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**PREVENTION OF DISCRIMINATION**

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

**Report of the Working Group on Indigenous Populations  
on its twenty-second session\***

**Chairperson-Rapporteur: Mr. Miguel Alfonso Martínez**

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\* The annexes are being circulated as received, in the language of submission only.

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## **Introduction**

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

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

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

## **I. ORGANIZATION OF THE SESSION**

### **A. Attendance**

2. The twenty-second session of the Working Group was held in Geneva from 19 to 23 July 2004. The composition of the Working Group at its twenty-second session was as follows: Mr. Miguel Alfonso Martínez, Mr. El Hadji Guissé, Ms. Françoise Hampson, Ms. Iulia-Antoanella Motoc and Mr. Yozo Yokota. The session was attended by all of the members of the Working Group.

3. The Working Group was attended by representatives of Member States, a non-member State, United Nations bodies and specialized agencies and a large number of indigenous and non-governmental organizations, who participated as observers. A total of 651 participants were accredited. Two members of the Permanent Forum on Indigenous Issues, Mr. Aiytegan Kouevi and Mr. Wilton Littlechild, also attended the session. The list of participants is at annex I.

### **B. Documentation**

4. A number of documents were made available for the twenty-second session of the Working Group (see annex II).

### **C. Opening of the session**

5. Ms. Louise Arbour, United Nations High Commissioner for Human Rights, opened the twenty-second session of the Working Group. In welcoming the participants, she made

particular mention of the valuable assistance given by the United Nations Voluntary Fund for Indigenous Populations in providing grants to indigenous people to participate in the proceedings of the Working Group and expressed appreciation to Governments for their support for the Fund and its activities. As the new High Commissioner, she welcomed her first formal contact with indigenous peoples and the States that were active in this important area of justice and rights. She had a strong belief in the role of normative frameworks as a tool for resolving problems, and expressed concern about the slow progress with respect to the adoption of the draft declaration on the rights of indigenous peoples. Only two articles had been adopted so far at first reading, even though the General Assembly had called for its adoption before the end of the International Decade of the World's Indigenous People in December 2004. She appealed to all parties to accelerate the process and finalize the declaration as soon as possible. The High Commissioner referred to the achievements of the Decade, notably the enhanced international cooperation and the establishment of new arrangements such as the Permanent Forum on Indigenous Issues and the mandate of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people. She noted that the Working Group, the Sub-Commission and the Permanent Forum had all called for a second Decade.<sup>1</sup> She proposed that the Working Group, as the "think tank" on indigenous issues, should elaborate its own substantive proposals concerning the Decade. With regard to the review of all existing mechanisms concerning indigenous issues that was to be conducted by the Economic and Social Council, she noted that the Council had before it a report by the Secretary-General to which her Office had contributed by highlighting the vital achievements of the Working Group and the outcome of two seminars on the administration of justice, and on treaties between indigenous peoples and States. She concluded by stating that she considered the promotion and protection of the rights of indigenous peoples as one of the priorities of the human rights programme and of the United Nations as a whole.

#### **D. Election of officers**

6. At the first meeting of the twenty-second session, Mr. Alfonso Martínez was elected Chairperson-Rapporteur by acclamation.

7. In his opening statement, the Chairperson-Rapporteur stressed that progress had been achieved in strengthening cooperation among the various bodies addressing indigenous peoples' issues. He advocated the continuation of the Working Group, the proclamation of a second Decade, as well as the adoption as soon as possible of a declaration on the rights of indigenous peoples.

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<sup>1</sup> It should be noted that the Economic and Social Council decided, at its substantive session of 2004, to transmit to the General Assembly the recommendation contained in draft decision V contained in the report of the Permanent Forum on Indigenous Issues on its third session (see E/C.19/2004/23-E/2004/43) in which the latter requested the proclamation of a second International Decade of the World's Indigenous People, to begin in January 2005.

### **E. Adoption of the agenda**

8. At its first meeting, the Working Group considered its programme of work on the basis of the provisional agenda (E/CN.4/Sub.2/AC.4/2004/1).
9. Mr. Guissé proposed the inclusion of an additional item relating to the adoption of the report. The agenda as adopted is contained in annex III.
10. The Working Group held 10 public meetings during its twenty-second session.

### **F. Organization of work**

11. In organizing its work, the Working Group decided to form an open, separate group on the main theme, "Indigenous peoples and conflict resolution", at the end of the general debate on item 4 (b), under the guidance of the Chair, in order to foster an interactive and action-oriented dialogue between the experts and participants. The results of the group's deliberation would be integrated into the recommendations section of the present report.

### **G. Adoption of the report**

12. The Working Group adopted the report of its twenty-second session on 2 August 2004.

## **II. MAJOR ISSUES RAISED BY PARTICIPANTS**

13. The Working Group, owing to the limit placed on the length of documents, organized the substantive part of its report to highlight the main issues raised under each agenda item by participants and to emphasize the recommendations proposed.

### **A. Review of developments pertaining to the promotion and protection of human rights and fundamental freedoms of indigenous peoples (item 4)**

#### **1. General debate (item 4 (a))**

14. A variety of issues regarding the human rights situation of indigenous peoples were raised. The immediate adoption of the draft declaration on the rights of indigenous peoples was recognized by most participants as an important step towards the promotion and protection of indigenous peoples' rights.
15. Indigenous participants expressed the position that territorial, social and cultural rights constituted elements of the right to self-determination. Several speakers highlighted the importance of actions aimed at defining and implementing a political framework that guaranteed to indigenous peoples collective rights and strengthened them as autonomous entities with specific competence in their economic, political, judicial and social affairs and the management of territories and resources at the national and local levels.
16. Indigenous participants from various regions called upon concerned Governments to stop abuses of indigenous peoples' rights, including their human rights recognized in domestic

legislation and in applicable international legally binding instruments. Participants reported on the criminalization of political dissent resulting in arbitrary arrests, torture and extrajudicial killings of indigenous peoples by non-indigenous authorities. They asserted that indigenous peoples had become easy prey for anti-terrorism campaigns, which were being used to justify violations of their human rights and fundamental freedoms.

17. It was reported by indigenous participants living in a large number of present-day States that the Governments had failed to protect the lands of indigenous peoples and were adopting legislation that served to extinguish their existing property rights. One participant exposed the long-term contamination of indigenous land caused by the use of depleted uranium in military training conducted on indigenous land.

18. Institutionalized discrimination against indigenous peoples as a major obstacle to the enjoyment of human rights was discussed by speakers from various countries. In that regard, references were made to the problems associated with the administration of justice and, in particular, with respect to legislation and policies that seriously hindered their access to non-indigenous justice systems and other existing domestic mechanisms for redress and compensation.

19. Various positive developments were reported by several government observers. The observer for Brazil reported steady progress as regards recognition and demarcation of indigenous lands, which the current Government had promised to conclude by 2006. In 2002 his Government had ratified ILO Convention No. 169 and was planning to organize a national conference for indigenous peoples in order to provide to them an opportunity to discuss common problems. It would also elaborate a new indigenous national law to replace the one which had been in effect for the past 30 years.

20. The observer for Canada informed the Working Group of recent national developments over the past year which included: the signing of the Tlicho comprehensive land claim agreement in the Northwest Territories; the ratification by the Inuit of the Labrador Inuit Land Claims Agreement; parliamentary adoption of the Westbank First Nation Self-Government Act; establishment of treaty relations in Manitoba; the decision of the Supreme Court of Canada in the *Powley* case, which was of major importance to the Métis people of Canada; and the first Canada-Aboriginal Peoples Roundtable. At the United Nations level, Canada had been an active participant at the Expert Seminar on Indigenous Peoples and the Administration of Justice, and the Expert Seminar on Treaties, Agreements and Other Constructive Arrangements. The observer referred to the visit to Canada of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people in 2004 and was awaiting his observations and recommendations.

21. The observer for Colombia stated that the most important threats to be overcome were the situation of poverty and marginalization of indigenous peoples. The observer informed the Working Group of difficulties that the Government encountered regarding the protection of indigenous groups which shared territories with armed groups.

