health**

1. Indigenous peoples have the collective and individual right to the enjoyment of the highest attainable standard of physical, mental, and spiritual health. (Approved on April 18, 2008 – Eleventh Meeting of Negotiations in the Quest for Points of Consensus)

2. Indigenous peoples have the right to their own health systems and practices, as well as to the use and protection of the plants, animals, minerals of vital interests, and other natural resources for medicinal use in their ancestral lands and territories. (Approved on January 19, 2011 - Thirteenth Meeting of Negotiations in the Quest for Points of Consensus)

3. The States shall take measures to prevent and prohibit indigenous peoples and individuals from being subject to research programs, biological or medical experimentation, as well as sterilization without their prior, free, and informed consent. Likewise, indigenous peoples and persons have the right, as appropriate, to access to their data, medical records, and documentation of research conducted by individuals and public and private institutions. (Approved on April 25, 2007 – Tenth Meeting of Negotiations in the Quest for Points of Consensus)

4. Indigenous peoples have the right to use, without any discrimination whatsoever, all the health and medical care institutions and services accessible to the general population. The States, in consultation and coordination with indigenous peoples, shall promote intercultural systems or practices in the medical and health services provided in indigenous communities, including training

of indigenous technical and professional health care personnel. (Approved on April 26, 2007 – Tenth Meeting of Negotiations in the Quest for Points of Consensus\*)

5. States shall guarantee the effective exercise of the rights contained in this article. (Approved on January 18, 2011 - the Thirteenth Meeting of Negotiations in the Quest for Points of Consensus)

**Article XIX. Rights of association, assembly, and freedom of expression and thought**

1. Indigenous peoples have the rights of association, assembly, organization and expression, and to exercise them without interference and in accordance with their worldview, *inter alia*, values, usages, customs, ancestral traditions, beliefs, spirituality, and other cultural practices. (Approved on January 18, 2011 - Thirteenth Meeting of Negotiations in the Quest for Points of Consensus)

2. Indigenous peoples have the right to assemble on their sacred and ceremonial sites and areas. For this purpose they shall have free access and use to these sites and areas. (Approved on January 18, 2011 - Thirteenth Meeting of Negotiations in the Quest for Points of Consensus)

3. Indigenous peoples, in particular those who are divided by international borders, shall have the right to travel and to maintain and develop contacts, relations, and direct cooperation, including activities for spiritual, cultural, political, economic, and social purposes, with their members and other peoples. (Approved on January 20, 2011 - Thirteenth Meeting of Negotiations in the Quest for Points of Consensus)

4. These states shall adopt, in consultation and cooperation with the indigenous peoples, effective measures to ensure the exercise and application of these rights. (Approved on January 18, 2011 - Thirteenth Meeting of Negotiations in the Quest for Points of Consensus)

**Article XXVI. Indigenous peoples in voluntary isolation or initial contact**

1. Indigenous peoples in voluntary isolation or initial contact have the right to remain in that condition and to live freely and in accordance with their cultures. (Consensus reached in October 2005—Sixth Meeting of Negotiations in the Quest for Points of Consensus)

2. The States shall adopt adequate policies and measures with the knowledge and participation of indigenous peoples and organizations to recognize, respect, and protect the lands, territories, environment, and cultures of these peoples as well as their life and individual and collective integrity.<sup>2/ 3/</sup> (Consensus reached in October 2005—Sixth Meeting of Negotiations in the Quest for Points of Consensus)

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\* This was the last paragraph analyzed at the Tenth Meeting of Negotiations in the Quest for Points of Consensus.

2. The delegation of Argentina enters a reservation with respect to the terms “lands and territories” until the scope of their meaning throughout the text of the declaration is reviewed.

