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

**TWELFTH MEETING OF NEGOTIATIONS IN
THE QUEST FOR POINTS OF CONSENSUS**

(United States, Washington D.C. – November 30 to December 2, 2009)

**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)

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

EXPLANATORY NOTE

Conclusion of the Negotiations in the Quest for Points of Consensus based on the “Consolidated Text of the Chair”

Negotiations on the substantive part of the Draft American Declaration on the Rights of Indigenous Peoples, related to the “Consolidated Text of the Draft Declaration prepared by the Chair of the Working Group” (GT/DADIN/doc.139/03), came to an end on March 24, 2006, during the Seventh Meeting of Negotiations in the Quest for Points of Consensus.

Start of the Review Phase for the Draft Declaration

The review of the Draft American Declaration on the Rights of Indigenous People, based on the document “Outcomes of the Six Meetings of Negotiations in the Quest for Points of Consensus, held by the Working Group” (GT/DADIN/doc.236/05 rev. 1), began on March 25, 2006, during the Seventh Meeting of Negotiations in the Quest for Points of Consensus.

A new basic text for the negotiations

In order to keep track of the process of preparing and negotiating the Draft American Declaration on the Rights of Indigenous Peoples, the working document for negotiations on the Draft Declaration is the most recent version of the document entitled “Record of the Current Status of the Draft American Declaration on the Rights of Indigenous Peoples.” That document is published at the end of each Meeting of Negotiations and serves as the basis for the next Meeting of Negotiations.

At the special meeting held in Washington, D.C., from December 9 to 12, 2008, a request was made for the inclusion of a statement on the difference between approved articles and consensus articles, in light of statements made by member states that had not gone along with the consensus during the Tenth and Eleventh Meetings of Negotiations in the Quest for Points of Consensus. To that end, it is understood that:

- Prior to the Tenth Meeting of Negotiations in the Quest for Points of Consensus, there were nine full consensus articles (Article I; Article VII; Article IX; Article X; Article X bis; Article XXVI; Article XXXII; Article XXXIV bis; and Article XXXVIII). Consensus was also reached on the following subsections: Article XXI.3; Article XXVII.2; and Article XXXI.2.
- At the Tenth Meeting of Negotiations in the Quest for Points of Consensus five subsections were approved (Article XIV.2 and 5, Article XV.1, and Article XVII.3 and 4).

- At the Eleventh Meeting of Negotiations in the Quest for Points of Consensus, six full articles were approved (Article II; Article V; Article XI; Article XXXIII; Article XXXVI; and Article XXXIX), and subsection 1 was approved for two articles (Articles 17.1 and 18.1).
- The Twelfth Meeting of Negotiations in the Quest for Points of Consensus approved four articles (Article VIII; Article XIII; Article XIV; and Article XXXV) and the first paragraphs of Article VI and Article XVI. In addition, the following provisions were analyzed: Article VI; Article XVI paragraph 2; Article XVII paragraphs 2 and 5; Article XXV; and Article XXXVII.

This document contains the “Record of the Current Status of the Draft American Declaration on the Rights of Indigenous Peoples,” as of December 2, 2009.

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PREAMBLE

The member states of the Organization of American States (hereafter, the states),

RECOGNIZING that the rights of indigenous peoples are a vital aspect that holds great historical significance for the hemisphere's present and future,

RECOGNIZING further how important it is for mankind that indigenous cultures of the Americas be preserved;

1. Indigenous peoples and nation-building

Recognizing that indigenous peoples are native societies that are an integral part of the Americas, and that their values and cultures are inextricably linked to the identity of their countries of residence and the region as a whole,

Mindful that the indigenous peoples of the Americas play a special role in strengthening state institutions and in attaining national unity based on democratic principles,

Recalling that some democratic concepts and institutions enshrined in the constitutions of the states of the Americas were born out of institutions created by indigenous peoples, and that many of their current participatory decision-making and governance systems contribute to the enhancement of democracies in the Americas,

