UN Declaration on the Rights of Indigenous Peoples

Deklarasyon ng UN sa mga Karapatan ng mga Katutubo
Deklarasyon ti UN para iti Karbengan ti Mainsigudan nga Umili
Deklarasyon sa UN Kaborin sa Katungod sa Katawhang Lumad
Stories of Eugene, the Earthworm
UN DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES
UN DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES

With support from Evangelischer Entwicklungsdienst (EED), Germany
Acknowledgements

Tebtebba would like to extend its appreciation to our friends and colleagues who helped in translating the UN Declaration on the Rights of Indigenous Peoples: Glenda Opong-Delideli of SILDAP (Bisaya); Borromeo Motin and Raymond de Chavez (Pilipino); Kathleen Okubo, Brenda Dacpano, Bernabe Almirol, Josie Almirol and Ador Ramo (Ilokano). To EED, who has consistently supported our initiatives, goes our warmest gratitude. The translations, while unofficial, are hoped to popularize the Declaration so that indigenous peoples can use the Declaration in the assertion of their rights.
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How the UN Declaration on the Rights of Indigenous Peoples Got Adopted

By Victoria Tauli-Corpuz

When the UN Declaration on the Rights of Indigenous Peoples was adopted on 13 September 2007, the indigenous peoples who were present at the General Assembly Hall of the UN were ecstatic and very emotional. There could have been no better time to be at the UN Headquarters in New York than this day. More than two decades of work were put by us on this which makes it almost impossible to believe that we finally got the Declaration. But we did.

With the historic adoption of this Declaration which has been drafted and negotiated between independent experts, States and us, indigenous peoples, we deemed it important to disseminate this immediately. Since it will not be appreciated very much by our indigenous sisters and brothers if it is just in English we tried our best to get the Declaration translated into three major Philippine languages - Filipino, Cebuano and Ilocano. These are unofficial translations which are still works in progress. We hope to get comments and suggestions for improvement from those who speak these languages.

Aside from putting the Declaration in this booklet in English and the three languages, it will also contain this report which will present a historical background of work of indigenous peoples within the UN and an account of how this Declaration finally got adopted before the 61st Session of the UN General Assembly ended.

The beginnings of indigenous peoples engagement with the international community

The first attempt of indigenous peoples to reach out to the international community started as early as 1923 with the at-
tempt of Chief Deskaheh, the speaker of the Council of the Iroquois Confederacy, to get the League of Nations to address the Iroquois’ dispute with Canada. This was followed in 1925 by W.T. Ratana, a Maori leader, who wanted to bring the violations against the Waitangi Treaty by New Zealand. They were not given an audience by the League but the fact that they sought this was already an assertion that indigenous peoples are subjects of international law. With the establishment of the United Nations in 1945 and with human rights being one of the key foundational elements of its Charter, the justification for indigenous peoples’ engagement with the UN was strengthened.

The International Labour Organization was the first multilateral body which managed to adopt a Convention addressing indigenous peoples. This was Convention No. 107 Concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries which was adopted in June 26, 1957. Unfortunately, this took a paternalistic and assimilationist approach. Its solution to the indigenous problematique was to integrate indigenous peoples into the dominant society and within the dominant development model. To rectify this, the ILO, with pressure from indigenous peoples, proceeded to revise this and in 1989 it adopted the ILO Convention 169 Concerning Indigenous and Tribal Peoples in Independent Countries. This has been ratified by 20 countries, most of which are in Latin America with only two in Asia-Pacific.

ILO Convention No. 169 has already been used in several cases or complaints filed by indigenous peoples against their governments before the Inter-American Court of Human Rights, the Human Rights Committee and the Committee on the Elimination of Discrimination. In the Philippines the campaign to get this ratified by the government continues. Spain and Nepal are the countries which just ratified it this year.

The Martinez Cobo Study and the International Conference on Discrimination Against Indigenous Peoples in the Americas

Meanwhile, indigenous peoples started working on the UN to address their issues. In 1971 the UN Economic and Social
Council authorized the UN Sub-Commission on the Prevention of Discrimination and Protection of Minorities to undertake a study on the “Problem of Discrimination Against Indigenous Populations.”¹ The Special Rapporteur, Mr. Martinez Cobo, came up with a series of partial reports between 1981-83 and the final paper which contains the Conclusions and Recommendations was released in 1986. This report, popularly known as the Martinez Cobo Study, became the major UN reference document on indigenous peoples.

On 20-23 September 1977 the NGO Subcommittee on Racism, Racial Discrimination, Apartheid, and Decolonization held the “International NGO Conference on Discrimination Against Indigenous Populations in the Americas” at the Palais des Nations in Geneva. Around 400 persons participated of which 100 of these are delegates of 60 indigenous nations and peoples coming from 15 countries in the Americas. Observers from 38 member states of the UN took part as well as UN agencies like the UNESCO and the ILO. This was the first major event which took place in the UN with a massive participation of indigenous peoples. This conference came up with a Declaration which called on the UN to set up a body which will address the violations of indigenous peoples rights. This echoes a recommendation made by the Martinez Cobo study.

The UN Working Group on Indigenous Populations (UN-WGIP)

The UN Working Group on Indigenous Populations² (UN-WGIP) was established in 1982 and held its yearly session until last year, 2006. This is an expert body which consists of 5 independent experts, none of which are indigenous. Year by year the number of indigenous representatives participating in this body increased and at its peak, the number reached 600. This body was mandated to review developments concerning indigenous peoples and to work towards the development of international standards on indigenous peoples’ rights. Since then, indigenous representatives occupied this space and actively participated in drafting the UN Declaration on the Rights of Indigenous Peoples. The WGIP provided the opportunity for us, indigenous peoples, to come together not just to make state-
ments at the Working Group but to consolidate our own movement at the global level.

From Asia, the first indigenous peoples represented in 1982 were the Igorots of the Cordillera Region in the Philippines and the Jummas of the Chittagong Hill Tracts in Bangladesh. The Igorot who participated in 1982 was Joji Carino. After the Cordillera Peoples’ Alliance was established in 1983 it participated in most of the sessions. Personally, my participation was in different capacities. First as a representative of the Cordillera Women’s Education and Resource Center, then as the Chairperson of the Cordillera Peoples’ Alliance and finally as a representative of Tebtebba.