**Article XXXII.**

All the rights and freedoms recognized in the present Declaration shall be guaranteed equally to indigenous women and men.<sup>4/</sup> (Consensus reached in November 2003—First Meeting of Negotiations in the Quest for Points of Consensus). Moved to this section in March 2006—Seventh Meeting of Negotiations in the Quest for Points of Consensus)

**Article XXXIII.**

Indigenous peoples and persons have the right to effective and appropriate remedies, including prompt judicial remedies, for the reparation of all violations of their collective and individual rights. The States, with the full and effective participation of indigenous peoples, shall provide the necessary mechanisms for the exercise of this right. (Approved on April 16, 2008 – Eleventh Meeting of Negotiations in the Quest for Points of Consensus)

**Article XXXIV**

In case of conflicts and disputes with indigenous peoples, states shall provide, with the full and effective participation of those peoples, just, equitable and effective mechanisms and procedures for their prompt resolution. For this purpose, due consideration and recognition shall be given to the customs, traditions, norms or legal systems of the indigenous peoples concerned. (Approved on January 19, 2011 - Thirteenth Meeting of Negotiations in the Quest for Points of Consensus)

**Article XXXIV bis.**

Nothing in this Declaration may be interpreted so as to limit, restrict, or deny human rights in any way, or so as to authorize any action that is not in keeping with international human rights law. (Consensus reached on December 8, 2006 – Eighth Meeting of Negotiations in the Quest for Points of Consensus)

**Article XXXV.**

The Organization of American States, its organs, agencies, and entities, shall take all necessary measures to [promote and ensure] the application, respect, and full protection of the rights of

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3. The delegation of Mexico joins in the consensus reached on this article. However, Mexico reserves the right to request reconsideration of the final part of paragraph 2 of this article, which reads: “These policies shall include the necessary measures to prevent, prohibit, and punish any unauthorized intrusion in their lands and territories,” if it is not reflected elsewhere in the Declaration.

4. During the Seventh Meeting of Negotiations, held in Brasilia, Brazil, the Working Group approved the three paragraphs proposed by the Indigenous Peoples’ Caucus and which the Chair suggested should currently appear in Article VII, “Gender Equality.” The paragraph that had already been approved by consensus at another meeting of negotiations and which appeared as the first paragraph of Article VII has been transferred as a general provision and now appears as Article XXXII in that section.



indigenous peoples contained in this Declaration. (Approved on December 1st, 2009 – Twelfth Meeting of Negotiations in the Quest for Points of Consensus)

**Article XXXVI.**

The nature and scope of the measures that shall be taken to implement this Declaration shall be determined in accordance with the spirit and purpose of said Declaration.<sup>5/</sup> (Approved on April 16, 2008 – Eleventh Meeting of Negotiations in the Quest for Points of Consensus)

**Article XXXVIII.**

Nothing in this declaration shall be construed as diminishing or extinguishing rights that indigenous peoples now have or may acquire in the future. (Consensus reached in March 2006—Seventh Meeting of Negotiations in the Quest for Points of Consensus)

**Article XXXIX.**

The rights recognized in this Declaration constitute the minimum standards for the survival, dignity, and well-being of the indigenous peoples of the Americas. (Approved on April 16, 2008 – Eleventh Meeting of Negotiations in the Quest for Points of Consensus)

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5. The delegation of Argentina states that the Article raises doubts regarding the scope of the measures referred to, bearing in mind that this is a Declaration, not a Plan of Action. It therefore reserves its right to formulate comments and proposals in the future.



**Texts on which a consensus could be reached easily**

**Article XVI. Indigenous family**

1. The family is a natural and fundamental group unit of society. Indigenous peoples have the right to preserve, maintain, and promote their own family systems. The States shall recognize, respect, and [protect] the various indigenous forms of family, in particular the extended family, as well as the forms of matrimonial union, filiations, descent, and family name. In all cases, gender and generational equity shall be recognized and respected. (Approved on November 30<sup>th</sup>, 2009 – Twelfth Meeting of Negotiations in the Quest for Points of Consensus)

2. In determining the best interests of the child in matters related to the adoption of indigenous children, severance of family ties, and other similar circumstances, the courts and other relevant institutions shall take into account, primarily, the [any applicable] indigenous law of the peoples concerned and shall consider their points of view, rights, and interests, including the positions of individuals, the family, and the community. The indigenous institutions, and indigenous courts where they exist, shall [may] have jurisdiction in determining the custody and other related matters concerning indigenous children.