Taking into account the rich cultural diversity of indigenous peoples of the Americas, the variety of national situations and the different levels of indigenous presence in the states,

Recalling the need to develop and strengthen national legal and political frameworks to respect cultural diversity in our societies,

2. Poverty eradication

Recognizing that the eradication of poverty is a universal and shared responsibility of the states, and concerned at the severe impoverishment and vulnerability of indigenous peoples in various regions of the hemisphere,

Reiterating that the Charter of the Organization of American States establishes as one of its essential purposes the eradication of critical poverty, noting that it is an obstacle to full democratic development for the peoples of the hemisphere,

Mindful of the importance that the Inter-American Democratic Charter places on the interrelationship of democracy, integral development, and combating poverty,

Recalling the commitments undertaken by the Heads of State and Government at the Third Summit of the Americas with regard to indigenous peoples and the need for special measures to be

adopted for them to realize their full potential, and recalling the importance of their inclusion in order to strengthen our democracies and economies,

Reaffirming indigenous peoples' right to develop themselves according to their own traditions, needs, and interests,

3. Indigenous culture and ecology

Recognizing indigenous peoples' respect for the environment and ecology,

Recognizing as well the value of indigenous peoples' cultures, knowledge, and practices to sustainable development and to living in harmony with nature,

4. Land, territories and resources

Recognizing the special relationship between indigenous peoples and their land, territories, and resources,

Recognizing that indigenous peoples view their traditional collective forms of ownership and use of land, territories, resources, water, and coastal zones as vital to their survival, community organization, development, spirituality, and individual and collective well-being,

5. Coexistence, respect and non-discrimination

Considering the importance of eliminating the various forms of *de facto* and *de jure* discrimination affecting indigenous peoples,

Taking into account the responsibility of states to combat racial and ethnic discrimination, xenophobia, and other related forms of intolerance,

6. Human rights instruments and other juridical successes

Reiterating the universality, inseparability, and interdependence of human rights and internationally-recognized fundamental freedoms,

Bearing in mind the international achievements in recognizing the rights of indigenous peoples and, in particular, the International Labor Organization's Convention concerning Indigenous and Tribal Peoples in Independent Countries (Convention No. 169).

Recalling the importance ascribed by the Inter-American Democratic Charter to human rights promotion and protection for indigenous peoples and to respect for ethnic and cultural diversity in the Americas,

Considering the achievements by nations of the Americas in their respective constitutions, legislation and jurisprudence to guarantee, promote, and protect the rights and institutions of indigenous peoples, as well as the political will on the part of states to continue moving forward in recognizing the rights of indigenous peoples of the Americas.

SECTION ONE: Indigenous Peoples. Scope of Application

Article I.

1. The American Declaration on the Rights of Indigenous Peoples applies to the indigenous peoples of the Americas. (Agreed upon by consensus 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 criteria 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. (Agreed upon by consensus 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. (Adopted on April 16, 2008 – Eleventh Meeting of Negotiations in the Quest for Points of Consensus).

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.]^{1/}

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.]

1. During the Eighth Meeting of Negotiations, proposed language for this article, including the indigenous caucus proposal, is included 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 corr. 1)

SECTION TWO: Human Rights and Collective Rights

Article V. Full effect and observance of human rights

Indigenous peoples and persons have the right to the full enjoyment of all 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. (Adopted on April 16, 2008 – Eleventh Meeting of Negotiations in the Quest for Points of Consensus)

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 2, 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 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. (Agreed upon by consensus in March, 2006 – Seventh Meeting of Negotiations in the Quest for Points of Consensus)

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

3. 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. (Agreed upon by consensus 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 identity, traditions, customs, and systems of belonging of each people. No discrimination of any kind may arise from the exercise of such a right. (Approved on November 30, 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. (Agreed upon by consensus 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. (Agreed upon by consensus 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. (Agreed upon by consensus 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. (Agreed upon by consensus 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. (Adopted on April 18, 2008 – Eleventh Meeting of Negotiations in the Quest for Points of Consensus)