22. The observer for Chile referred to various important steps undertaken by the Government to promote and protect the rights of indigenous peoples, including the adoption in 2004 of a new engagement policy with indigenous peoples. His country respected the profound relationship indigenous peoples had with their land. For that reason, the Government had begun a process of land identification in the 1990s, which continued today. In Chile, the rule of law and the guarantee of due process were firmly established. Even if every legitimate demand put forward by indigenous peoples had not been satisfied, an institutional framework and adequate channels to analyse and discuss them existed, including the opportunity to present claims to the tribunals. He stressed that this year the Government had demonstrated its will to expand the recognition of indigenous peoples, including through constitutional recognition and the ratification of ILO Convention No. 169.

23. The observer for Mauritius stated that Mauritius had never relinquished its sovereignty over the Chagos Archipelago, that there were no “indigenous” peoples on the Archipelago and that all who went to live and work on the Archipelago came from Mauritius.

24. The observer for WHO highlighted some of its ongoing activities which were of interest to the Working Group. They included the Health Equity and Human Rights team, which had been working on a data analysis process designed to provide a means of considering health disparities among ethnic groups, including indigenous and tribal peoples. The analysis would use human rights as a normative framework in considering health disparities as evidence of the fulfilment or denial of the right to health.

25. The observer for the Indigenous Peoples’ African Coordinating Committee asserted that, despite the problems in Africa linked to the exclusion of indigenous peoples from participation in political life and the lack of recognition of their identities, culture and languages, a positive development had occurred at the regional level with the creation in 2001 by the African Commission on Human and Peoples’ Rights of a Working Group on Indigenous Populations. The observer called on the United Nations to help strengthen international cooperation and to help resolve the problems faced by indigenous peoples by proclaiming a second International Decade of the World’s Indigenous People and by adopting the draft United Nations declaration on the rights of indigenous peoples.

26. Mr. Guissé discussed the exploitation to which indigenous people were subject through various means and in particular the cheap labour which was extracted from them as a result of irregular migration. In situations of armed conflict, indigenous people were even more exposed, as they often did not benefit from international protection and were subject to all sorts of human rights violations. In that regard, he pointed to the situation of the Pygmies in the Great Lakes region of Africa who were marginalized, exploited and subject to extrajudicial killings and cannibalism.

27. Ms. Hampson claimed that the crimes being committed against the Pygmies in the Democratic Republic of the Congo constituted crimes against humanity and possibly genocide. The situation was of such urgency that the United Nations forces presently in the country should be given a special mandate to protect the Pygmies. Regarding the draft declaration, she asked whether it might be helpful if members of this Working Group were to attend the meetings of the working group of the Commission on Human Rights with a view to assisting by making drafting suggestions, thereby moving the process forward.

## **2. Principal theme: “Indigenous peoples and conflict resolution” (item 4 (b))**

28. The principal theme of the twenty-second session of the Working Group was welcomed by all participants. Over 100 indigenous and government observers spoke under this sub-item.

29. Mr. Alfonso Martínez introduced the item by presenting his working paper on indigenous peoples and conflict resolution (E/CN.4/Sub.2/AC.4/2004/2). The paper attempted to summarize the main issues, including the most important sources of conflict facing indigenous peoples. In proposing steps to build confidence and prevent conflict, he highlighted the need to foster new relationships between indigenous and non-indigenous population segments on the basis of mutual recognition, harmony and cooperation. In his consideration of existing or proposed mechanisms for conflict prevention and resolution of indigenous issues at the domestic or international level, emphasis was placed on the importance of establishing negotiation processes that were based on the full, equal and free participation and consent of indigenous peoples. His recommendations included proposals for analysing the possible elements necessary for an effective domestic mechanism or process of conflict resolution and prevention as well as the need to fully review the possible advantages and disadvantages of establishing an advisory international body to facilitate agreement in conflict situations involving indigenous peoples.

30. Indigenous participants from all regions of the world agreed with the basic root causes of actual or potential conflict situations involving indigenous peoples identified in Mr. Alfonso Martínez' paper. They related to the issues of: recognized title to land and resources; the exercise of the right of self-determination; recognition/implementation of treaty rights and contradictory interpretations of the purpose and object of treaties; development projects undertaken by non-indigenous entities and individuals that affect traditional indigenous lands; militarization of traditional indigenous lands; non-recognition of indigenous peoples' traditional sources of authority and practical exclusion from, or the discriminatory nature of, access to non-indigenous political and juridical structures; and obstacles related to the participation in indigenous religious ceremonies and the proselytizing activities of groups advocating predominantly monotheistic faiths.

31. Emphasis was also placed on colonialism and assimilation processes, the denial of the right of self-determination, the non-recognition of indigenous peoples and their rights in many present-day States, socio-economic inequalities faced in accessing water, health and education services when displaced to urban areas, exploitation or expropriation of resources, the absence of policies dealing with agro-pastoral conflicts as well as the effects of forced deportation or resettlement as major causes of conflict. Reference was also made to the results of research on the root causes of conflict that revealed, according to participants, that the denial of self-determination - rather than its opposite - was a major cause of conflict.

32. In highlighting the present situation of indigenous peoples, many participants reiterated issues raised in the general debate under item 4. Serious human rights violations, such as the killing, disappearance and rape of indigenous people in armed conflict situations, were reported, including those related to the militarization of indigenous ancestral territories. Attention was drawn to the particularly harmful effects of the forced recruitment of indigenous children and



youth into regular armies and other armed groups and the sexual violence and exploitation affecting indigenous women and girls. Cases were reported of indigenous activists being arrested under anti-terrorism legislation; the violation of the human rights and fundamental freedoms of indigenous peoples was being justified under the campaign against terrorism or under the pretext of national security concerns.

33. It was reported that peace agreements were inadequately monitored or implemented, for example with respect to Guatemala and Bangladesh. Likewise, a Special Autonomy Law, which included the setting up of a Papua Consultative Assembly, had been offered to West Papuans but not implemented. The lack of indigenous participation in peace negotiations, including those related to the Great Lakes region, was highlighted.

34. Indigenous participants and the observer for Mauritius expressed their serious concern over two recent Orders in Council made by the Government of the United Kingdom on 10 June 2004 which prohibited Chagossians from returning to and residing in the islands of the Chagos Archipelago. This was a violation of the human rights of the persons concerned. The observer for the United Kingdom indicated that the territory in question would be ceded to Mauritius when the Government considered that it was no longer required for defence purposes. Indigenous participants indicated their intention to take the case to the European Court of Human Rights.

35. Several indigenous participants spoke of the negative effects of the activities of transnational corporations on indigenous peoples. Several made reference to the negative impact of dams on indigenous communities, causing the destruction of the environment, conflicts over sacred lands, expropriations of land and the displacement of communities. Concerns were raised regarding the specific issues of the denial of free, prior and informed consent and the need for greater self-determination and control over lands. Comments were also made regarding the negative effects of globalization for indigenous peoples, specifically the privatization of health and education services, traditional knowledge and access to “genetic resources”.

36. The observers for Bolivia, Canada, Chile, Costa Rica and Venezuela, among others, referred to the establishment of institutions to deal specifically with problems affecting indigenous communities and peoples living within their territory. Mediation, conciliation and arbitration were proposed as additional mechanisms for dealing with conflict resolution. In addition, some government observers expressed their commitment to working on policies regarding the restitution and protection of land, cultural and educational promotion, as well as culturally specific policies to fight poverty. The observer for Colombia stressed the efforts of her Government to implement strategies to prevent or mitigate the impact of armed conflict affecting indigenous communities.

37. Members of the Working Group and indigenous observers supported the recommendations for further action as set out in the working paper of Mr. Alfonso Martínez. Repeated references were made to the value of introducing a sub-item entitled “Conflict prevention and resolution” into the agenda of the annual sessions of the Working Group. It was understood that under such an agenda item the Working Group would be able to review the progress achieved in ongoing conflict prevention and resolution in the light of updated

information provided by Governments and indigenous peoples' representatives. Monitoring of domestic negotiations would also be considered, especially as regards the application of the principle of free, prior and informed consent and equality between the parties involved in negotiations. Indigenous participants also requested that Sub-Commission reports on indigenous peoples and land, transnational corporations and human rights standards, as well as on reparations for victims, be made available as background documents during the consideration of such an agenda item.