**Article XXV. On transfers and relocations**

1. Indigenous peoples shall not be transferred or relocated without their free, prior, and informed consent<sup>6/</sup>, except in cases of natural disaster, [national emergency, or exceptional grounds duly justified,] through procedures jointly established with the indigenous peoples. In the event of a transfer or relocation, the States shall ensure the replacement, [wherever possible,] by adequate lands of equal size, quality, and legal status, [guaranteeing] in all cases the right to return if the causes that gave rise to the displacement cease to exist.

2. Just and equitable compensation shall be paid to the indigenous peoples and to their members who are transferred or relocated for [any] loss or harm they may have suffered as a result of their displacement.<sup>7/</sup>

**Article XXXIV ter**

[Nothing in this declaration may be interpreted as being incompatible with the domestic and international legal order.]

**Article XXXIV quat**

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6 This phrase has been approved by the Plenary in the Twelfth Meeting of Negotiations in the Quest for Points of Consensus)

7. The delegation of the United States reserves its position on Article XXV (2).

[The provisions of this declaration shall be interpreted and applied in keeping with the American Convention on Human Rights, the American Declaration of the Rights and Duties of Man, and inter-American jurisprudence on matters of human rights.]

**Article XXXVII<sup>8/</sup>**

Any interpretation and application of the present Declaration [shall take into account the constitutional principles of each state and] shall be consistent with the international principles of justice, democracy, respect for human rights, nondiscrimination, [good governance,] and good faith.

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<sup>8</sup>. At the Twelfth Meeting of Negotiations, at the request of the plenary it was decided that this article would be analyzed at the conclusion of the round of negotiations.

**Texts where consensus could be reached with some difficulty**

**Article VI.**    Collective rights

1.        Indigenous peoples have collective rights that are indispensable for their existence, well-being, and integral development as peoples. (Approved on December 2nd, 2009 – Twelfth Meeting of Negotiations in the Quest for Points of Consensus)

2.        In this regard, the States recognize [and guarantee], *inter alia*, the right of the indigenous peoples to their collective action; to their social, political, and economic organization; [to their legal systems;] to their own cultures; to profess and practice their spiritual beliefs; [and] to use their languages [; and to administer and control their lands, territories, and natural resources].

**Article XXI.**    Indigenous law and jurisdiction

1.        The States shall recognize the [competence] of the authorities of indigenous peoples to exercise [jurisdictional functions] in their territory in accordance with their own standards, institutions, and procedures. Indigenous peoples have the right to maintain [control] and strengthen their legal systems to address the internal matters that affect their rights and interests, and to apply them in accordance with their own rules and procedures.<sup>9/</sup>

2.        The indigenous law and legal systems shall be recognized and respected by the national, regional and international–legal systems. (Approved on January 18, 2011 - Thirteenth Meeting of Negotiations in the Quest for Points of Consensus)

3.        The matters referring to indigenous persons or to their rights or interests in the jurisdiction of each State shall be conducted so as to provide for the right of the indigenous people to full representation with dignity and equality before the law. Consequently, they are entitled, without discrimination, to equal protection and benefit of the law, including the use of linguistic and cultural interpreters. (Consensus reached in November 2004 – Fourth Meeting of Negotiations in the Quest for Points of Consensus)

4.        The States shall take effective measures in conjunction with indigenous peoples to ensure the implementation of this article. (Approved on January 18, 2011 - Thirteenth Meeting of Negotiations in the Quest for Points of Consensus)

**Article XXII.**    Contributions of the indigenous legal and organizational systems

1.        The States shall facilitate the inclusion, within their national and regional organizational structures, as appropriate, of the traditional institutions and practices of the indigenous peoples, in consultation with and with the consent<sup>10/</sup> of said peoples.