[SECTION THREE: Cultural identity]

[Article XII. Right to cultural identity]

[1. Indigenous peoples have the right to their cultural integrity and to their historical and ancestral heritage, which are important for their collective continuity, and for their identity and that of their members and their states.]^{2/}

2. Informal consultations held at the ninth meeting of negotiations resulted in the following text:

[2. Indigenous peoples have the right to restitution of the property that is part of that heritage of which they may be dispossessed, or, when restitution is not possible, to fair and equitable compensation.]^{3/}

3. Indigenous people have the right to the recognition and respect for all their ways of life, world views, 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 inter-relationship as elaborated in this Declaration. (Agreed upon by consensus on January 26, 2007 – Ninth 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.^{4/} (Agreed upon by consensus on January 24, 2007 – Ninth Meeting of Negotiations in the Quest for Points of Consensus)

The states shall adopt adequate and effective measures to protect the exercise of this right with the full and effective participation of indigenous peoples. (Approved on November 30, 2009 – Twelfth Meeting of Negotiations in the Quest for Points of Consensus)

2. Indigenous peoples have the right to promote and develop all their systems and media of communication, including their own radio and television programs, and to have equal access to 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, 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

[1. Indigenous peoples have the right to/rights pertaining to their own identity and cultural 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 pass on/and to transmit that heritage to future generations.]

3. Informal consultations held at the ninth meeting of negotiations resulted in the following text:
[States shall provide reparation, including the right of restitution whenever possible, of any cultural heritage of which indigenous peoples have been dispossessed without their free, prior, and informed consent. Should return not be possible, indigenous peoples shall have the right to fair and equitable compensation. States, in conjunction with indigenous peoples, shall establish effective mechanisms for that purpose.]

4. After participating in Working Group meetings regarding Section Three, the United States understands this section does not concern intellectual property rights, which are solely addressed under Article 28 of this Declaration.

judicial proceedings, where necessary through the provision of interpretation or by other effective means. (Agreed upon by consensus on January 26, 2007 – Ninth Meeting of Negotiations in the Quest for Points of Consensus)

Article XIV. Education

1. Indigenous peoples and individuals, particularly indigenous children, have the right to all levels and forms of education, without discrimination. (Approved on November 30, 2009 – Twelfth Meeting of Negotiations in the Quest for Points of Consensus)

2. 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, La Paz, Bolivia)

3. Indigenous peoples have the right to establish and control their educational systems and institutions, providing education in their own languages, in a manner appropriate to their cultural methods of teaching and learning. (Approved on December 1, 2009 - Twelfth Meeting of Negotiations in the Quest for Points of Consensus)

4. In conjunction with indigenous peoples, the states shall take effective measures to ensure that indigenous persons living outside their communities, particularly children, may have access to education in their own languages and cultures. (Approved on December 1, 2009 - Twelfth Meeting of Negotiations in the Quest for Points of Consensus)

5. States shall promote harmonious intercultural relations, ensuring that the curricula of state educational systems reflect the pluricultural and multilingual nature of their societies and encourage respect for and knowledge of the different indigenous cultures. States shall, in conjunction with indigenous peoples, promote intercultural education that reflects the worldview, 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. States, in conjunction with indigenous peoples, shall adopt necessary and effective measures to ensure the exercise and observance of these rights. (Approved on December 1, 2009 - Twelfth Meeting of Negotiations in the Quest for Points of Consensus)

Article XV. Indigenous spirituality

1. Indigenous peoples have the right to freely exercise 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. [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.]^{5/}

3. Indigenous peoples have the right to [recover, preserve, use, control, protect, and access^{6/}] their [existing and future] sacred sites and objects, including their burial grounds, human remains, and relics [located in their ancestral and other territories]. States, in conjunction with indigenous peoples, shall adopt the necessary measures to protect these rights.^{7/ 8/}

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

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

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. 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, 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 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 custody and other related matters concerning indigenous children.