It was in 1985 when the UN-WGIP decided to work on a “Draft Declaration on Indigenous Rights.” In the process of drafting the Declaration substantial dialogues between us, the experts and the states took place. This became the global forum where we discussed extensively our worldviews, justified why our rights to our ancestral lands, territories and resources should be respected, that we as distinct peoples have the right of self-determination, why free, prior and informed consent has to be part of the Declaration, among others.

There were several Chair-Rapporteurs of the WGIP but the one who stayed on the longest when the draft was being made, was Madame Erica-Irene Daes. The drafting finished in 1993 and was submitted to the UN Sub-Commission on the Prevention of Discrimination and Protection of Minorities. The Draft consisted of 19 preambular paragraphs and 45 operative articles. This body adopted the Draft in 1994 and submitted it to the Commission on Human Rights.

**UN Working Group on the Draft Declaration**

Since the WGIP is not an intergovernmental body, but just an expert body, the Draft it made has to be negotiated between governments before it can be finalized as a text that is agreed upon by States. Thus, the Commission on Human Rights set up the “Working Group established in accordance with Commission on Human Rights resolution 1995/32 of 3 March 1995” to further elaborate and negotiate the Draft. Since the name of this Working Group is too long, we call it the Working Group on the
Draft Declaration (WGDD). This Open-ended Intersessional Working Group had its first session from 20 November to 1 December 1995 and completed its work at its 12th Session in February 3, 2006. The first Chair-Rapporteur was Ambassador Jose Uruttia of the Government of Peru. He only stayed for the 1995 session and Luis Enrique Chavez Basgoitia, also from the Government of Peru, took over.

When this body first met in 1995 it had to work out its procedures and the first issue was whether indigenous representatives are allowed to have a voice in the meetings. The initial view of the States was no because this is now an intergovernmental process. We rejected this view and walked out of the process with the threat not to come back unless they agree that we have an equal voice as the governments. The Indigenous Caucus made a statement saying that any Declaration on the Rights of Indigenous Peoples which will come out of the UN will only have legitimacy if we, who are the subjects of the rights, are part of the drafting process. The States who are members of the UN Commission on Human Rights met and agreed that they will let us have a voice in the negotiations. So in all the sessions, we were allowed to speak in equal terms as the States.

When the negotiations started, the indigenous caucus position was that we will only push for the original draft as adopted by the Sub-commision. So year in and year out we went to the meetings and asserted that the original paragraphs should be adopted and we gave the justification why this was so in each article being discussed. In November 1997, two article were provisionally adopted. These were Article 5 (indigenous individual has the right to a nationality) and 43 (all rights and freedoms are equally guaranteed to male and female individuals). As these are referring to individual rights there was no controversy.

The pace was so slow as indigenous representatives kept asserting the “no change” stance, which meant that the WGDD can only adopt the Sub-Commission text. The States, on the other hand, started raising issues with the original text. For instance, the US refused to accept the term “indigenous peoples” without qualifying it by saying the use of the term “cannot be construed as having any implications as to rights under international law.” This is language from the ILO Convention 169 and also the Durban Declaration and Programme of Action of the World
Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance. Most of the articles were unacceptable to some States as these referred to collective rights which they thought were against International Human Rights Law which are basically about individual rights. Thus, they questioned whether we have the right to self-determination (Article 3), whether our rights to lands territories and resources are part of our right of self-determination, among others. One of their fears was that with the right of self-determination, indigenous peoples can justify secession which would damage State Sovereignty and Territorial Integrity. We questioned the validity of their positions using existing international human rights law.

Proposals for Changes in the Draft

By 2002, eight years after the WGDD started its work, some friendly governments led by Norway came up with a proposal to include a reference on territorial integrity which comes from the 1970 Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations. This can allay the fears of States. Some governments were comfortable with this proposal while others were not. Indigenous representatives had divided views. Some were of the view that by accepting this we were already going against the “no change” position of the Caucus.

Others thought that if we would not move to accommodate some changes, the negotiations would come to an end and we would lose our chance of getting a UN Declaration on our rights.

We were also made aware that the Commission on Human Rights could not continue to support a process which does not seem to have prospects of ending with an outcome. In fact in 2000, the CHR made a decision (2000/19) which set five years as the specific time-frame for a working group to finish its task. The WGDD had been going on for eight years already, so we had to work harder to come up with agreements.

By this time, some of us in the caucus decided that a “no change” position was untenable and so we had to show some flexibility. Since the only position put forward has been a global
caucus position, the regions asserted that they would like to also present their own positions. The Arctic and Asia indigenous peoples’ caucuses came out to say they can consider some changes as long as these would not undermine the most fundamental rights such as self-determination and rights to land, territories and resources. With the regions becoming the center of decision-making, the global caucus was not anymore used by some indigenous representatives to impose the “no change” position.

During the 61st Session of the Commission on Human Rights, the International Indian Treaty Council initiated a process to call for a recess of the WGDD. Without consulting the regional caucuses, it sent a letter to the President of the Commission on Human Rights, Ambassador Makarin Wibisono (Indonesia) dated March 15, 2005 asking the Commission to adopt the Sub-Commission Text and if this was not possible, then they would support the CHR to call for a pause or recess in this process in order to take effective steps that would make the chances of success much greater. This recess will provide the Commission on Human Rights, beginning at this session, with the opportunity to establish, in full consultation with Indigenous Peoples,…

I was present at the Session where the IITC was pushing for this, although they did not inform me of what they were up to. I found it unacceptable that a major step such as this was being taken by a group of indigenous persons without bringing it to the attention of the other regions. If it was presented before the indigenous caucus during the previous WGDD and there was a chance to discuss it, then this would have been a different story. I thought this was political suicide for indigenous peoples as many governments who were against the Declaration would jump on this and support it. So I sent out an alert to other indigenous colleague and, together with the Saami Council led by Mattias Ahren, mobilized to get other views from indigenous peoples in other parts of the world. The result of this was a joint letter addressed to the President of the CHR stating that what was sent by the IITC was just one view. Many other indigenous
peoples’ organizations from other parts of the world do not agree that a recess should be called because this would bring a lot of uncertainty on the future of the Declaration. This was distributed widely to all the governments. The IITC tried to get a State to sponsor a resolution on this but they did not succeed. Several organizations, like the Grand Council of the Crees and the Inuit Circumpolar Conference, sent their joint letter to the President of the CHR protesting against this proposal. In the end, the proposal was killed.