38. A seminar was proposed on possible ways and means of ensuring the implementation of treaties, agreements and other constructive arrangements between States and indigenous peoples and the adjudication of disputes that remained unresolved by existing conflict-resolution mechanisms. The organization of a workshop on indigenous peoples and conflict resolution was also suggested. The Working Group was invited to consider holding the seminar on the lands of the First Nations parties to Treaty 6 in Canada. Indigenous observers from Asia stressed their interest in having either the seminar or workshop held in their region.

39. Emphasis was placed on the need to follow closely the implementation of conflict-resolution processes and peace processes. Various speakers also called for serious efforts to ensure the involvement of indigenous peoples in peace-building, conflict resolution and other processes concerning them. Particular mention was made of situations in, among others, Guatemala, Bangladesh, Canada, the Democratic Republic of the Congo and Burundi. The importance of ensuring the participation of indigenous women in peace initiatives and negotiation processes was also highlighted. Particular emphasis was placed on the need for recognition to be given to indigenous approaches to conflict resolution, a point raised by indigenous observers from Canada, Nepal, New Zealand and the Philippines, among others.

40. Many indigenous participants affirmed that their inability to gain justice, redress and remedy at the national level had led to their call for support from the international community. Ms. Hampson stressed the importance of reaching agreement with indigenous peoples as to the choice of the form of dispute settlement. Mr. Guissé also spoke about the importance of involving indigenous peoples in all aspects of standard-setting and institution-building as a legal approach to preventing conflict and highlighted the importance of providing material and financial support to indigenous peoples where it was necessary to have recourse to courts. Mr. Yokota proposed that serious consideration should be given to arbitration as a means of conflict resolution. Various indigenous participants called for the creation of an international mechanism with a mandate to act on an urgent basis in connection with conflict situations, with the possible involvement of the Special Rapporteur on the situation of the human rights and fundamental freedoms of indigenous peoples and members of the Permanent Forum in their capacity as such.

41. The need for capacity-building of indigenous leaders and women to negotiate and build constructive relationships with Governments and other parties to resolve conflict was suggested by various indigenous participants. Reference was made to the United Nations Institute for Training and Research (UNITAR) training programme on conflict analysis and the peaceful negotiation of differences in contributing to such empowerment.

42. Indigenous participants emphasized that the adoption of the draft declaration on the rights of indigenous peoples and its implementation would contribute to the solution of conflicts, in particular its draft article 36.

43. The observer for Canada noted the potential importance of a declaration on the rights of indigenous peoples with respect to creating a new framework within which to understand and address issues of conflict resolution and that achievement of that important objective would require flexibility and compromise by all parties.

44. Various participants proposed the continued study of conflict prevention and resolution affecting indigenous peoples. Subjects identified as meriting further study included: conflict between indigenous traditional sources of authority and State-designated institutions and representation; the role and position of the military in illegal income-generating activities in the traditional lands of indigenous peoples; combating impunity and bringing to justice those perpetrating human rights violations against indigenous peoples, including where abuses have been committed by the military; and the positive role that may be played by impartial third parties in brokering a dialogue for the peaceful resolution of conflicts affecting indigenous peoples, including their human rights recognized in applicable international norms. It was also suggested by a large number of indigenous participants that there be an examination of the impact of the non-recognition of indigenous peoples and other groups in the constitution-building process. An indigenous organization offered to support a future study on the relationship between the principles of non-interference, territorial integrity and the respect for the rights of indigenous peoples. It was suggested that further emphasis should also be given to other possible constructive elements and criteria as means of promoting peaceful coexistence between indigenous and non-indigenous population segments and averting conflict.

45. Calls were made by indigenous participants for the Working Group to request that Governments ratify or implement existing international human rights treaties. A similar request was made with respect to Governments extending an invitation to the Special Rapporteur, Mr. Stavenhagen, to visit their countries and following up on the recommendations made in the reports of the Special Rapporteur. Following his mission to the Philippines, indigenous participants indicated that they had created an Indigenous Peoples' International Commission for Conflict Resolution and Mediation, which intended to look into the situation of indigenous peoples affected by armed conflict.

46. The observer for the Congo reminded participants about the regional human rights standards and mechanisms that existed in Africa, as well as regional conflict-prevention and -resolution mechanisms, and encouraged indigenous peoples to make use of them.

### **3. Globalization and indigenous peoples (item 4 (c))**

47. Mr. Guissé presented his follow-up report to his working paper on globalization and economic, social and cultural rights of indigenous populations (E/CN.4/Sub.2/AC.4/2003/14) submitted at the twenty-first session of the Working Group. He asserted that globalization constituted a system of exploitation conducted by developed countries and transnational

companies with the support of Governments from the developing world. It included the exploitation of indigenous lands and resources by stripping the environment of its natural resources, while destroying the natural environment which supported the traditional lifestyle of indigenous people and thereby forced them into extreme poverty, migration and despair. Mr. Guissé stated that, as a form of “neo-colonialism”, globalization operated in total disregard of the rights and sometimes even the existence of indigenous peoples.

48. Many indigenous participants from a large number of countries expressed the view that the process of globalization was complex and that they were aware of its negative impact through the exploitation of their natural resources and the destruction of their natural environments, cultures and languages.

49. Several indigenous participants stated that globalization had not contributed to the alleviation of poverty; instead, it had contributed to further impoverishing indigenous populations by introducing a system of unequal competition among developed and developing communities. They affirmed that, while globalization continued to diminish their traditional means of sustenance, no sustainable alternative was being offered. As a result, many indigenous people were forced to abandon their lands and to work in private and corporate sectors which exploited their labour and imposed the assimilation of indigenous peoples into dominant societies.

50. Some indigenous participants claimed that their communities had been subject to forced resettlement based on false pretexts, which included promises of arable land, and access to safe water, health care, free schooling and other incentives while their lands were used for logging, tourism and other money-making industries.

51. Several indigenous participants called the attention of the Working Group to practices of international financial institutions such as the World Bank, the International Monetary Fund and the Asian Development Bank that were detrimental to the practical implementation of their rights and freedoms. They considered that the development paradigm promoted by international financial institutions was not in conformity with the rights-based approach to development and that the imposition by those institutions of economic liberalization and privatization had paved the way for the unprecedented exploitation of indigenous resources in disregard of their collective rights.

52. The observer for Venezuela said that she supported Mr. Guissé’s observations and recommendations relating to the negative impacts of globalization on indigenous peoples’ lands, cultures and resources. It was because of economic and social exclusion that indigenous peoples were not able to benefit from the positive aspects of globalization and there was a need for a new process that would put human beings and nature at its centre and respect multiculturalism and biodiversity. In addition, she reaffirmed the importance of public policies to promote the general welfare and participatory democracy. The new Venezuelan Constitution provided for space for indigenous peoples to manage their own affairs and for the promotion of their human rights.

53. Mr. Yokota suggested that the Working Group should continue to pay close attention to the practices of international financial institutions vis-à-vis the rights of indigenous peoples and should continue to observe the effects of globalization on indigenous peoples.

## **B. Standard-setting activities (item 5)**

### **1. Legal commentary on the concept of free, prior and informed consent (item 5 (a))**

54. Ms. Motoc presented her preliminary paper on free, prior and informed consent of indigenous peoples in relation to development affecting their lands and natural resources (E/CN.4/Sub.2/AC.4/2004/4), elaborated jointly with the Tebtebba Foundation with the objective of preparing a future legal commentary on this principle. There was clear recognition of the concept both at the international level and in some cases also at the national level. In particular, Australia and the Philippines had formally integrated the concept into their national laws.

55. The observer for the Tebtebba Foundation explained that the paper was to a certain degree based on experiences with free, prior and informed consent, which in the Philippines was applied through national legal instruments, demonstrating that it was possible to apply the principle in concrete terms.

56. Numerous participants, expressing appreciation for the joint working paper, drew attention to existing international and national legal norms and jurisprudence reflecting the concept. Several indigenous participants gave examples of cases where in practice the right was either not being recognized or was falsely applied. Attention was drawn to the need for a clear definition of this concept for application by Governments, the private sector and financial institutions; guidelines for its application could be envisaged in addition to the commentary.

57. One indigenous participant suggested that more details about the order and the procedure related to obtaining free, prior and informed consent were necessary and needed to be formalized in order to facilitate the adoption of the principle by Governments.