5. 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.

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

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

8. Proposal of Brazil for Article XV (3): Indigenous peoples have the right to preserve, protect, and access their sacred sites, including their burial grounds; to use and control their sacred objects and relics; and to recover their human remains.

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. (Adopted on April 18, 2008 – Eleventh Meeting of Negotiations in the Quest for Points of Consensus).

[2. Indigenous peoples have the right to the use and protection of the plants, animals, and minerals for medicinal use in their ancestral lands and territories, as necessary for the practice of indigenous medicine.]

3. 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. 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 provide the necessary means for the indigenous peoples to improve the health conditions in their communities insofar as they fall short of the standards accepted for the general population.]

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, worldview 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].^{9/}

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

9. Since there is no consensus on this paragraph, the Chair has recorded proposals made by member states and by the Indigenous Caucus. Various delegations of member states have requested bracketing the words "territories" and "resources". In addition, a part of this paragraph will be considered when reviewing the chapter on General Provisions.

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].^{10/}

3. (Caucus) Indigenous peoples have the right to their free, prior and informed consent, with respect to 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].^{11/}

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. 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 areas or areas of conservation on their lands [and territories] that shall be recognized, respected, and protected by the state. States shall not create protected areas or areas of conservation 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, 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.

10. 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.

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

SECTION FOUR: [Organizational and Political Rights]

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

1. [Indigenous peoples have rights of association, assembly, organization and expression, without interference and in accordance with their worldview, *inter alia*, values, usages, customs, ancestral traditions, beliefs, spirituality, and other cultural practices.]^{12/}

2. Indigenous peoples have the right to assemble on their sacred and ceremonial sites and areas, and for this purpose, they shall have free [reasonable] access, use [and administration] of these sites and areas.

3. Indigenous peoples, in particular those who are divided by borders, have the right to [move freely and] maintain full contact and common activities with their members [and other peoples] [with whom they have ethnic, religious or linguistic ties] who inhabit the territory of neighboring states, without discrimination. [The states shall adopt measures, including the adoption of international instruments, to facilitate the exercise of these rights.]

4. [The states shall adopt measures aimed at facilitating the exercise of the rights recognized in this article, mindful of the rights of third persons.]^{13/}

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 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].^{14/}

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 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 fora, [including deliberative bodies.]

12. This item had the support of most of delegations, but a consensus was not reached.

13. This item will be reviewed when considering section six general provisions - the Secretariat duly records the proposals of the Indigenous Caucus.

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

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.^{15/}

2. The indigenous law and legal systems shall be recognized and respected by the national [and international] legal systems.^{16/}

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. (Agreed upon by consensus on November, 2004 – Fourth Meeting of Negotiations in the Quest for Points of Consensus)

4. The states shall take effective measures in consultation with the indigenous peoples to ensure implementation of this article,^{17/} [for which they shall determine the coordination of the indigenous jurisdictional systems with the national legal systems].

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^{18/} of said peoples.

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 activities, 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. States shall obtain free, prior, and informed consent of the indigenous peoples concerned before adopting and implementing such policies and measures.]^{19/}

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

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

17. The first part of this paragraph will be considered when reviewing the chapter on General Provisions.

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

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

Article XXIII. Treaties, agreements, and constructive arrangements

[Indigenous peoples have the right to the recognition, observance, and application of the treaties, conventions, and other arrangements that the states or their successors may have concluded, in keeping with their spirit and intent, and to have the same be respected and observed by the states.]^{20/}

SECTION FIVE: Social, Economic, and Property Rights

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.^{21/}

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.

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

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.

20. The Chair has collected all the proposals but delegations need further time to analyze them.

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.