Human Rights Council Adopts the Declaration

Between 2003 to 2005 there were already movements towards revisions in some articles. In 2006, the Commission on Human Rights ended its existence and was replaced by the Human Rights Council. The WGDD held its 11th and last session in December 2005 and it requested for an extension in 2006 so it could complete its work. The Chairman came up with a draft which we would be working on when we come back the next year. The last day of the WGDD-extended 11th session was February 3, 2006. There was still no complete agreement on the full text but most of the articles were more or less acceptable to most States and indigenous representatives. The Chairman was then asked to complete the text and have this circulated before it would be brought before the First Session of the Human Rights Council.

To prepare the ground for a favorable vote at the Human Rights Council, indigenous representatives started lobbying states during the 2006 session of the UN Permanent Forum on Indigenous Issues (UNPFII) which was held the last two weeks of May. I was already the Chair of the Forum by that time and we came up with a strong recommendation that the Human Rights Council adopt the Declaration and also that the 61st Session of the General Assembly also adopts it. The Human Rights Council had 47 member states so we had to lobby each and everyone of these states.

During the Human Rights Council, we were very apprehensive on which way the votes would go. The States in which we had confidence that will deliver the yes votes were those from Latin America and the European Union. We were not sure
about Asia and Africa. The burden of lobbying States from the regions rested with the regional caucuses. So in Asia, we tried our best to talk with the governments. The Philippines, whom I was expecting to vote yes, abstained in spite of our efforts to convince them.

On 29 June 2006, the Declaration, through Human Rights Council Resolution 2006/2, was adopted through a vote: 30 voted yes, 2 voted against (Canada and Russia) and 12 abstained. This was the first major victory for us.

For this we expressed our thanks first to, indigenous peoples, of course, because we did not lose hope that this would happen one day. We also thanked the governments who voted yes and those who played key roles in convincing other governments to vote yes. Among these were Peru, Mexico, Guatemala, Norway and Denmark. The Chair of the 1st Session of the Human Rights Council was Ambassador Luis de Alba of the Government of Mexico. His government sponsored a meeting in Patzcuaro, Michoacan, Mexico in September 2005 which brought governments and indigenous peoples together to bridge their differences. This was through the work of Xothchil Galvez, the head of the National Commission on Indigenous Peoples’ Development of Mexico. She is an indigenous person herself. Through the whole HRC session, she was also there lobbying other governments to vote yet. We also thanked Luis Enrique Chavez, the Chairman-Rapporteur, who was able to bring the WGDD to a successful conclusion with a text on the Declaration. Finally, we thanked the support NGOs like the International Workgroup on Indigenous Affairs (IWGIA) which accompanied us in this whole journey.

Back to the Philippines

When I came back from the HRC session, Tebtebba together with other organizations of indigenous peoples, held an activity to celebrate the International Day of the World’s Indigenous Peoples. This was held from 7-9 August 2006 at the SEAMEO-INNOTECH in Diliman, Quezon City, Philippines. We invited representative of indigenous peoples’ organizations from all over the country, representatives of government agencies, NGOs, the UN and other multilateral bodies like the Euro-
pean Union and the Asian Development Bank and members of Congress. I told the story on how the Declaration got adopted by the HRC and discussed the contents of the Declaration. We also shared the Second Decade of the World’s Indigenous Peoples Programme of Action. The abstention of the Philippine government was decried by the indigenous participants. A strong request was put before the government agencies and the members of Congress to push the government to vote yes when the Declaration is put for adoption by the General Assembly.

On August 9, the Chair of the National Commission on Human Rights, Hon. Purificacion Quisumbing invited me to meet with government agencies whom she invited. She was present at the HRC shortly before the Declaration was adopted and promised me that when we were back home, she would organize a meeting with the various government agencies to discuss the Declaration. This meeting was attended by the members of the National Commission on Human Rights, representatives of the Department of Foreign Affairs (Section on the UN and Other International Organizations), Office of the Solicitor General (OSG), National Commission on Indigenous Peoples, among others. The OSG, which penned the legal opinion on why the Philippines should abstain, explained their position. The Department of Foreign Affairs also spoke up. Chair Quisumbing demolished the arguments made by the OSG and all the Commissioners spoke up to say they thought that the Philippine Government should vote for its adoption at the General Assembly.

In the meantime, the National Commission on Indigenous Peoples prepared an en banc resolution asking the Philippine Government to adopt the Declaration. This was presented to me as the Chair of the Permanent Forum at the gathering we organized. According to the then Chair of the NCIP, Janette Cansing Serrano, they were going to work on this. A few months later, there was a budget hearing in Congress for the NCIP. Just before their turn came, the Department of Foreign Affairs Budget was being heard. She invited several Party-List representatives, Rafael Mariano and Riza Hontiveros, to question the DFA on why they abstained during the adoption of the Declaration in Geneva. They asked them to explain why their budget should be approved when they were going against a Declaration which
was consistent with the Indigenous Peoples’ Rights Act (IPRA), a legislation passed by Congress. A short recess was called and the DFA had a caucus among themselves. They came back and committed that they would vote yes when the Declaration would come up for adoption at the General Assembly. Serrano reported this to me so I got assured that there would be no problems during the GA, as far as the Philippines was concerned.

61st Session of the General Assembly: September – December 2006 session

The HRC-adopted Declaration was brought before the 61st Session of the General Assembly, in particular, in its September to December 2006 session. The Global Indigenous Caucus held strategy meetings to talk about the lobbying activities. There were apprehensions about the fact that this would be brought before the Third Committee (Social, Humanitarian and Cultural Committee) of the General Assembly. This was the Committee which could reopen the Declaration and amend it. The Human Rights Council wanted the resolution on the adoption of the Declaration to immediately go to the Plenary without passing through the Third Committee. In the end, this was still brought to the Committee.