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9.        This item had the support of most delegations, but a consensus was not reached. It was suggested that this paragraph be reviewed with Article XXXIII.

10.        The term "with the consent" will need further reflection.

2. The indigenous peoples, in matters that may directly affect their rights, have the right to participate fully and effectively [without discrimination] in the design of institutions that serve them, in the development, [adoption] and implementation of plans, public policies, and programs and actions, including those that the State agrees [with {financial} multilateral institutions], as well as in the process of development of legislative, administrative and judicial measures. [All of the above, with the purpose of strengthening and promoting the identity, culture, traditions, organization, and values of these peoples.]

[3. The States shall obtain free, prior, and informed consent of the indigenous peoples concerned before adopting and implementing such policies and measures.]<sup>11/</sup>

**Article XXIII. Treaties, agreements, and other constructive arrangements**

1. [Indigenous peoples have the right to the recognition, observance, and enforcement of the treaties, agreements and other constructive arrangements concluded with states and their successors, in accordance with their true spirit and intent in good faith and to have the same be respected and honored by the States. States shall give due consideration to the understanding/interpretation of the indigenous peoples as regards to treaties, agreements and other constructive arrangements.]

2. When disputes cannot be resolved between the parties in relation to such treaties, agreements and other constructive arrangements, these shall be submitted to competent bodies, including regional and international bodies, by the States or indigenous peoples concerned. (Approved on January 19, 2011 - Thirteenth Meeting of Negotiations in the Quest for Points of Consensus)

3. Nothing in this Declaration may be interpreted as diminishing or eliminating the rights of indigenous peoples contained in treaties, agreements and other constructive arrangements. (Approved on January 19, 2011 - Thirteenth Meeting of Negotiations in the Quest for Points of Consensus)

**Article XXVII. Labor Rights**

1. Indigenous peoples and persons have the rights and guarantees recognized in national and international labor law. States shall take all special measures to prevent, punish and remedy the discrimination to which indigenous peoples and persons are subjected. (Approved on January 20, 2011 - Thirteenth Meeting of Negotiations in the Quest for Points of Consensus)

2. The States, in conjunction with indigenous peoples, shall adopt immediate and effective measures to eliminate exploitative labor practices with regard to indigenous peoples, in particular, indigenous children, women, and elders. (Consensus reached in October 2005 – Sixth Meeting of Negotiations in the Quest for Points of Consensus)

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11. Most delegations felt there was a need to analyze the scope of this paragraph in the future.

3. In case indigenous peoples are not effectively protected by the laws applicable to workers in general, states, in conjunction with indigenous peoples, shall take all measures that may be necessary in order to:

- a. protect indigenous workers and employees in relation to contracting under fair and equal conditions in both formal and informal employment;
- b. establish, apply, or improve labor inspection and the enforcement of rules with particular attention to, *inter alia*, regions, companies, and labor activities in which indigenous workers or employees participate;
- c. establish, apply or enforce laws so that both female and male indigenous workers:
  - i. enjoy equal opportunities and treatment in all terms, conditions, and benefits of employment, including training and capacity-building, under national and international law;
  - ii. enjoy the right of association, the right to form trade unions, and join trade union activities, and the right to bargain collectively with employers through representatives of their own choosing or workers' organizations, including traditional authorities;
  - iii. are not subject to discrimination or harassment on the basis of, *inter alia*, race, sex, indigenous origin or identity;
  - iv. are not subject to coercive hiring systems, including debt servitude or any other form of forced or compulsory labor regardless of whether the labor arrangement arises from law, custom, or an individual or collective arrangement, in which case the labor arrangement shall be deemed absolutely null and void;
  - v. are not forced to work in conditions that endanger their health and personal safety; and are protected from work that does not comport with occupational health and safety standards; and
  - vi. receive full and effective legal protection, without discrimination, when they provide their services as seasonal, occasional, or migrant workers, as well as when they are contracted by employers such that they receive the benefits of the national legislation and practices, which shall be in accordance with the international human rights laws and standards for this category of workers;
- d. ensure that the indigenous workers and their employers are informed of the rights of indigenous workers under national law and international and indigenous standards, and of the remedies and actions available to them to protect those rights.