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 XXV. On transfers and relocations

1. Indigenous peoples shall not be transferred or relocated without their free, prior, and informed consent,^{22/} 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.^{23/}

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. (Agreed upon by consensus 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.^{24/ 25/} (Agreed upon by consensus in October, 2005 – Sixth Meeting of Negotiations in the Quest for Points of Consensus)

22. This phrase was approved by the plenary of the Twelfth Meeting of Negotiations in the Quest for Points of Consensus.

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

24. 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.

25. 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.

Article XXVII. Labor Rights

1. Indigenous peoples and persons have the rights and guarantees recognized in national and [applicable] international labor law. States shall take all special measures to prevent, sanction and remedy the discrimination to which indigenous peoples and persons are subjected.

2. 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. (Agreed upon by consensus in October 2005 – Sixth Meeting of Negotiations in the Quest for Points of Consensus)

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 of employment in both formal and informal labor arrangements;
- 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 privileges of employment under national and [applicable] 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 [applicable] 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 [applicable] international and indigenous standards, and of the remedies and actions available to them to protect those rights.
4. [States should take measures to promote employment of indigenous individuals.]
- [5. In all cases, applicable indigenous labor laws, norms, and policies shall take precedence within the jurisdiction of the indigenous peoples concerned.]

[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. 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^{26/} 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.

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

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 institutions 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 right 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. States shall respect international standards, in particular 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 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 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 of 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.]

SECTION SIX: General provisions

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. (Agreed upon in April 2006 – Seventh Meeting of Negotiations in the Quest for Points of Consensus)

Article XXXII.

All the rights and freedoms recognized in the present Declaration are guaranteed equally to indigenous women and men.^{27/} (Agreed upon in November 2003 – First Meeting of Negotiations in the Quest for Points of Consensus. Relocated to this section in March 2006 – Seventh Meeting of Negotiations in the Quest for Points of Consensus.)

Article XXXIII.

27. 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 in Article VII has been transferred as a general provision and now appears as Article XXXII in this section.

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 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 purposes, [due consideration / recognition] shall be given to the customs, traditions, norms and [legal systems] of the indigenous peoples concerned.

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. (Agreed upon by consensus 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 the full respect, protection, and application of the rights of indigenous peoples contained in this Declaration and shall endeavor to ensure their efficacy. (Approved on December 1, 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. (Approved on April 16, 2008 – Eleventh Meeting of Negotiations in the Quest for Points of Consensus)^{28/}

28. 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.

Article XXXVII^{29/}

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.

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. (Agreed upon by consensus 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)

29. At the request of the plenary of the Twelfth Meeting of Negotiations in the Quest for Points of Consensus, it was decided that this article will be analyzed at the conclusion of the round of negotiations.

APPENDIX I

**WORKING GROUP TO PREPARE THE DRAFT AMERICAN DECLARATION ON THE
RIGHTS OF INDIGENOUS PEOPLES**

**ELEVENTH MEETING OF NEGOTIATIONS ON THE QUEST FOR POINTS OF
CONSENSUS**

United States, Washington D.C., April 14-18 de 2008

**DOCUMENTS PRESENTED BY THE DELEGATIONS OF THE PERMANENT MISSIONS
OF CANADA AND THE UNITED STATES
AND THE INDIGENOUS CAUCUS**

**Canada's Statement to the Working Group to Prepare the Draft American Declaration
on the Rights of Indigenous Peoples
April 14, 2008**

Canada has been an active participant in the negotiations of the draft American Declaration on the Rights of Indigenous Peoples since the process began in 1997. We have worked towards a strong, effective text that could provide practical guidance to States. The commitments that States undertake through this process should be ones that they are willing and able to assume. The record provided by the compendium of proposals over the years demonstrates the contributions we have made towards this goal.

At the last negotiating session, Canada proposed a new approach to finding common ground. Specifically, we proposed that the focus of the Working Group undergo a fundamental shift – a shift from negotiating specific text to exploring in detail the underlying issues through discussion of, among other things, relevant State and indigenous experiences, practices and policies. We underlined the fact that Canada could not accept the text of the *United Nations Declaration on the Rights of Indigenous Peoples* (A/RES/61/295) as the starting point or minimum outcome for further negotiations. We also made it clear that if true consensus was not our shared goal, then Canada would have to fundamentally review its participation in, and support for, future negotiations.