The date for the discussion of the Declaration was set for November 28, 2006. There was news that the Africans were not happy with the Declaration and that they might table an amendment to the resolution of Peru and other co-sponsors calling for the adoption of the Declaration. They claimed that it was the first time for most of them to see the Declaration so they needed time to discuss this among themselves and also in the capitals. This made the co-sponsoring governments and the indigenous caucus worried. Indigenous representatives tried to get to the African governments to talk with them but they were not interested. They had the view that this was a negotiation between member-states of the UN and not between them and non-state actors.

Before November came, some of us paid visits to the Permanent Missions of Asian governments like that of China, the Philippines, Indonesia to ask how they would respond to the African position. It was obvious to us that if Africa will, indeed,
table a resolution it will be difficult for Asian countries to oppose them. We were advised that we should work hard to clarify with the Africans their doubts and encourage them to support the adoption.

In a document dated October 31, 2006, the government of Peru and a number of co-sponsors tabled a draft resolution A/C.3/61/L.18. This resolution called on the General Assembly to adopt the UN Declaration on the Rights of Indigenous Peoples, as adopted by the Human Rights Council on June 29, 2006. This was formally introduced at the 37th meeting of the Third Committee on November 2.

Then on November 28 at the 53rd meeting of the Third Committee, Peru, again with the same co-sponsors but with Albania, Andorra and Malta joining, introduced an amended version of the earlier draft resolution (A/C.3/61/L.18/Rev.1). This contained some changes to accommodate some of the concerns of the African Group of States.

Deferral of the Adoption of the Declaration

In spite of this, though, Namibia, on behalf of the Group of African States still presented an amendment to the amendment (resolution A/C.3/61/L.57 - Peru’s resolution.). This is to “defer consideration and action on the United Nations Declaration on the Rights of Indigenous Peoples to allow time for further consultations.” Peru then withdrew its resolution. Then at the 57th Meeting on December 3, the Chairman of the Committee then presented the Draft Resolution which would be presented to the General Assembly which reads;

Draft resolution II

Working group of the Commission on Human Rights to elaborate a draft declaration in accordance with paragraph 5 of General Assembly resolution 49/214 of 23 December 1994

The General Assembly,

Guided by the purposes and principles of the Charter
of the United Nations, in particular the principles of self-determination of peoples, respect for the territorial integrity of States and good faith regarding the fulfilment of the obligations assumed by States in accordance with the Charter,

Taking note of the recommendation of the Human Rights Council contained in its resolution 1/2 of 29 June 2006,1 by which the Council adopted the text of the United Nations Declaration on the Rights of Indigenous Peoples,

Recognizing that the situation of indigenous peoples varies from country to country and from region to region,

1. Expresses its appreciation to the Working Group of the Commission on Human Rights for the work done in the elaboration of a draft declaration on the rights of indigenous peoples,

2. Decides to defer consideration and action on the United Nations Declaration on the Rights of Indigenous Peoples to allow time for further consultations thereon;

3. Also decides to conclude its consideration of the Declaration, as contained in the annex to the present resolution, before the end of its sixty-first session.

The Africa group also released a Draft Aide-Memoire in November 9 which contained their concerns with the Declaration and this included, among others, definitions of indigenous peoples, self-determination, rights to lands, territories and resources, establishment of distinct political and economic institutions and national unity and territorial integrity. On the basis of these concerns, they proposed that a deferment on action on the Declaration for one year be taken to allow time for these to be addressed.

In November 28, 2006, the draft Namibia Resolution to defer the adoption was passed through a vote at the Third Committee. Eightytwo (82) voted yes, 67 voted no and 25 abstained.7 This was a terrible day for the indigenous peoples. This was not what we expected at all. We thought that because this is one of the two standard-setting instruments adopted by the Human
Rights Council in its First Session, the General Assembly would adopt it without much fanfare. We could not imagine that the General Assembly would behave this way.

Obviously, we were wrong with our projection. The various regions came up with statements condemning the Africa States for their action. As Chair of the Permanent Forum, I also came up with a statement during the International Human Rights Day, December 10, stating that there was nothing to be celebrated because the General Assembly failed in its responsibility to recognize indigenous peoples’ rights when it deferred the adoption of the Declaration.

Those who voted with the Africans from Southeast Asia were Brunei, Indonesia, Myanmar, Singapore and Thailand. Indonesia behaved strangely because it voted yes at the HRC but voted with the Africans for the deferral. This time, the Philippines abstained.

Role of the African Commission on Human and Peoples’ Rights

The co-sponsoring governments for the adoption and the indigenous peoples had to recover from this defeat and start picking up the pieces again. As the resolution of Namibia still says that the Declaration should still be adopted before the end of the 61st Session of the GA, there was still time to repair this damage and still attain the objective of getting the Declaration adopted. The end of the 61st Session is September 17, 2007. One of the things which should be done is to change the position of the African Group of States. While there might be a possibility to win the votes if we work hard on those who abstained on the Namibian Amendment, this was going to be a high risk proposition.

The Africans were able to get the Assembly of Heads of State and Government of the African Union to concur with the resolution passed at the GA. Because of this, the African Commission on Human and Peoples’ Rights (ACHPR) prepared an Advisory Opinion which responded to the concerns raised in the Aide-Memoire of 9 November 2006. This was given to the governments with the hope that this would allay some of the concerns raised and will help lead towards the adoption of the
Declaration. This was the result of the work of the African Commission Working Group of Experts on Indigenous Populations/Communities. This Working Group had done a study on the concept of indigenous populations in the African Continent and the report on this was adopted by the ACHPR in its 34th Ordinary Session in November 2003.

The ACHPR advisory opinion tackled the concerns one by one. I will not go into all of these but just to give an example, this is what it said on the concern on the lack of definition of indigenous populations.

From the studies carried out on this issue and the decisions it has made on this matter, the ACHPR is of the view that a definition is not necessary or useful as there is no universally agreed definition of the term and no single definition can capture the characteristics of indigenous populations. Rather, it is much more relevant and constructive to try to bring out the main characteristics allowing the identification of the indigenous populations and communities in Africa.8

In spite of this, the Africa Group prepared their amendments which they released in May 2007. There were around 36 changes which effectively would mangle the whole Declaration. Indigenous peoples condemned these as discriminatory. There was not much movement between January to May except for this.