58. An indigenous participant suggested that the Working Group should recommend the establishment of an international body where indigenous peoples could make complaints regarding violations of free, prior and informed consent.

59. Mr. Yokota mentioned the problem of the identification of persons giving consent. He mentioned that it was easier in theory than in practice. Regarding the consent process, Mr. Yokota supported the practical and flexible approach as outlined in the paper.

60. Mr. Guissé stated that consent should be limited in scope and time. He also raised the question of the need to find a balance between the national interest of States and the rights of indigenous peoples. These issues would need to be addressed together and should be debated by all institutions of the United Nations system.

61. Ms. Hampson pointed out that the principle of free, prior and informed consent involved both questions of form and substance. She first suggested that for consent to be free it would need to be obtained in a transparent manner, and that should perhaps be mentioned in the report. She further mentioned that, in assessing the impact of a project on a community, the elements important to the indigenous peoples needed to be taken into account. Ms. Hampson also drew

attention to the difference between consent and consultation and emphasized that consultation could not replace consent. She suggested that examples of good practices could be included in the commentary to the guidelines and stated that consent could in any case be of a limited and qualified nature with conditions attached.

62. A number of participants stated that the right to free, prior and informed consent was inextricably linked to the right of self-determination, as without the right to withhold consent indigenous peoples would not be able to exercise the right to freely determine their economic, social and cultural development. It was recommended that the Working Group should consider and elaborate on this aspect and that it should further examine issues such as the relationship between free, prior and informed consent and the right to land, territory and resources or the relationship between treaties and the obligations of transnationals.

63. Several indigenous organizations pointed to the World Bank's policy regarding free, prior and informed consent. It was claimed that the Bank was substituting consultation for consent.

64. The observer for the World Bank stated that for the past 10 years his institution had been engaged by the international indigenous community which demanded the recognition of the right to free, prior and informed consent. The Bank was examining the issue as part of the Extractive Industries Review (EIR). The Draft Management Response to the EIR specifically recommended "the provision of free, prior and informed consultation leading to broad community support of any proposed project".

65. He also drew attention to an upcoming meeting of the World Bank's Board of Executive Directors that was scheduled for 3 August 2004 to discuss the issue of free, prior and informed consultation in finalizing the draft indigenous peoples policy. The discussion could give guidance on this issue and he was willing to share the paper by Ms. Motoc and the Tebtebba Foundation during the Bank's internal discussion process.

66. Ms. Motoc responded that "consultation" was a weaker concept than "consent" and did not necessarily imply the agreement of the indigenous community involved.

67. Several indigenous participants stated that the effectiveness of the application of the principle would largely hinge on access to impartial information regarding the short- and long-term effects of a project on an indigenous community. Needs-assessment studies should also be participatory and should be carried out in stages. Communities were often misinformed in that respect and information on the effects of a project was provided to them only by the proponent.

68. Several indigenous participants pointed out that consent should only be obtained from a body recognized as mandated to give consent under the relevant customary legal system. That was considered particularly important as there had been situations where consent was obtained from persons not officially recognized by their communities or persons who would gain personal benefit from a given project. It was also important to consider the definition of the concept in indigenous languages.

## **2. Review of the draft principles and guidelines on the protection of the heritage of indigenous peoples (item 5 (b))**

69. Mr. Yokota presented his working paper, prepared jointly with the Saami Council, to serve as a guideline for the review of the draft principles and guidelines on the heritage of indigenous peoples (E/CN.4/Sub.2/AC.4/2004/7). The draft principles and guidelines had been prepared and submitted to the Sub-Commission on the Promotion and Protection of Human Rights by Ms. Erica-Irene Daes in 1995. Following the request contained in Sub-Commission resolution 2003/29, Mr. Yokota focused his paper on: (a) recent developments at the international level regarding the protection of indigenous people's heritage; and (b) the need for a specific international instrument for the protection of indigenous heritage. The expert noted that, while several United Nations bodies and agencies as well as a number of international human rights instruments had addressed the issue, many indigenous representatives had expressed their view that they did not adequately protect the indigenous cultural heritage, which continued to be abused, misrepresented, lost or destroyed on a daily basis. It was therefore indispensable that a United Nations body with the mandate to promote and protect the human rights of indigenous peoples should address these issues in order to ensure a holistic approach. There were some elements that needed further clarification, such as the definition of heritage; clarification of the theoretical and practical relationship between self-determination and heritage; and the role of indigenous customary law and legal systems.

70. The observer for the Saami Council, while commending the Working Group for having taken the initiative to build research partnerships with indigenous organizations, noted developments since Ms. Daes had elaborated her draft guidelines and principles. He called for an international instrument that acknowledged the collective nature of indigenous knowledge and resources, recognizing that the knowledge and resources were vested with the people as such, compared to the individual nature of intellectual property rights.

71. Many indigenous participants recalled that indigenous culture and heritage were fundamentally linked to the protection of their traditional rights, as well as their human rights. Their cultures were not appreciated despite the fact that they represented most of the world's cultural diversity. Also, national laws in many countries did not recognize or protect indigenous cultures at the constitutional level. Participants expressed concern about the current intellectual property regime which was said not to protect the interests of indigenous peoples owing to the lack of recognition of their customary law and collective systems. All indigenous representatives noted that the prompt adoption of the draft declaration on the rights of indigenous peoples was necessary to effectively protect all the varied manifestations of their cultural heritage.

72. Commenting on Mr. Yokota's working paper, Ms. Hampson expressed concern over the lack of protection within the international system for indigenous heritage and knowledge. While noting that future reports on the subject should include references to artefacts, Ms. Hampson said that free, prior and informed consent was the basis for access and benefit-sharing for indigenous peoples. On the need for an international instrument, she suggested guidelines rather than a declaration or convention, as they were easier to adopt and more effective in the short term.

73. The observer for WIPO stated that her organization sought to respect the holistic quality of traditional knowledge in the customary context while developing specific legal tools that reflected the broader legal environment and policy context. While explaining the main strategy of the organization, she noted that the participation of indigenous or local communities in the work of the Committee on Intellectual Property and Traditional Knowledge, Genetic Resources and Folklore of WIPO should be enhanced.

74. All indigenous participants welcomed the proposal for the elaboration of an international instrument and stressed that it should be legally binding and grounded in human rights.

75. Mr. Yokota agreed with the suggestions and proposals made by Ms. Hampson and the indigenous participants and noted that guidelines could be a very useful instrument in the short term. While noting that cultural heritage was abused not only during the colonial period but also in current times, Mr. Yokota stressed that the efforts made to address the situation had revealed themselves to be ineffective. Finally, Mr. Yokota stressed that indigenous cultural heritage should be protected according to indigenous customary law.

### **C. Other matters (item 6)**

#### **1. Cooperation with other United Nations bodies on indigenous issues (item 6 (a))**

76. Given the importance of ensuring the application of the principles of non-discrimination and equality as well as the rights of indigenous people in the work of the United Nations, it was suggested that the Working Group should recommend that indigenous rights be applied in the work of all relevant bodies of the United Nations system in relation to indigenous peoples. Additionally, it was requested that the United Nations Development Programme organize regular country-level meetings of indigenous peoples and United Nations representatives to assist in ensuring that international human rights standards were applied in all projects and programmes implemented at the country level by the United Nations.

77. Appreciation was expressed to the Working Group for having introduced new methods of work which called, inter alia, for involving indigenous peoples and other sources (including those from the academic world) as partners in the preparation and drafting of its working papers. It was noted that the inter-agency group supporting the work of the Permanent Forum had requested UNDP to prepare a technical paper relating to the issue of free, prior and informed consent. Its contents complemented the human rights-focused paper considered in the Working Group. It was recommended that the Working Group should consider cooperating closely with the inter-agency group with a view to harmonizing and coordinating inter-agency input on standard-setting with respect to the issue of free, prior and informed consent. It was also recommended that discussions on protection of, access to and use of traditional knowledge should be held in a human rights body, such as the Sub-Commission or the Working Group, rather than in a biodiversity or intellectual property forum.

78. Reference was made to the United Nations Educational, Scientific and Cultural Organization (UNESCO) and the importance of its work in protecting indigenous languages and culture. One indigenous participant urged UNESCO to include the protection of the Berber culture and the Tamazigh language in its programme of work.