Regrettably, the negotiations of this Working Group continue to move in a direction that Canada cannot support. It has become clear that there is a strong desire among many OAS States and the Indigenous Caucus to use the *United Nations Declaration on the Rights of Indigenous Peoples* as the baseline or starting point for future negotiations on topics for which no consensus has been reached within this Working Group. However, the adoption of the United Nations Declaration was not universally supported by OAS Member States.

In the interest of allowing others to proceed with the negotiations of an OAS declaration, from this point forward, Canada will be playing a different role. We are formally reserving our position on the final text under negotiation. We will no longer actively negotiate or table text. We will, however, continue to be present and will occasionally speak about Canadian experience and perspectives.

It is not our intention to stand in the way of others moving in the direction they wish. If and when a final document emerges from this process, Canada will consider it carefully. If the final document does not adequately address Canada's concerns, we will not be able to support it. However, in that case, Canada would not intend on blocking consensus, as long as the document adopted clearly indicated that Canada did not give its support and as long as there was an explicit understanding that the Declaration text therefore did not apply to Canada.

Regardless of our position on this process, Canada will continue to take effective action, at home and abroad, to promote and protect the rights of indigenous peoples based on our existing human rights obligations and commitments.

Statement of the United States

11th Meeting of Negotiations in the Quest for Points of Consensus on the draft Inter-American Declaration on the Rights of Indigenous Peoples

The United States is reserving its position on the final text under discussion and does not join in any text that might be approved or otherwise appear in the Chair's rolling text for the 11th meeting of the Working Group.

**Statement of Principles of the United States of America
on the Rights of Indigenous Peoples**

Recognizing that indigenous peoples have suffered from historic injustices, including dispossession of lands and resources, forced assimilation, and systematic discrimination,

Welcoming ongoing efforts by indigenous peoples to promote their political, economic, social, and cultural enhancement and in order to bring an end to all forms of discrimination and oppression wherever they occur,

We hereby pledge our commitment to the following principles and our determination to work for their full implementation throughout the world:

1. Indigenous individuals and non-indigenous individuals are entitled to equal protection under law. States should take measures to combat discrimination against indigenous individuals and peoples and to promote tolerance, respect, understanding and good relations among indigenous peoples and all other segments of society.

2. In addition to implementing existing human rights obligations with respect to indigenous individuals, States should recognize additional, collective rights of indigenous peoples, which promote their dignity, well being, and development and preservation of their cultures.

3. States should recognize, for example, that indigenous peoples have the collective right to self-determination within the nations in which they reside. This means the right to self-government in matters relating to their internal and local affairs, including culture, language, religion, education, information, social welfare, maintenance of community safety, family relations, economic activities, lands and resources management, environment, determination of membership, and entry by non-members as well as ways and means for financing these functions. As indigenous peoples exercise their collective right to self-government, states should maintain formal, political relationships with indigenous peoples residing within their countries.

4. In the exercise of this self-governance within the national legal framework, indigenous peoples should have the collective right to promote, develop, and maintain their own institutional structures and their distinctive customs, spirituality, traditions, procedures and practices, and legal systems.

5. Indigenous peoples should have the collective right to lands that they own or occupy, including sub-surface resources. States should give legal recognition to such lands and resources and this recognition should be conducted with due respect to the customs, traditions, and land tenure systems of indigenous peoples.

6. Indigenous peoples should not be subjected to forced assimilation or destruction of their culture.

7. Before adopting legislation or administrative measures that would directly affect the rights of indigenous peoples, States should consult and cooperate in good faith with the indigenous peoples concerned.

8. Indigenous peoples should be able to maintain, protect, and have access to their religious and cultural sites and should have the collective right to repatriation of their human remains, ceremonial objects and cultural patrimony.