The African Indigenous Peoples’ Caucus decided that the Experts of the African Commission Working Group on Indigenous Populations, together with a few indigenous representatives8 should go to New York to lobby the African delegations based there. With the support of IWGIA, this trip materialized on April 28 – May 4, 2007. They were able to visit many Permanent Missions of the African countries and a roundtable was also held where they had a discussion with African and other governments.

6th Session of the Permanent Forum on Indigenous Issues

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Before the 6th Session of the Permanent Forum, there were some regions which held their preparatory meetings for the session. Asia was one of these which held their meeting in Cambodia in April. In this meeting, we discussed the situation regarding the Declaration and tasked each of the representatives from all the countries who attended to do their share of the work in terms of lobbying their governments. We specifically made a resolution addressing the President of Indonesia as AMAN, the National Federation of Indigenous Peoples’ Organizations in that country, will hold their General Assembly. They would like to present their own resolution and the regional one to the President. Among the countries singled out for special attention were Indonesia and Thailand, because they voted yes for the Namibia Amendment. Laos, Cambodia and Vietnam were also included as they were absent during the HRC adoption in Geneva.

Indigenous peoples renewed their lobbying efforts and during the 6th Session of the UN Permanent Forum on Indigenous Issues in the last two weeks of May, strategy meetings were held. The African indigenous representatives were urged to do more work with their governments so that in the next round they would vote for the Declaration. The aim was still to get the GA to adopt the UN Human Rights Council Text.

The Permanent Forum invited the President of the 61st Session of the General Assembly, Ambassador Sheikha Haya Rashed Al Khalifa (Bahrain), the President of ECOSOC, and the President of the Human Rights Council, H.E. Ambassador Luis de Alba (Mexico) to speak at the opening plenary session. This was an opportunity to get their commitments for the adoption of the Declaration before the indigenous representatives who were in the session. In my opening statement as the elected Chair for the 6th Session of the Forum, I appealed to the member states of the ECOSOC, especially to the African Group of States, to support the adoption.

Many of the indigenous representatives who intervened also said the same. Some of the States who co-sponsored the resolution for adoption at the Third Committee spoke up to say that they would do all they can to make sure that this happens. The Forum reiterated its 2006 recommendation that the Declaration be adopted before the 61st Session ends as this will be an important framework for the work of the Forum. While the Fo-
rum was meeting, the indigenous peoples used their time to keep talking with the governments. The Arctic representatives, for instance, met with the European Union and the Pacific caucus met with the Pacific States. There were dinners organized by the Quakers of Canada which brought the indigenous representatives and the African Group of States and the Asian States together.

Some of the regional coordinators of the Caucus met with the President of the General Assembly to express our concern about the fate of the Declaration and to impress on her that she should do all she can to ensure that this be adopted during her Presidency. If this happens, the indigenous peoples will forever remember her. She told us that since nothing has moved in relation to the informal consultations held so far, she was going to appoint a facilitator to try once more to bring together governments, informally, to agree on the changes. The Secretariat of the Forum helped set up the meeting with the President and also the press conferences where we did not only talk about the Forum issues, but also to appeal to governments to support the adoption.

Appointment of Ambassador Davide as the Facilitator

There were a lot of speculations on who would be appointed as the facilitator. Guatemala told us that President was considering Bahamas or Singapore. This did not look good as these countries were not interested at all in the Declaration. But it seemed nobody really liked to be in this position. By June 6, the President came out with a letter appointing Ambassador Hilario Davide of the Philippines to be the facilitator. He was instructed to conduct informal consultations and then to come back with a report on July 15.

In the meantime the Steering Committee of the Indigenous Peoples’ Caucus requested Les Malezer, who was chairing the Global Caucus, to make provisions to stay in New York from June until the Declaration is adopted. We needed a person who can be an anchor in New York to monitor developments and to constantly speak with the States. He agreed to do this and so he based himself there by mid-June 2007. We agreed that some of us would try to be in New York for some days or weeks to be
with him and help him.

Since the facilitator was the Philippine Ambassador, as a member of the Steering Committee from Asia and from the Philippines, I scheduled some meetings with him and his technical expert, Ivy Banzon, from the Philippine Permanent Mission. I flew to New York at the end of June to help Les Malezer. There was an information that some of the co-sponsors were asking what my position as the Chair of the Permanent Forum is and some members of the Steering Committee felt that I had to go to New York to meet with some of them. So instead of going to Salekhard, Russia where the Permanent Forum was having a meeting, I had to make a decision to reroute and fly to New York instead. Les Malezer and I met with several delegations on a one-on-one basis. We met with Mexico, Guatemala and Libya. I met with Ivy Banzon who briefed me about the results of the consultations Ambassador Davide held with various groups. Amd. Davide met with the African group of States, then combined them with the co-sponsors and they also held meetings with Canada, Australia and New Zealand. The indigenous peoples asked that he also holds a meeting with them which also took place. Davide invited the indigenous caucus to a meeting he was holding with governments. When they were all in the room, the Russian Federation complained that non-state actors were in the room. So, as per General Assembly ruling that if a member state complains, then a decision has to be made to let these non-state actors leave. After this government meeting, Davide still met with the indigenous caucus to brief them on the situation.

I had to go to Geneva to attend the ECOSOC Functional Commissions Meeting which was scheduled July 10. The Permanent Forum on Indigenous Issues is a subsidiary body of the ECOSOC so it takes part in the meetings of the Functional Commissions. The Chair of this meeting was Ambassador Davide as he was one of the Vice-Presidents of the ECOSOC. After the ECOSOC session, I scheduled to meet with him. I and Mattias Ahren, a Saami from Sweden who is the co-coordinator for the Arctic Indigenous Peoples’ Caucus, went to meet him. He told us about his own assessment of the situation and he said that he was finishing his report to the President of the General Assembly. His conclusion was that there was no consensus that
can be reached. However, he said that States cannot complain anymore that they were not heard as he spent time hearing their concerns and discussing these with them.

The situation so far was that the position of the co-sponsors was still to stick with the Human Rights Council text, that the Africans were still pushing their 36 amendments and that Canada, Australia, New Zealand, Russia, Colombia, Guyana and Surinam (we call them the Group of 7) will present their own proposal which was to reopen the discussion around several themes. So he will say in his report that this was the situation and that he would propose a way forward which is to agree on a few amendments. He posed questions which should be asked to judge whether the amendments are acceptable.