79. An indigenous participant called upon the Working Group to support the involvement of indigenous youth and introduce indigenous traditional knowledge into the preparations for the World Summit on the Information Society, including a meeting to be organized at the University of California at Los Angeles in May 2005.

80. Moreover, ILO should consider establishing a simple, clear and transparent complaint mechanism regarding violations of its conventions and consider amending its rules on participation in its international conferences to allow the direct participation of indigenous representatives in its work.

81. The Working Group was informed about the results of the first international conference on indigenous medicine held at the Barcelona Forum, where various conclusions and recommendations were adopted, including in relation to recognizing the contribution and ensuring the protection of indigenous medicine and alternative medicines for society and communities.

82. A statement by the indigenous caucus called for further support in promoting and protecting the rights of indigenous children and youth. Initiatives mentioned included supporting: the elaboration of a general comment by the Committee on the Rights of the Child; the preparation of a study on violence against children, including through the establishment of indigenous youth participation fellowships; and the participation of indigenous youth in the World Summit on the Information Society.

## **2. Follow-up to the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance (item 6 (b))**

83. Many indigenous participants expressed concern regarding the lack of implementation by Governments of the recommendations of the Durban Declaration and Programme of Action.

84. One indigenous participant suggested that the Permanent Forum on Indigenous Issues should pursue three of the recommendations submitted last year by indigenous participants at the twenty-first session of the Working Group. In developing strategies, States and indigenous peoples should not only consider the 17 relevant recommendations, instead: (a) they should consider as a whole the recommendations of the Durban Declaration and Programme of Action; (b) an international conference should be held at the end of the International Decade of the World's Indigenous People to highlight the Decade and its achievements and to consider the Durban Declaration; and (c) UNESCO and UNICEF should assist States to develop plans of actions to reduce racial stereotyping, and to promote respect for the histories and cultures of indigenous peoples.

85. Another indigenous participant referred to the hidden forms of racism manifested in the selection of candidates for employment, housing and education, as well as in the issuance of passports and entry visas.

86. Two indigenous participants reported on the situation of indigenous women who were sometimes excluded from shops and restaurants because of their dress.

87. Indigenous participants also suggested that the Working Group should provide input to the Sub-Commission and the Commission on developments as regards the implementation of the Durban Declaration and Programme of Action.

### **3. Review of activities undertaken under the International Decade of the World's Indigenous People (item 6 (c))**

88. An indigenous participant from Australia referred to the review of the Decade (E/2004/82) submitted to the Economic and Social Council. He highlighted the significant progress achieved within the United Nations and at the international level. However, he recalled the stagnation in the adoption process of the draft declaration and called for a second decade to improve the situation of indigenous peoples. He also called upon States to contribute to the Voluntary Fund for the International Decade.

89. An indigenous participant from Venezuela identified the issue of the administration of justice as being of crucial importance to indigenous peoples. He recommended that the Working Group give special consideration to indigenous women in prison and requested that a study on equal justice for indigenous peoples in the administration of justice be undertaken.

90. Ms. Victoria Tauli-Corpuz, Chairperson of the Board of Trustees of the United Nations Voluntary Fund for Indigenous Populations and of the Advisory Group of the Voluntary Fund for the International Decade of the World's Indigenous People, stated that the Decade had increased the visibility of indigenous peoples. She mentioned the case of the Philippines and how the experience of indigenous peoples had helped them to press for legal changes at the national level. She concluded that indigenous peoples had been very successful in using the scarce resources that were available from the Voluntary Funds and advocated the need for a second decade and the continuation of the Voluntary Funds.

91. In a joint statement, an indigenous participant from Asia requested the Working Group to focus more on Asia and noted that more opportunities for discussing constructive arrangements and the implementation of peace agreements should be available in the region.

92. The Asian caucus acknowledged that the implementation of the programme of the International Decade had raised the profile of indigenous peoples around the world and that the establishment of the Permanent Forum had provided opportunities for indigenous peoples to interact more with the United Nations. The caucus emphasized the valuable contribution of the Voluntary Funds in involving the grass roots in the work of the United Nations. The caucus urged Asian Governments to support a second Decade and the Voluntary Funds.

93. Several indigenous participants underlined the need for indigenous leaders to be trained in international indigenous peoples' rights and said that a second Decade should focus on training. Others stressed that the end of the Decade was near and proposed that a programme of action for a second Decade should be prepared as soon as possible. An indigenous participant from the Russian Federation stated that it was time to assess the results of the Decade and informed the Working Group that the representative of the Russian Federation in the Permanent

Forum on Indigenous Issues had proposed during the Forum's last session to host an international conference on the rights of indigenous peoples in order to evaluate the Decade and to elaborate a programme of action for a second Decade. He recommended that the General Assembly proclaim a second Decade. It was also proposed to hold an international seminar on the rights of indigenous peoples.

94. The observer for Mexico stressed the need for elaborating a plan of action for a second Decade.

95. The observer for Bolivia informed the Working Group about the advances of his country relating to indigenous issues. Indigenous peoples were able to apply their own customary law, and could take part actively in Bolivian political life through their participation in local administration and on the national level as deputies or senators. Moreover, all indigenous languages were recognized as official languages and educational materials were being developed in those languages. In addition, both in forestry and agriculture, laws guaranteed indigenous peoples the possibility of accessing individual and collective property and profiting from their natural resources. Bolivia had ratified ILO Convention No. 169 and the Decade had provided the framework for the above-mentioned legal changes in favour of indigenous peoples' rights.

#### **4. State of the Voluntary Funds (item 6 (d))**

96. Mr. Ahmed Mahiou, member of the Advisory Group of the Voluntary Fund for the International Decade of the World's Indigenous People, presented the report on the Fund (E/CN.4/Sub.2/AC.4/2004/9) and pointed out that valuable efforts by indigenous communities had been supported by the Fund and that further contributions from donors were needed to sustain the Fund's impact. He stated that from 1996 to 2004 only US\$ 2.6 million had been donated to the Fund, but that 176 projects had been funded during this period in 51 different countries. He welcomed the conclusions and recommendations of the technical seminar held from 15 to 16 July 2004 in Geneva to evaluate the impact of the two Voluntary Funds.

97. Ms. Tauli-Corpuz presented the report on the United Nations Voluntary Fund for Indigenous Populations (E/CN.4/Sub.2/AC.4/2004/8). She underlined the importance of the Fund in providing indigenous representatives with access to United Nations meetings. She referred also to the multiplier effects of indigenous participation and called for a second Decade and the continuation of both Funds. Ms. Tauli-Corpuz was thanked for including information disaggregated by age concerning recipients of assistance from the Fund, as requested during the previous session of the Working Group.

98. A participant speaking on behalf of the indigenous caucus underlined the value for indigenous peoples of the two Voluntary Funds and called for their continuation.

#### **5. The draft United Nations declaration on the rights of indigenous peoples (item 6 (e))**

99. An indigenous representative recommended that the Working Group's members participate in the intersessional meeting of the working group on the draft declaration. Several

participants stressed that the Decade was coming to an end with only two articles of the declaration having been adopted. They reminded the Working Group that the text of the draft declaration under review contained the minimum standards agreed upon by indigenous peoples.

100. In a joint statement, an indigenous participant referred to the position of the United Kingdom that the collective rights of indigenous peoples were not recognized under international law. He put forward three arguments for the recognition of collective rights in international law: (a) collective rights were already recognized in the Convention for the Prevention and Punishment of the Crime of Genocide and in the norms of customary international law; (b) the jurisprudence of intergovernmental bodies overseeing universal and regional human rights instruments routinely used the term indigenous peoples; and (c) State practice indicated that collective rights were applied on a regular basis. He further noted that the United Kingdom had failed to recognize that the draft declaration elaborated the rights of the indigenous as peoples, and not as individuals. He also reminded the Working Group that the United Kingdom did not oppose collective rights of indigenous peoples as provided for in ILO Conventions Nos. 107 and 169, and urged the United Kingdom to review its position. He also informed the Working Group that the groups supporting the statement had offered to host a round table on collective rights.

101. Ms. Hampson welcomed the idea of holding a round table on collective rights. She also stated that it was more advantageous to use the draft declaration in its current form than to adopt a weak declaration.

102. The observers for Bolivia and Mexico expressed their Governments' support for the adoption of the draft declaration.