(Approved on January 19, 2011 - Thirteenth Meeting of Negotiations in the Quest for Consensus)

4. States shall take measures to promote employment of indigenous individuals.  
(Approved on January 19, 2011 - Thirteenth Meeting of Negotiations in the Quest for Points of Consensus)

[5. In all cases, applicable indigenous labor laws, norms, and policies shall take precedence within the jurisdiction of the indigenous peoples concerned.]

**Article XXXIV quint**

[Culture should be considered a set of distinctive spiritual, material, intellectual, and affective characteristics that belong to a particular society or social group and that, furthermore, include arts and literature, ways of life, forms of coexistence, systems of values, traditions, and beliefs.]



### **Difficult texts**

#### **Article III.**

[Within the States, the right to self-determination of the indigenous peoples is recognized, pursuant to which they can define their forms of organization and promote their economic, social, and cultural development.]<sup>12/</sup>

#### **Article IV.**

[Nothing in this Declaration shall be construed so as to authorize or foster any action aimed at breaking up or diminishing, fully or in part, the territorial integrity, sovereignty, and political independence of the States, or other principles contained in the Charter of the Organization of American States.]

#### **Article XII. Right to cultural identity and integrity**

1. Indigenous peoples have the right to their own cultural identity and integrity and to their cultural heritage, both tangible and intangible, including historic and ancestral heritage; and to the protection, preservation, maintenance, and development of that cultural heritage for their collective continuity and that of their members and so as to transmit that heritage to future generations. (Approved on January 20, 2011 - Thirteenth Meeting of Negotiations in the Quest for Points of Consensus)

[2. Indigenous peoples have the right to reparations, including the right of restitution, of any cultural heritage of which they have been dispossessed without their free, prior, and informed consent. Should restitution not be possible, indigenous peoples shall have the right to fair and equitable compensation.]

3. Indigenous people have the right to the recognition of and respect for all their ways of life, world view, spirituality, uses and customs, norms and traditions, forms of social, economic, and political organization, forms of transmission of knowledge, institutions, practices, beliefs, values, dress, and languages, recognizing their interrelationship as elaborated in this Declaration. (Consensus reached on January 26, 2007 – Ninth Meeting of Negotiations in the Question for Points of Consensus)

#### **Article XV. Indigenous spirituality**

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12. During the Eighth Meeting of Negotiations, 10 proposals for this article were presented, including the proposal of the Indigenous Caucus, which are contained in the “New Compendium of Proposals for the Phase of Review of the Draft American Declaration on the Rights of Indigenous Peoples” (GT/DADIN/doc.276/06 rev. 4)

1. Indigenous peoples have the right to exercise freely their own spirituality and beliefs, and, by virtue of that right, to practice, develop, transmit, and teach their traditions, customs, and ceremonies, and to carry them out in public and in private, individually and collectively. (Approved on April 24, 2007 – Tenth Meeting of Negotiations in the Quest for Points of Consensus)

2. No indigenous people or person shall be subject to pressures or impositions, or any other type of coercive measures that impair or limit their right to freely exercise their indigenous spirituality and beliefs. [The States, in conjunction with indigenous peoples, shall take effective measures to prohibit actions by religious authorities or third parties that undermine indigenous spirituality and beliefs.]<sup>13/</sup>

3. Indigenous peoples have the right to [recover, preserve, use, control, protect, and access<sup>14/</sup>] their [existing and future] sacred sites and objects, including their burial grounds, human remains, and relics [located in their ancestral and other territories]. The States, in conjunction with indigenous peoples, shall adopt the necessary measures to protect these rights.<sup>15/ 16/</sup>

[The States shall adopt effective measures, in conjunction with the indigenous peoples, to preserve, respect, and protect their sacred sites and objects, including their burial grounds, human remains, and relics.]