9. States should provide financial and technical assistance to indigenous peoples residing within their countries and throughout the world.

10. In the exercise of collective rights by indigenous peoples, the human rights of all shall be respected and indigenous peoples should be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of public order and general welfare in a democratic society.

Response of the Indigenous Peoples' Caucus of the Americas
April 15, 2008

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

The Positions of Canada and the United States Expressing Reservations and Opposing Consensus are Unacceptable

The Indigenous Peoples' Caucus kindly requests that the following Statement be included as part of the official record of this meeting.

The Organization of American States (OAS) is a vital regional agency committed to the Purposes and Principles of the United Nations. The Inter-American human rights system has a strong tradition and record of progressive action in relation to the promotion and protection of human rights. Indigenous peoples in the Americas have repeatedly reaffirmed their support for the OAS. This Working Group was created by the OAS General Assembly and its mandate and process must be respected by all participants.

In a historic vote on September 13, 2007, the UN General Assembly overwhelmingly adopted the *UN Declaration on the Rights of Indigenous Peoples*. Of the 35 States in the Americas, only Canada and the United States voted against.

The *UN Declaration* is a universal human rights instrument. Article 43 affirms that the "rights recognized herein constitute the minimum standards for the survival, dignity and well-being of the indigenous peoples of the world". This Article was accepted for provisional adoption by all States and Indigenous peoples in the UN standard-setting process, including Canada and the United States.

At the OAS Meeting of Reflection in November 2007 in Washington, D.C., Canada stated that the "Government of Canada cannot accept the UN Declaration text as the starting point or minimum outcome for these negotiations [on a draft American Declaration]. Trying to impose the UN Declaration text will doom these negotiations to failure." Notwithstanding this statement, most other American States at the November Meeting chose to reaffirm their international commitments and take further consistent steps in negotiating a draft American Declaration.

In its April 14, 2008 Statement to the Working Group, Canada expressed a similar objection. Canada went further, however, and indicated that it would attempt to block consensus, unless the following two conditions were met: "the document adopted clearly indicated that Canada did not give its support" and the Declaration included "an explicit understanding that the Declaration text therefore did not apply to Canada."

These conditions are inconsistent with the rule of law, international practice and domestic precedent within Canada and are, therefore, inappropriate, unacceptable and discriminatory. In interpreting human rights, Canadian courts are free to invoke and often rely upon a wide range of

international instruments, including declarations. In effect, Canada is requesting the OAS to alter the rule of law within a member State.

In addition, Canada is seeking to create a dangerous precedent within the OAS. That is, any State that chooses to oppose the adoption of any declaration within the Inter-American system could simply opt to oppose it and prevent its domestic application. This would severely undermine the principle of international cooperation that is a crucial element of the *UN Charter* and the *OAS Charter*. It would also undermine the progressive development of human rights within the Hemisphere.

Within the OAS, the quest for consensus is the preferred course of action. However, consensus cannot be used as a veto by any member State to insist on regressive measures. It would be an abuse for a State to prevent consensus on a draft American Declaration, in an attempt to compel other States to abandon their solemn commitments in upholding the “minimum standards” in the *UN Declaration*.

Notably, the minority government of Canada is defying a Motion adopted on April 8, 2008 in the Canadian Parliament. This Motion states:

That the government endorse the United Nations Declaration on the Rights of Indigenous Peoples as adopted by the United Nations General Assembly on 13 September 2007 and that Parliament and Government of Canada fully implement the standards contained therein.

We respectfully urge the OAS and its member States to reject the undemocratic actions of the Canadian government. As affirmed in the *Inter-American Democratic Charter*: “The peoples of the Americas have a right to democracy and their governments have an obligation to promote and defend it.”

The Indigenous Peoples’ Caucus also notes that the United States’ position has deteriorated from the general reservation which it took at the tenth negotiation session in April 2007 in Bolivia. The US indicated there that it would later inform the Working Group whether the US could accept the results of that session. This was never done.