103. The observer for the Indigenous Peoples' Centre for Documentation, Research and Information (doCip) referred to the intersessional meeting of the working group on the draft declaration and raised the issue of the participation of indigenous representatives, reminding the Working Group about the difficulties of funding and requesting that additional funding be made available as soon as possible.

## **6. The human rights situation of indigenous peoples in States and territories threatened with extinction for environmental reasons (item 6 (f))**

104. Ms. Hampson introduced her working paper concerning the human rights situation of States and territories threatened with extinction for environmental reasons (E/CN.4/Sub.2/AC.4/2004/CRP.1). She posed a range of questions and proposed that the Working Group should request the Sub-Commission to seek the authorization of the Commission to send out a questionnaire to all States whose territories comprised islands or which had responsibility for islands, in order to better evaluate the scale of the problem and identify possible solutions.

105. Ms. Hampson raised various legal questions that would emerge from situations of environmental asylum. They included, inter alia, whether the peoples affected could be considered as indigenous peoples once they were forced to relocate; how to resolve the

unprecedented international law problems linked to the situation of a State ceasing to exist without being replaced by a successor State; and the scope of the rights of inhabitants of disappearing States on the territories of receiving States. Based on these legal questions, which presented multifaceted difficulties, Ms. Hampson recommended that one or more seminars be held to seek to further identify the practical and legal problems to which the disappearance of these territories would give rise. In conclusion, Ms. Hampson recommended that the issue should continue to be addressed at the Working Group because of its indigenous peoples' rights dimension and that a further report on these issues be submitted next year to both the Working Group and the Sub-Commission.

106. Mr. Yokota said that he found Ms. Hampson's paper stimulating and asked whether the problems she had brought up concerned indigenous peoples in particular or everyone and therefore constituted a broader human rights concern.

107. Mr. Guissé underlined the important consequences of disasters such as those outlined by Ms. Hampson. He expressed the view that a mechanism should be established to consider all aspects of the problem while paying special attention to the human rights issues involved.

108. Several indigenous participants recommended, inter alia, that the Working Group should include the subject of disappearing States and territories, and that representatives of the peoples affected be afforded the opportunity to participate in studies and analyses and that they should be allowed to contribute actively in addressing the problem. They also expressed the wish that the United Nations sponsor a seminar to examine closely the problems associated with the environmental catastrophe facing the indigenous peoples of the threatened States and territories and that regional cooperation through existing mechanisms be encouraged and enhanced.

### III. CONCLUSIONS AND RECOMMENDATIONS

#### Organization of work

109. **The Working Group, in reviewing the organization of work of the twenty-second session, considered that all the papers submitted for its consideration pursuant to Sub-Commission resolution 2003/29 were of high quality and noted their remarkable contribution to an interactive debate. The new methods of cooperation between the members and indigenous peoples also enhanced an interactive dialogue as exemplified by the cooperation on the two working papers prepared jointly by Mr. Yokota and the Saami Council and Ms. Motoc and the Tebtebba Foundation. The Working Group resolved to develop its cooperation with indigenous peoples in areas such as research, the drafting of working papers and other activities within its mandate. Nonetheless, it was also expressly recognized that it was the exclusive responsibility of the members to determine the specific ways in which such collaboration was to be materialized.**

#### Review of developments: general statements

110. **The Working Group noted the continuing difficulties faced by indigenous peoples in exercising their rights in many countries, as well as some encouraging improvements in others. The Working Group, although not able to submit recommendations to its superior**

bodies in connection with specific situations raised by participants, agreed to continue its cooperation with the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people. The Working Group underlined the vital importance of its mandate to review developments in relation to indigenous peoples.

#### **Review of developments**

##### **Principal theme: indigenous peoples and conflict resolution**

111. The Working Group took note of the discussions under the agenda item and the information provided, in particular, relating to the root causes of conflict, traditional conflict-resolution mechanisms of indigenous peoples and the concerns expressed that the international community should play a more active role in conflict prevention and resolution. The Working Group expressed appreciation to Mr. Alfonso Martínez for his working paper on the principal theme.

112. The Working Group decided to include a sub-item entitled “Indigenous peoples and conflict prevention and resolution” under item 4 at its twenty-third session.

113. The Working Group also decided to request OHCHR to organize, if possible in 2005, a workshop on indigenous peoples and conflict resolution.

114. The Working Group decided to request OHCHR to organize a seminar, preferably in 2006, on the implementation of treaties, agreements and other constructive arrangements between States and indigenous peoples.

115. The Working Group recommended to its parent bodies that they consider ways and means of protecting indigenous peoples in armed conflict, including those in which United Nations peacekeeping forces took part.

116. The Working Group agreed to request the treaty bodies to pay specific attention to conflicts involving indigenous peoples.

117. The Working Group requested Mr. Alfonso Martínez to submit, under item 4 at its twenty-third session, a working paper on indigenous peoples and the prevention and resolution of conflict, dealing in particular with conflicts between indigenous traditional sources of authority and State-designated institutions and representatives and exploring the possible role that might be played by domestic and international third parties in brokering agreements for the peaceful resolution of conflicts affecting indigenous peoples.

118. The Working Group requested OHCHR to continue to organize seminars and workshops on indigenous issues in Africa, Asia and Latin America. In this connection, the Working Group accepted the invitation by representatives of indigenous peoples from parties to Treaty 6 in Canada to hold a seminar on the implementation of treaties, agreements and constructive arrangements to take place on their lands, preferably in the year 2006.

### **Standard-setting and research activities**

119. The Working Group, noting that it has the only United Nations mechanism addressing indigenous issues that included standard-setting as part of its mandate, expressed appreciation to Mr. Yokota and Ms. Motoc and the indigenous organizations that had collaborated in the preparation of the working papers on indigenous peoples' heritage and on the principle of free, prior and informed consent.

120. The Working Group decided to recommend that Mr. Yokota and the Saami Council prepare a further working paper containing substantive proposals on the draft principles and guidelines relating to indigenous peoples' heritage to be submitted to its twenty-third session in 2005.

121. The Working Group further decided to recommend that OHCHR facilitate, without financial implications, the organization of a consultation on the above principles and guidelines with Mr. Yokota, the Saami Council and other interested parties.

122. The Working Group decided to recommend that Ms. Motoc, the Tebtebba Foundation and any other indigenous source interested in this issue and prepared to make a contribution should prepare guidelines on the principle of free, prior and informed consent for consideration by the Working Group at its next session.

123. The Working Group recommended that OHCHR request information on the two standard-setting activities from Governments, indigenous organizations, the United Nations system and NGOs.

### **Cooperation with other United Nations bodies**

124. The Working Group decided to recommend to its parent bodies that the Chairperson of the Permanent Forum on Indigenous Issues and the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people be invited to participate in its twenty-third session. It expressed appreciation to the Permanent Forum for inviting the Chairperson-Rapporteur of the Working Group to its fourth session.

125. The Working Group further recommended to its parent bodies to decide that the Chairperson-Rapporteur of its twenty-second session should submit the present report to the fourth session of the Permanent Forum, to be held in New York in May 2005.

126. The Working Group expressed support for the recommendation by the Permanent Forum that a technical seminar on future cooperation among United Nations mechanisms be organized.

127. The Working Group encouraged the United Nations Children's Fund to facilitate the organization of a consultation among experts of the Permanent Forum and the Working Group, the Special Rapporteur, specialists from UNICEF, OHCHR and other United Nations bodies, and indigenous experts to assist the members of the Committee on the Rights of the Child in developing a general comment on indigenous children.