4. The States, in conjunction with the indigenous peoples, shall adopt effective measures both to promote respect by society for indigenous spirituality and beliefs, and to protect the integrity of the symbols, practices, ceremonies, expressions, and spiritual protocols of the indigenous peoples[, in accordance with international standards].

#### **Article XVIII. [Right to] protection of a healthy environment**

1. Indigenous peoples have the right to live in harmony with nature and to a healthy, safe, and sustainable environment, essential conditions for the full enjoyment of the right to life, to their spirituality and world view, and to collective well-being. (Approved on April 16, 2008 – Eleventh Meeting of Negotiations in the Quest for Points of Consensus)

2. Indigenous peoples have the right to conserve, restore, recover, manage, use, and protect the environment, and to the sustainable management of their lands [, territories,] [and resources].<sup>17/</sup>

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13. Approved at the meeting of the drafting group of April 26, 2007, subject to the concerns of the Caucus as set forth in the bracketed language being adequately addressed elsewhere in this article.

14. The Drafting Group also considered the alternative phrase “the right to the recovery, preservation, use, control, protection, and access of...”

15. This text is under consultation and its placement is to be determined.

16. Proposal of Brazil for Article XV, paragraph 3: “The indigenous peoples have the right to preserve, protect, and access their sacred sites, including their burial grounds, to use and control their relics and sacred objects, and to recover their human remains.”

17. Since there is no consensus on this paragraph, the Chair has recorded proposals made by member states and by the Indigenous Caucus. Various member state delegations have requested the insertion of

3. Indigenous peoples have a right to [prior information and consultation on] [their free, prior, and informed consent on] measures and actions which may [significantly] affect the environment in indigenous lands [and territories].<sup>18/</sup>

3. (Caucus) Indigenous peoples have the right to free, prior, and informed consent on measures and actions that may affect the environment in indigenous lands and territories.

4. Indigenous peoples have the right to participate fully and effectively in the formulation, planning, organization, and implementation of measures, programs, laws, policies, and any other public [or private] activity that could affect the environment, for the conservation, use, and management of their [the] lands [, territories] [and resources].<sup>19/</sup>

5. Indigenous peoples have the right to technical and financial assistance from their States and from international organizations for the purpose of protecting the environment [, in keeping with the procedures established in the national legislations].

[6. The States shall prohibit and punish, with the full and effective participation of indigenous peoples [and their consent], the introduction, abandonment, dispersion, transit, use, or deposit of any harmful substance, including persistent organic contaminants, nuclear, radioactive, chemical, and biological materials, and [genetically modified organisms] that can directly or indirectly affect indigenous communities, lands [, territories] and resources.]

7. Indigenous peoples have the right to create their own protected or conservation areas on their lands [and territories] that shall be recognized, respected, and protected by the State. The States shall not create protected or conservation areas of any sort on lands [or territories] that indigenous peoples have historically or traditionally used, possessed, or occupied or have otherwise acquired, without the free, prior, and informed consent of the indigenous peoples affected. In the creation of said areas, the States shall not [under any circumstances / except under the circumstances set out in Article 25 of this Declaration] require the forced transfer or relocation of indigenous peoples' communities, impose restrictions, or inhibit the traditional uses of the land, their way of life, or their means of subsistence.

**Article XX.** Right to [autonomy] or [and] self-government

1. Indigenous peoples, [as one of the ways to exercise their] [in the exercise of] the right to self-determination [within the States], have the right to autonomy or [and] self-government

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brackets around the words "territories" and "resources." In addition, a part of this paragraph will be considered when reviewing the chapter on General Provisions.

18. Since there is no consensus on this paragraph, the Chair has recorded proposals made by member states and by the Indigenous Caucus. The terms "significantly" and "prior, free, and informed consent" were the object of special consideration by the Working Group. This paragraph will be considered when reviewing the chapter on General Provisions.