- Does it represent a genuine effort to address the various concerns?
- Does it build on, and not undermine, the efforts and achievements of the process at the Commission on Human Rights and Human Rights Council?
- Does it preserve the purpose for the Declaration for indigenous peoples?
- Will it ensure that the Declaration does not fall below existing human rights standards?

In July 16, he submitted his report to the President of the General Assembly, thus ending his role as a facilitator. The Group of 7 met with him after the submission to present their amendments, requesting that these be included in his report. He said that his report was already submitted so he would just send these as an annex. By this time, we got the impression that the Africans no longer wanted to be seen as the bad guys so they were reaching out to the co-sponsors to see what they can work on. This was a major development in the process.

**The Strategy of the Global Indigenous Caucus Steering Committee**

The Global Indigenous Caucus Steering Committee continued to hold electronic discussions on the next steps should
be. We already got word that there were ongoing informal negotiations between the co-sponsors (led by Mexico, Peru and Guatemala) and the leaders of the African Group of States (Namibia and Botswana). So the developments around this was what we were closely monitoring. While the official position of the Caucus was still to push for the adoption of the Human Rights Council text, there were several of us who were open to see the amendments and to judge whether these were acceptable or not. We felt that the best chance that we would get the Declaration was to bring the Africans on board. It would be very difficult to bring the Middle East countries and the other Asian countries to support the adoption if the Africans would vote against it. To do this, we had to show good faith that we were willing to accommodate some of their amendments. But we still kept counting the possible votes we would get in case we insisted that the Human Rights Council text be adopted.

There were a few voices within the Caucus suggesting that maybe we should drop the plan to get this Declaration adopted by the General Assembly. We can just settle with the Human Rights Council version and implement it together with the 30 States who voted for it. The General Assembly can just note the existence of this Declaration and then it was up to indigenous peoples to use it as they wish. Mattias Ahren of the Saami Council wrote a long email stating his vehement disagreement with this option because there are 192 member-states of the General Assembly and only 30 voted for this in the HRC. Its legitimacy as an international instrument will be very compromised if this was the route we would take.

We were also monitoring the moves of Canada, Australia, New Zealand and Russia as they were doing their own moves to undermine the process and the Declaration. They submitted their amendments dated August 13, 2007 which were on 13 articles. Like the amendments of the African Group of States, these were totally unacceptable to the indigenous peoples caucus. One example of this was their proposal to change Article 26 (right to lands, territories and resources) to say that indigenous peoples “... may have rights to the lands, territories and resources which they have traditionally owned, occupied or used.”

The Group of 7 were not being consulted anymore by the co-sponsors as their concentration was with the Africans. We
also agreed with this move as we did not see any possibility of these countries changing their position to vote against the Declaration. We still might get Guyana and Surinam as the Latin American indigenous peoples were working on them. The indigenous peoples from Canada went all out to condemn their government who still took the hardline position inspite of the fact that it was a Minority government and the opposition in the Parliament made a stand to support the Declaration. We were not clear on what the US was doing but what we heard was that it was not actively lobbying. We surmised that Canada was already doing the work, so why should the US bother?

We decided that most of us should be in New York by the last week of August to monitor the developments and to make recommendations to the regional caucuses based on the possible amendments which will be agreed upon by the co-sponsors and African states.

To get the involvement of NGOs based in the United States, I worked closely with the International Forum on Globalization, of which I am the co-President, to work on this. The IFG organized a meeting in Washington in August where we, Les Malezer and I, met with almost 20 representatives of international NGOs based in Washington. It was there where we planned that we would hold a rally on August 30 before the Permanent Missions of Canada, Australia and New Zealand. This was to shame them publicly for their opposition to the Declaration.

This mass demonstration, which was organized by the International Forum on Globalization, took place in August 30 and we managed to get a group of around 50 persons who went to the Canadian Permanent Mission, the New Zealand Mission - which was just in front of the UN Building - and the Australian Mission on 42nd Street. The indigenous persons and NGO representatives from these countries were the ones who spoke. A joint letter from the NGOs were brought to the missions and at the Australian Mission, the Deputy Permanent Representative came down to receive the statement. Rainy Bluecloud, a young Mohawk activist who was hired by IFG was the one who mainly anchored this activity. Most of the indigenous representatives present in New York took part in this historic demonstration.
On 27 August 2007, the Steering Committee met for updates and to plan out what we will do while we were in New York. During this period, continuous negotiations were already taking place between Mexico, Guatemala and Peru on one hand, and the African Group of States represented by Namibia and Botswana on the other. We were being updated by Mexico, Guatemala and Peru on the developments and we set a meeting with them on August 29 to get the latest situation.

On August 30, just before the rally took place, I met Enrique Javier Ochoa Martinez, the lead Mexican negotiator, on the way to the UN. I asked him what the situation was and he said they stayed up late the night before because they could not yet come to an agreement on the Preambular Paragraph which says “Recognizing that indigenous peoples have the right on an equal basis with others freely to determine their relationships with States in a spirit of coexistence, mutual benefit and full respect.” The UK was not happy with this as they see it as recognizing that others also have collective rights. So I suggested that they strike this out as the essence of this has been said in other parts of the Declaration. He said that he would suggest this and he would inform us if they already have agreed. I assured him that the caucus won’t mind this. By 2:00pm, while we were in the rally, he called up and said that they finally agreed and there was now a text which they can present to us the next day.

The Global Indigenous Peoples Steering Committee prepared a very comprehensive account of what happened in the meeting with the co-sponsor group on the 29th of August and on the 31st. This report was sent to all the regional caucuses. Instead of recounting what happened, I will quote most parts of this report as this is a report of the body I was part of.


**Developments this week**

“On Tuesday, August 29, the co-sponsors met with the Steering Committee to report on their negotiations with the African Group. They reported that this has been a very difficult process, but that they were now very close to an agreement, however, a few details still need to be resolved. They did not
provide the Steering Committee with any of the language being discussed, and did not go into any details as to what the emerging agreement looked like. They assured us that the provisions on land, territories and resources, self-determination, free prior and informed consent and treaties remained intact but they have to agree to the insertion of a reference to state territorial integrity in the Declaration text. The co-sponsors thanked the indigenous peoples for putting a lot of pressure on the African States as this has definitely helped in bringing them to negotiate with them.