Today, the United States made a statement on the floor that it would “not join in any text that might be approved or otherwise appear in the Chair’s rolling text” as a result of this 11th negotiation session and it would reserve its position on the final text. The refusal of the United States to constructively engage in this negotiations process violates its duty to consult with sovereign Indigenous nations and to uphold its obligations under treaties it has made with Indigenous nations.

The Indigenous Peoples’ Caucus of the Americas regrets that Canada and the United States are continuing to disrespect this process and the human rights of Indigenous peoples, which places what we have achieved to date in this process at great risk. These two States with their positions of “reservations” constitute a pre-emptive veto on the consensus that we are building with the great majority of States and representatives of Indigenous peoples for a draft American Declaration that is consistent with the *UN Declaration on the Rights of Indigenous Peoples*.

The Indigenous peoples participating in this process call upon Canada and the United States to withdraw their reservations, to not block consensus, and adopt a constructive attitude to ensure the timely adoption of the American Declaration that reflects in a true and effective manner our human rights. They must respect the principles of international cooperation and solidarity that underlie the Organization of American States.

We look forward to working with all States and adopt a strong and effective Declaration that responds to the aspirations and needs of the Indigenous peoples of the Americas.

APPENDIX II

**TWELFTH MEETING OF NEGOTIATIONS ON THE QUEST FOR POINTS OF
CONSENSUS**

United States, Washington D.C., November 30-December 2, 2009

**DOCUMENTS PRESENTED BY THE PERMANENT MISSIONS
OF THE UNITED STATES AND THE INDIGENOUS CAUCUS**

**Statement by the Delegation of the United States
Twelfth Meeting of Negotiations on the Quest for Points of Consensus on the Draft American
Declaration on the Rights of Indigenous Peoples
Washington, D.C., November 30, 2009**

Mr. Chair:

- The United States remains committed to addressing the urgent issues of indigenous peoples in the hemisphere, including combating societal discrimination against indigenous peoples, increasing indigenous participation in national political processes, addressing lack of infrastructure and poor living conditions in indigenous areas, and collaborating on issues of land rights and self governance.
- We have experiences, ideas, and best practices to share. We know that many other member states around this table do as well.
- We believe the OAS can be mobilized to make a practical difference in the lives of indigenous peoples in real time. We note that negotiations on this text have gone on for more than a decade, and that the working group remains deadlocked on key issues. We reiterate our belief that there are ways to focus the OAS to make practical differences in the lives of indigenous peoples, rather than continuing to focus exclusively on negotiating a declaration while states in the hemisphere are still trying to understand how best to implement the commitments they recently made under the 2007 UN Declaration on the Rights of Indigenous Peoples.
- That said, my government will continue to support these and other OAS efforts, while the working group continues its consideration of the draft text. We reiterate the general reservation we noted at the beginning of the 10th meeting in the Quest for Points of Consensus, as set forth in GT/DADIN/doc.301/07, and request that that document and this statement be included in the official documents of this session.
- Finally, Mr. Chair, as an update to the Working Group, my delegation is pleased to announce that this year the United States has made another substantial financial contribution to the work of the Inter-American Commission on Human Rights Rapporteurship on the Rights of Indigenous Peoples.
- Additionally, the United States, through its Permanent Mission to the OAS, intends to help fund a project by Georgetown University's Political Database of the Americas to compile legislation related to indigenous peoples in all OAS member states.

Thank you, Mr. Chair.

TENTH MEETING OF NEGOTIATIONS IN THE QUEST FOR POINTS OF CONSENSUS

STATEMENT OF THE UNITED STATES

"The United States Government noted at the beginning of this session that it took a general reservation to all of the text under discussion during the 10th Meeting of the Working Group, and that it would not join in any text that might be approved or otherwise appear in the Record of the Current Status of the Draft American Declaration on the Rights of Indigenous Peoples arising from the Tenth Meeting of the Working Group and in the Report of the Chair."