19. This paragraph will be considered when reviewing article XX (2) and the Indigenous Caucus' proposal with respect to Article XXII.

with respect to, *inter alia*, culture, language, spirituality, education, [information, means of communication,] health, housing, employment, social well-being, maintenance [of community security], [of jurisdictional functions in matters of territory,] family relations, economic activities, administration of land and resources, environment and [entry of non-members]; [and to determine with States the ways and means of financing {the exercise of these rights} these autonomous functions].<sup>20/</sup>

2. Indigenous peoples have the right to maintain and develop their own decision-making institutions. They also have the right to participate fully and effectively without discrimination in decision-making at all levels in relation to matters that may [directly] affect their rights, [lives and destiny]. They may do so directly or through their representatives, and in accordance with their own norms, procedures, and traditions. They also have the right [to equal opportunities] to access and to participate [fully and effectively as peoples] in all national institutions and forums, [including deliberative bodies.]

**Article XXIV. Traditional forms of property and cultural survival. Right to land, territory, and resources**

Indigenous peoples have the right to maintain and strengthen their distinctive spiritual, cultural, and material relationship to their lands, territories, and resources and the [duty] to assume their responsibilities to preserve them for themselves and for future generations.<sup>21/</sup>

[1. Indigenous peoples have the right to the recognition of their property rights and ownership rights with respect to the lands and territories that they historically occupy, as well as the use of the lands to which they have traditionally had access for carrying out their traditional activities and for sustenance, respecting the principles of the legal system of each State. These rights also include the waters, coastal seas, flora, fauna, and all other resources of that habitat, as well as their environment, preserving these for themselves and future generations.

2. Indigenous peoples have the right to legal recognition of the various and particular modalities and forms of property, possession, and ownership of their lands and territories, in accordance with the principles of the legal system of each State. The States shall establish the special regimes appropriate for such recognition, and for their effective demarcation or titling.

3. The rights of the indigenous peoples to their lands and territories they occupy or use historically are permanent, exclusive, inalienable, imprescriptible, and inalienable.

4. The titles may only be modified by mutual agreement between the State and the respective indigenous peoples, with full knowledge and understanding by their members with respect to the nature and attributes of that property and of the proposed modification. The agreement by the indigenous people concerned shall be given following its practices, usages, and customs.

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20. This item will be considered together with Articles III and IV of the Draft Declaration.

21. Following instructions it received from Santiago after consideration of this paragraph by the Meeting, the delegation of Chile reserves the right to review the term "territories" used in this clause.

5. Indigenous peoples have the right to attribute ownership within the community in accordance with the values, usages, and customs of each peoples.

6. The States shall take adequate measures to avert, prevent, and punish any intrusion or use of such lands, territories, or resources by persons from outside to claim for themselves the property, possession, or right to use the same.

7. In case the property rights over the minerals or resources of the subsoil belong to the State, or it has rights over other resources existing in the lands and territories of the indigenous peoples, the States shall establish or maintain procedures for the participation of the peoples concerned for determining whether the interests of those peoples would be prejudiced and to what extent, before undertaking or authorizing any program involving prospecting, planning, or exploitation of the resources existing on their lands and territories. The peoples concerned shall participate in the benefits of such activities, and receive fair compensation for any harm they might suffer as a result of such activities.

8. The States shall provide, within their legal systems, a legal framework and effective legal remedies to protect the rights of the indigenous peoples referred to in this article.]

**[Article XXVIII.      Protection of cultural heritage and intellectual property**

1. Indigenous peoples have the right to the full recognition and respect for their property, ownership, possession, control, development, and protection of their tangible and intangible cultural heritage and intellectual property, including its collective nature, transmitted through millennia, from generation to generation.

2. The intellectual property of indigenous peoples includes, *inter alia*, traditional knowledge, ancestral designs and procedures, cultural, artistic, spiritual, technological, and scientific, expressions, genetic resources including human genetic resources, tangible and intangible cultural heritage, as well as the knowledge and developments of their own related to biodiversity and the utility and qualities of seeds and medicinal plants, flora, and fauna.