They further explained that they had no option but to enter into negotiations on the actual Declaration text as it is evident that it would be impossible to reach an agreement with the African Group if they did not consider some amendments to the Declaration text. Further, the co-sponsor group deemed it too risky to try to push the Declaration as adopted by the Human Rights Council through the General Assembly against the opposition of the African Group. To do so would seriously jeopardize the adoption of the Declaration and would ensure that very unfavourable amendments would be presented on the floor during the debate at the General Assembly. Hence, in the co-sponsor group’s assessment it was necessary to enter into text negotiations with the African Group.

The Steering Committee responded by expressing its gratitude for the co-sponsors’ efforts to reach an agreement on the Declaration. The Steering Committee further stated that it would not be in a position to comment on any agreement until they had been provided with the actual agreed text. The states responded that they would provide the Steering Committee with the agreed text as soon as a formal agreement with the African Group had been reached.

The co-sponsors further said that the momentum to have a Declaration adopted is strong at this time. An agreement between the co-sponsors and the Africa Group has to be reached in the next few days as the opposing states – predominantly Canada and New Zealand – are trying very hard to stop the coming into being of such an agreement. Pressure from the opposing states is reaching the heads of states of some of the co-sponsors. The forthcoming Asia-Pacific Economic Cooperation (APEC) meeting on 4-7 September 2007, which will be held in Australia and attended by heads of states from the CANZUS
(Canada, Australia, New Zealand and the US) group will be a fertile ground for such lobbying thus, the urgency of finalizing the agreement. The opposing states demanded to be included in the negotiations and that their proposed language (see attachment) also be considered. The co-sponsors expressed the opinion that if the deliberations on the Declaration are extended beyond the General Assembly’s 61st session, it would no longer be possible to keep Canada, New Zealand et. al – nor their proposed amendments - out of the negotiations. The outcome of such a process could only, in the co-sponsors’ opinion, be a seriously diluted Declaration.

The co-sponsor group also informed the Steering Committee that an agreement with the African Group would include a pact to jointly vote down any amendments on the floor of the General Assembly, coming from Canada, or other opposing nations.

The Chair of the Steering Committee distributed a document containing the amendments to the Declaration that he foresaw might be included in a negotiated agreement between the co-sponsor group and the African Group. Since these amendments were not confirmed, the Steering Committee decided not to distribute the document. It was considered better to wait for an official text before circulating the agreement in the regions.

Nevertheless, the Steering Committee discussed and analysed the amendments, as foreseen and presented by the committee Chair. The Steering Committee quickly concluded that of the envisioned amendments, the one that caused the most concern was the inclusion of a reference to territorial integrity in Article 46. The committee understood that it would be nearly impossible to avoid a reference to territorial integrity in the Declaration. It is evidently too important to many African (and also Asian) states. Some committee members, however, thought that the proposal was discriminatory, and potentially could be harmful to Indigenous peoples and the rights in the Declaration. Other committee members did not see any problem with the proposed language as this is standard language in most international instruments and this is balanced and safeguarded with several clauses in the various parts of the Declaration.

Given that an agreement between the co-sponsor group
and the African Group was imminent, the Steering Committee recognized that it would be very difficult, probably impossible, to influence the text amendments at this stage. Some committee members thought that the language on territorial integrity, if it had to be included, should be stated in a way that was more consistent with texts that already exist in international law. The committee decided to make an attempt to craft language on territorial integrity to be handed over to Mexico for use in the final negotiations with the African Group. Two paragraphs with suggested wording along those lines were drafted to present to the co-sponsors without delay.

On the evening of August 29, the Chair of the Steering Committee together with the Chair of the Permanent Forum, and also regional member of the Steering Committee, Victoria Tauli-Corpuz met with the co-sponsors and presented the committee’s suggested wording for improvements on the language on territorial integrity.

The Co-sponsor/ Africa Agreement

On the afternoon of August 30, the government of Mexico informed the Steering Committee that the co-sponsor group and the African Group had reached an agreement on the Declaration. On August 31 the co-sponsors met with the Steering Committee and presented the text of the negotiated agreement, which contained nine changes to the Declaration as passed by the Human Rights Council.

Committee members first expressed gratitude to the co-sponsors for all their efforts and for being able to successfully reach an agreement with the African Group. The Steering Committee stated that Indigenous peoples in the seven regions would now study the agreement, and come back to the co-sponsors with their position. Since time is short, it was decided that the committee would meet with the co-sponsors after the regional consultations and report back indigenous people’s positions on the Declaration with the negotiated changes.

Responding to questions and concerns from members of the Steering Committee, the co-sponsors offered the following information about the agreement:

- In their view this is the final document. The African Group has committed to not come forward with any
further request for additional amendments to the Declaration and has agreed to vote against any amendments made on the floor.

• The co-sponsors were satisfied that they had managed to reach an agreement with the African Group that includes amendments to very few of the provisions in the Declaration, in particular compared to the long list of amendments that the African Group initially wanted to see included in the Declaration. The co-sponsors further stated that they were very pleased to present an agreed Declaration that leaves all – in their opinion – the most central articles in the Human Rights Council Declaration intact. These include the articles on self-determination; lands, territories and natural resources; free, prior and informed consent; treaties; and preambular paragraphs recognizing inherent and equal rights of Indigenous peoples.

• The co-sponsors stated that even though technically speaking it is not a closed document, that in their view it would not be possible to open up the negotiated text for any further amendments without other interested parties – such as opposing states like Canada, New Zealand and the Russian Federation – also being invited to the negotiating table.

• They further stated that the agreement must be seen as an integrated whole or “package”. This means that if the co-sponsor group would go back to the African Group and attempt to re-negotiate the language on territorial integrity, the African Group would instantly respond by wanting to open up the articles on lands and natural resources for negotiation, which are unchanged from the Human Rights Council text. Hence, in the co-sponsor group’s opinion, it is not a viable option for Indigenous peoples to try to further amend the agreed changes as presently drafted. Their interest now is to know whether Indigenous peoples can accept the Declaration or not with the newly negotiated changes.