128. **The Working Group decided to request OHCHR to invite representatives of the United Nations system to provide, under the appropriate agenda item, comments and recommendations on ways and means of improving cooperation among themselves.**

#### **International Decade of the World's Indigenous People**

129. **The Working Group welcomed the decision of the Economic and Social Council to transmit to the General Assembly the recommendation of the Permanent Forum that the Assembly should proclaim a second Decade. It reiterated its view that one of the focuses of the second Decade should be the achievements of international standards for indigenous peoples that are implemented in practice and provide the basis for rights-based development in their communities.**

130. **The Working Group recommended that the High Commissioner for Human Rights continue to undertake the responsibility of coordination of the Decade in close cooperation with the Permanent Forum, the Special Rapporteur and the Working Group. The Working Group considered that the High Commissioner, given her position as the highest-ranking United Nations official charged with human rights and the proactive role given to her by the General Assembly in its resolution 48/141 of 20 December 1993, would be able to maintain the progress achieved during the first Decade.**

131. **The Working Group further recommended that the High Commissioner, in her capacity as Coordinator of the Decade, take initial practical steps to assure the submission of a substantive programme of action for a possible second Decade to the General Assembly at its sixtieth session.**

132. **The Working Group expressed appreciation to the members of the Board of Trustees of the United Nations Voluntary Fund for Indigenous Populations and to the Advisory Group for the Voluntary Fund for the International Decade of the World's Indigenous Peoples as well as to OHCHR for the organization of the technical seminar to evaluate the Funds, which took place on 15 and 16 July 2004. The Working Group noted the conclusions of the seminar in which the positive impact of both Funds was underlined and endorsed the recommendation that both Funds be maintained and strengthened.**

#### **Seminars, workshops and regional activities**

133. **The Working Group expressed its appreciation to OHCHR for having organized the two seminars on indigenous peoples and the administration of justice and on treaties, agreements and other constructive arrangements between indigenous peoples and States.**

134. **The Working Group reiterated its recommendation that OHCHR organize a second workshop on indigenous peoples, mining companies and human rights with a view to preparing guidelines for the private sector based on respect for the cultures and traditions of these communities and the principle of free, prior and informed consent.**



### **States and territories threatened with extinction for environmental reasons**

135. The Working Group decided to recommend that Ms. Hampson prepare another working paper, developing further the information and ideas contained in her first paper, taking into account the discussion in the Working Group, and that the working paper be considered both in the Sub-Commission, as requested by the Commission, and in the Working Group at its next session.

136. To that end, the Working Group decided to recommend that the authorization of the Commission be sought for Ms. Hampson to be given the assistance of the Secretariat in contacting Governments, including by means of a questionnaire, in order to obtain further information about the scale, nature and urgency of the problem.

### **Twenty-third session of the Working Group**

137. The Working Group reiterated its decision that its principal theme at its twenty-third session would be “Indigenous peoples and the international and domestic protection of traditional knowledge”. The Working Group invited Governments, indigenous peoples, the United Nations system and NGOs to provide relevant information. In particular, it requested WIPO and UNESCO to contribute to the debate.

138. The Working Group adopted the following provisional agenda for its 2005 session:

1. Election of officers.
2. Adoption of agenda.
3. Organization of work.
4. Review of developments: (a) General Debate; (b) Principal theme - “Indigenous peoples and the international and domestic protection of traditional knowledge”; (c) “Indigenous peoples and conflict prevention and resolution”.
5. Standard-setting: (a) A legal commentary on the concept of free, prior and informed consent; (b) Review of draft principles and guidelines on indigenous heritage.
6. Other matters: (a) International Decade of the World’s Indigenous Peoples; (b) Cooperation with United Nations bodies; (c) State of the Voluntary Funds; (d) The human rights situation of indigenous peoples in States and territories threatened with extinction for environmental reasons.
7. Presentation of elements for the conclusions and recommendations.
8. Adoption of the report.

## **Annex I**

### **LIST OF PARTICIPANTS**

The following States Members of the United Nations were represented by observers: Azerbaijan, Argentina, Austria, Bahrain, Bangladesh, Bhutan, Bolivia, Brazil, Canada, Chile, China, Colombia, Congo, Costa Rica, Ecuador, Egypt, Finland, France, Germany, Guatemala, Honduras, India, Indonesia, Japan, Mauritius, Mexico, Morocco, Myanmar, Netherlands, New Zealand, Nicaragua, Nigeria, Norway, Paraguay, Peru, Romania, Russian Federation, Senegal, Slovakia, South Africa, Spain, Sri Lanka, Turkey, Ukraine, United Kingdom of Great Britain and Northern Ireland, United States of America, Venezuela.

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

The following United Nations bodies and specialized agencies were also represented by observers: United Nations Permanent Forum on Indigenous Issues, United Nations Population Fund (UNFPA), United Nations Institute for Training and Research (UNITAR).

The following specialized agencies were represented by observers: International Labour Office (ILO), World Health Organization (WHO), World Bank, World Intellectual Property Organization (WIPO), International Fund for Agricultural Development (IFAD).

The following Intergovernmental organization was represented by an observer: European Union.

The following non-governmental organizations in consultative status with the Economic and Social Council (general consultative status, special consultative status and Roster) were represented by observers: Anti-Slavery International, Association of World Citizens, Commission of the Churches on International Affairs of the World Council of Churches, Foundation for Aboriginal and Islander Research Action (FAIRA), Indian Council of South America (CISA), Indigenous Peoples' Centre for Documentation, Research and Information (DoCip), Indigenous World Association, Innu Council of Nitassinan, Institute of Bangsmoro Studies, International Movement Against All Forms of Discrimination and Racism (IMADR), International Federation of Rural Adult Catholic Movements (FIMARC), International Indian Treaty Council, International League for the Rights and Liberation of Peoples, International Movement Against All Forms of Discrimination and Racism, International Organization for the Development of Freedom of Education (OIDE), International Organization of Indigenous Resources Development (IOIRD), International Service for Human Rights, International Working Group on Indigenous Affairs (IWGIA), Inuit Circumpolar Conference, Mandat International, Minority Rights Group International, National Bar Association, Saami Council, Shimin Gaikou Centre, Society for Threatened Peoples.

The following indigenous peoples' organizations and nations, as well as other organizations and groups, were represented at the twenty-second session: Ahwaz Human Rights Organization, Ainu Association of Hokkaido, Akaitcho Dene, Akha Heritage Foundation, Aktionsgruppe Indianer und Menschenrechte, Akuoipe Waimakat, Almaciga, Amity for Peace,

Aram Naharaim Foundation, Asia Indigenous Peoples Pact (AIPP), Asociación El Buen Samaritano, Asociación Intercultural, Asociación para la Salud, Association Amazighe Tawesna (Morocco), Association Iles Umazigh, Association of Indigenous Peoples in the Ryukyus, Association of Indigenous Peoples of the North of the Tomsk Region, Association of the Khasa Tribes, Association Tamaynut, Association Taralift, Djanet, Bangladesh Hindu Buddhist Christian Unity, Bangsa Adat Alifuru, Benadir-Watch, Bikalpa Gyan Kendram, Bindray Institute for Research Study and Action (B.I.R.S.A), Brazilian National Foundation for Indigenous Peoples, Canadian Indigenous Women Resource Institute, Capithania Guarani Zona Cruz, Cefail-ONGD, Centre d'accompagnement des autochtones pygmées et minorités vulnérables, Centre de conseils et d'appui pour les jeunes en matière de droits de l'homme (CODAP), Centre for Adivasee Studies and Peace, Centre for Organization Research and Education, Centre International de Défense des droits des Batwa, Centre National de la Recherche Scientifique, Cherangany Indigenous Minority Group, Chin Human Rights Organization, Chirapaq, Chittagong Hill Tracts Hill Students' Council, Cobase, Comité de Solidarité avec les Indiens d'amériques CSIA-Nitassinan, Comité Suisse de Soutien aux Chagossiens, Communauté des Autochtones Rwandais (Caurwa), Comunidad de Sitajara, Comunidad Indígena del Pueblo Kolla Tinkunaku, Comunidad Indígena del Pueblo Tupi Guarani "Cacique Hipolito Yumbay", Confederación Indígena Tayrona, Confédération Amazighe du Sud Marocain, Congrès Mondial Amazigh, Congreso Indígenas de Tierra Colectiva Emera y Wounan, Conseil National des Droits des Peuples Autochtones, Consejo de Ancianos de la Nación Otomi, Consejo de Pueblos Nahuas del Alto Balsas Guerrero, Consejo de Todas las Tierras, Consejo Indígena Permanente de México, Consejo Nacional de Mujeres Indígenas del Ecuador, Consejo Regional Indígena del Cauca, Cordillera Peoples Alliance, Philippines, Cultural Survival, Culture of Solidarity Afroindigenous, Delegation Femmes Celtes, Dewan Adai Papua, Ecospirituality Foundation, Empire Washitaw de Dugdahmoundyah, Ethnic Conflicts Research Project, Federación Campa Ashaninka "Feconaca", Federación Departamental Unica de Trabajadores Campesinos de La Paz, Federation Nationale des Eleveurs Centrafricaine, Fédération Rhone Alpes de Protection de la Nature, Fondation pour l'environnement et le développement au Cameroun (FEDEC), Foundation for Indigenous Americans of Anasazi Heritage, Foundation for Research and Support of Indigenous People of Crimea, Fundación Alitasia (Venezuela), Fundació Privada d'Ajuda i Proció de les Cultures Indigenes, Freunde der Naturvolker, Fundacion Jurijuri, Gherush92, Gukom-Subanon Seven Rivers Council, Historical Memory Project, Human Rights 3000, Incomindios, Indian Confederation of Indigenous and Tribal Peoples, Indian Movement "Tupaj Amaru, Indigenous Peoples African Coordinating Committee, Indigenous Peoples and Nations Coalition, Indigenous Peoples of Africa Co-Ordinating Committee (IPACC), Indigenous Peoples Survival Programme-Pakistan, Indigenous Research Center of the Americas, Institute for Ecology and Action-Anthropology, Inter-Regional Public Movement "Komi Voytyr", International Institute for Sustainable Development, International Peace Bureau, International Programme for Funding Indigenous Leaders, International Society for Human Rights, Japan Karenni Rainbow Foundation, Kanaky, Nouvelle-Caledonie, Karenni Rainbow Foundation, Kikar Chamling Language, Culture and Development Central Committee, Kwia, Flemish Support Group for Indigenous Peoples, Lao Human Rights Council, Lauravetlan Information and Education Network of Indigenous People, Lawyers' Association for Human Rights of Nepalese Indigenous Peoples, Leonard Peltier Defense Committee, Linapyco-Racongo, Maori Legal Service, Mapuche International Link, Mbororo Social and Cultural Development Association, Médecins du Monde-France, Medzhlis of Crimean Tatar People, Mena Muria Foundation, Mexican Council of Indigenous Peoples,