3. The States, in conjunction with indigenous peoples, shall adopt measures necessary to guarantee that national and international agreements and regimes provide adequate recognition and protection for indigenous peoples' cultural heritage and intellectual property. These measures shall be adopted with the free, prior, and informed consent of indigenous peoples.]

**[Article XXIX. Right to development**

1. Indigenous peoples have the right to freely<sup>22/</sup> determine their political, economic, social, and cultural development in conformity with their own world view. They also have the right to be guaranteed the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities.

2. This right includes the development of policies, plans, programs, and strategies in the exercise of their right to development and to administer them through their own institutions.

3. Indigenous peoples have the right to obtain adequate means for their own development from the State, as well as those from international cooperation.

4. Indigenous peoples have the right to full and effective participation in the formulation, implementation, and evaluation of State development plans and programs which may affect them.

5. The States shall take the necessary measures to ensure that the decisions referring to any plan, program, or project that affect the rights or living conditions of indigenous peoples are made with the free, prior, and informed consent or agreement of the indigenous peoples affected, on the basis of the measures proposed.

6. Indigenous peoples have the right to effective measures to mitigate adverse ecological, economic, social, cultural, or spiritual impacts of development projects. Indigenous peoples who have been deprived of their own means of subsistence and development have the right to restitution and, where this is not possible, to fair and equitable compensation. This includes the right to compensation for any damage caused to them by the implementation of State, international financial institution, or private business plans, programs, or projects.]

**[Article XXX. Right to peace, security and protection in the event of armed conflicts**

1. Indigenous peoples have the right to peace and security.

2. Indigenous peoples have the rights to recognition and respect for their institutions for the maintenance of peace and security.

3. Indigenous peoples have the right to protection and security in situations or periods of internal or international armed conflict, political turmoil, or social disorder.

4. The States shall respect international standards, in particular the international humanitarian law such as the Fourth Geneva Convention of 1949 relative to the protection of civilian persons in time of war, and Protocol II of 1977 relating to the protection of victims of non-international armed conflicts. In the event of armed conflicts, the States shall take adequate

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22. This item will be considered together with Articles III, IV, and XX of the Draft Declaration.

measures, with the agreement of the indigenous peoples concerned, to protect the human rights, institutions, lands, territories, and resources of the indigenous peoples, *inter alia*:

- a. Shall not permit the recruitment of indigenous individuals against their will to serve in the armed forces and private security forces and, in particular, for use against their own peoples or other indigenous peoples;
- b. Shall not recruit indigenous children into the armed forces under any circumstances;
- c. Shall not force indigenous communities or individuals to abandon their lands, territories, or means of subsistence, nor displace nor relocate them for military purposes;
- d. Shall not force indigenous individuals to work for military purposes.
- e. Shall respect the right to conscientious objection particularly taking into account their cultural or spiritual practices.
- f. Shall take measures for integral reparation and provide adequate resources for reconstruction, with the free, prior, and informed consent of the indigenous peoples affected, for the damages incurred.
- g. Shall take special and effective measures to guarantee that women and children live free from all forms of violence.

5. Nothing in this article shall be used as a pretext to militarize, directly or indirectly, the lands and territories of indigenous peoples, by the armed forces of the State, armed groups supported or condoned by the State, or private security groups; or to take any actions that limit or deny their right to peace and security.]

#### **Article XXXI.**

1. The States shall ensure the full enjoyment of the civil, political, economic, social, cultural, and [spiritual] rights, and of all [fundamental human] rights, of the indigenous peoples contained in this Declaration.

2. The States shall promote, with the full and effective participation of the indigenous peoples, the adoption of the legislative and other measures that may be necessary to give effect to the rights included in this Declaration. (Consensus reached in April 2006 – Seventh Meeting of Negotiations in the Quest for Points of Consensus).