Miami Tribe of Indiana, Mollucas Sovereignty Front, Murkele Organization, Netherlands Centre for Indigenous People, Noganchiq, Jovenes, Niños, Adolescentes Indigenas del Peru, Nuevos Derechos del Hombre, Ogiek Cultural Initiatives Programme, ONG CERA AF, ONG CREDO, Organisation Camerounaise de Promotion de la coopération économique internationale (OCAPROCE), Organisation d'appui aux initiatives de développement et environnement, Organization for Conflict Resolution, Organización Ati, Achuarti Irumstramu, Organización Zona Indigena de Putimayo, Otm-Enfants Mayas de Guatemala, Parbatya Chattagram Jana Samhati Samiti, Philippine Indigenous Peoples Links, Prerana Samaj Kallyan Sanch, Rangamiti, Programa de Derechos Indigenas, Programa de la Mujer Indigena "Kichin Konojel", Programme d'intégration et de développement du peuple Pygmées, Pueblos Indigenas Cumanagotoa de Venezuela, Public Organization Kumandi, Quaker Aboriginal Affairs Committee, Rehab Hope Fund, Rehoboth Community of Namibia, Réseau Apm-Afrique, Revista-Ecuamundo-Jatun Pacha Proucciones, Rural Community Development Program, Samson Cree Nation, Sapeh Association, Sarawak Community Co-Operation Institute, Siocon Subano Association, Society For Education, Training And Development, Solidarité avec les Peuples Autochtones des Amériques (SOPAM), South Centre, SRG Welfare Society, St. John's Mission, Bijni, Survie Touareg, Survival France, Taungya, Tebtebba Foundation, Teton Sioux Nation, Threatened Indigenous People's Society, Ti Tlanizke, Tin Hinan, Torres Strait Regional Authority, Tuhoe Nation Tuawhenualand Trust, Unissons-nous pour la promotion des Batwa (Uniproba), United Hmong International, United Peoples Assembly, United Zo Indigenous Peoples (Zoipu), Unrepresented Nations and Peoples Organizations (UNPO), Voceros de la Tierra, West Africa Coalition for Indigenous Peoples Rights (WACIPR), Women's Sports Foundation, Working Circle Indians Today - Germany, Working Group on Indigenous Minorities in Southern Africa (WIMSA), World Adivasi Council, World Barua Organization, Yawint's Arutam Mura.

In addition to the above-mentioned participants, the following individual scholars and observers attended the meetings: Hawaii Institute for Human Rights, International Scholars for Indigenous Americans, John Jay College Of Criminal Justice, Mcquarie University of Australia, Musée d'histoire naturelle-France, Rutgers University, Simon Fraser University, Universidad de Guadalajara, Universidad Nacional de Educación a Distancia (UNED), Université de Genève, Université de Lyon, Université Marc Bloch, University of Amsterdam, University of Berlin, University of Leipzig, University of Milano, University of Neuchâtel, University of Toronto, University of Tulsa, University of Zurich, Université de Dijon.

## Annex II

### LIST OF DOCUMENTS

<u>Title of document</u>	<u>Item No.</u>	<u>Document symbol</u>
Provisional Agenda	2	E/CN.4/Sub.2/AC.4/2004/1
Annotated Agenda	2	E/CN.4/Sub.2/AC.4/2004/1/Add.1
Indigenous peoples and conflict resolution: working paper submitted by Mr. Miguel Alfonso Martínez	4 (b)	E/CN.4/Sub.2/AC.4/2004/2 and Corr.1
Globalization and indigenous peoples: supplementary working paper submitted by Mr. El Hadji Guissé	4 (c)	E/CN.4/Sub.2/AC.4/2004/3
The principle of free, prior and informed consent of indigenous peoples in relation to development affecting their lands and natural resources that would serve as a framework for the drafting of a legal commentary by the Working Group on this concept, preliminary working paper submitted by Antoanella-Iulia Motoc and the Tebtebba Foundation	5	E/CN.4/Sub.2/AC.4/2004/4
Guideline for the review of the draft principles and guidelines on the heritage of indigenous peoples: working paper submitted by Mr. Yozo Yokota and the Saami Council	5	E/CN.4/Sub.2/AC.4/2004/5
Report on the Expert Seminar on Indigenous Peoples and the Administration of Justice (Madrid, 12-14 November 2003)	6 (a)	E/CN.4/Sub.2/AC.4/2004/6
Report of the Seminar on Treaties, Agreements and Other Constructive Arrangements between States and Indigenous Peoples (Geneva, 15-17 December 2003)	6 (a)	E/CN.4/Sub.2/AC.4/2004/7 and Corr.1
Voluntary Fund for Indigenous Populations: note by the Secretariat	6 (d)	E/CN.4/Sub.2/AC.4/2004/8
Voluntary Fund on the International Decade for the World's Indigenous People: note by the Secretariat	6 (d)	E/CN.4/Sub.2/AC.4/2004/9
The human rights situation of indigenous peoples in States and territories threatened with extinction for environmental reasons: working paper submitted by Ms. Françoise Hampson	6 (f)	E/CN.4/Sub.2/AC.4/2004/CRP.1

### **Annex III**

#### **AGENDA OF THE TWENTY-SECOND SESSION**

1. Election of officers.
2. Adoption of the agenda.
3. Organization of the work of the session.
4. Review of developments pertaining to the promotion and protection of the rights of indigenous peoples, including their human rights and fundamental freedoms:
  - (a) General debate;
  - (b) Principal theme: "Indigenous peoples and conflict resolution";
  - (c) "Globalization and indigenous peoples".
5. Standard-setting:
  - (a) Legal commentary on the concept of free, prior and informed consent;
  - (b) Review of the draft principles and guidelines on the protection of the heritage of indigenous peoples.
6. Other matters:
  - (a) Cooperation with other United Nations bodies on indigenous issues;
  - (b) Follow-up to the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance;
  - (c) Review of activities undertaken under the International Decade of the World's Indigenous People;
  - (d) State of the Voluntary Funds;
  - (e) The draft United Nations declaration on the rights of indigenous peoples (up-date);
  - (f) The human rights situation of indigenous peoples in States and territories threatened with extinction for environmental reasons.
7. Presentation of elements for the conclusions and recommendations of the Working Group at its twenty-second session.
8. Adoption of the report.

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