• They repeated what has always been the case: that the
co-sponsors will not go ahead and push for adoption of a Declaration that Indigenous peoples do not want. They said that this amended text should be analysed from a political lens than from a legalistic lens.

- If a Declaration that enjoys the support of the African Group is presented to the UN General Assembly, the co-sponsor group is certain that the vast majority of Asian, Eastern European and Caribbean states will also support the Declaration. Western Europe and Latin America’s votes have already been secured. If the Indigenous peoples of the world support the adoption of the Declaration as agreed to by the co-sponsors and the African Group, the co-sponsors believe it will be adopted by the UN General Assembly with overwhelming majority. (Currently there are 67 co-sponsors plus the 53 countries of the African Group which adds up to 120 votes. This is a clear majority as there are a total of 192 members of the General Assembly).

Discussions regarding changes to Article 46 and “territorial integrity”

The co-sponsors were well aware that many Indigenous peoples had argued for many years against the inclusion of a provision upholding state territorial integrity in the Declaration. They explained that they understood that this might be the most difficult provision for Indigenous peoples to accept in the newly negotiated text. They also once again expressed that an agreement with the African Group would not be possible without this inclusion.

Members of the Steering Committee again asked the co-sponsors why their suggested wording on territorial integrity had not been included in the final agreed changes. The co-sponsor group responded that it was not possible to include the language on territorial integrity submitted by the Steering Committee, because it would have lead to the African Group insisting on opening up the land and resource articles for changes. They were also asked if the opening phrase of Article 46 which says “Nothing in this Declaration may be interpreted as implying...” would affect all the rights in Declaration. The co-sponsors said that in existing international law, territorial integrity
is clearly tied to the exercise of the right to self-determination and therefore would not be construed as affecting other rights. They further added that the reference to the Vienna Declaration and Programme of Action in the preamble would reaffirm this.

In further discussions, members of the Steering Committee responded to concerns expressed for Indigenous peoples’ territorial integrity by affirming that in their view Article 26 left intact in fact recognizes Indigenous peoples’ territorial integrity over lands they have traditionally owned and occupied. Article 37 on treaties further affirms these rights. They also agreed that the reference to the Vienna Declaration and Program of Action will be an additional safeguard clause.”

Feedback from Indigenous Peoples’ Organizations from the Regions

This letter quoted above was sent to all the members of the various regional caucuses which came with the Amended Text of the Declaration (9 changes) which highlighted the changes from the HRC Text; the Canada/New Zealand/Russia/Colombia Proposals (20 changes, Aug. 13, 2007); and the original Africa Proposed Amendments (36 changes, May 2007). These additional attachments were sent for them to compare what was finally agreed upon with the earlier proposals. The instruction was that they should send back their position not later than September 4, at 12 noon, New York time. The regional coordinators were in charge of sending out the information and receiving the responses from their regions. Then the Steering Committee will meet on Sept. 5 to consolidate the results. I prepared one for Asia, as I was the only one left again in New York after Joan Carling of the Cordillera Peoples Alliance, who stayed for the first week, had to leave. Different modes were adopted. I mainly sent this through email and asked my office in the Philippines to call those who were not responding. The North American caucus and Latin America did conference calls in addition to the emails.

The time given was short because we already knew that the Declaration would be presented before the General Assembly on 13 September 2007. By September 5, we will have to inform the co-sponsors if the indigenous caucuses agree with the
changes. Then this has to be translated into the six UN languages. All the caucuses, except the North American caucus (mainly the US groups), had a consensus that they accepted the amendments. The few indigenous organizations in the US who did not accept the changes said they would not block the consensus. All the Asia indigenous peoples’ organizations from 11 countries which I emailed replied positively that they would accept the amendments. The Steering Committee met in September 5 to get the regional reports.

The next day, 6 September, we held a press conference at the UN Press room. Those who spoke were Les Malezer, the Chair of the Global Caucus and the Co-coordinator for the Pacific, Joseph Ole Simmel the Co-coordinator for Africa and I, as the Chair of the Permanent Forum and the Co-coordinator for Asia. Before the press conference I also consulted with my colleagues in the Permanent Forum whether they agreed with the changes in the text. Most of them emailed back saying they did; and so I stated in the press conference that it was not just the Asia Indigenous Peoples’ Organizations who supported the amended text but also most of the members of the Permanent Forum.

We met with the co-sponsors on 7 September to inform them of the consolidated position. We also looked at the draft resolution that they were going to present. This was a simple resolution saying that it takes note of the HRC adoption of the Declaration and then calling on the General Assembly to adopt the Declaration (revised version) annexed to the resolution. They assured us that the Africans will not put any amendments nor will the Canadians. It will be put to a vote but they are confident that we will get the majority.

The Historic Day, September 13, 2007

Between the 7th to the 12th of September, we spent the time preparing our regional caucus statements. I prepared the Asia Indigenous Peoples’ Regional Caucus Statement and my own statement as the Chair of the Permanent Forum. The co-sponsors suggested that I, as the Chair, and Les Malezer should speak before the General Assembly when the Declaration is adopted. I suggested this to Elsa Stamatopoulou, the Chief of
the Secretariat of the Forum. She said this was a difficult challenge because it was not the practice of the GA to allow non-state members to speak, especially if this was a UN body. Anyway, she said that she will do what she can. She wrote the General Assembly Secretariat who finally answered after a few days saying that we can speak, but only after all the governments have spoken. There will be a recess called for the formal session and the GA will go into informal session. Then I and Les can speak.

On this day there, were many indigenous representatives who came from Canada and the US to witness the event. The Secretariat of the Forum arranged with the GA secretariat that the regional coordinators and other indigenous representatives would have a seat at the main floor of the GA Hall. The others will be at the Public Gallery. Some of those involved in the drafting of the Declaration from the beginning were there. These were Professor James Anaya of the University of Arizona and Tim Coulter of the Indian Law Resource Center, among others. John Henriksen of the Saami Council was also present. He was the one who recommended at an early stage of the WGDD that a reference on territorial integrity be included as the States will never accept a Declaration without this. He was vilified by other indigenous organizations for this proposal but it turned out he was right after all. Many Chiefs from Canada were present which included Phil Fontaine, the Grand Chief of the Assembly of First Nations.

From the side of the Philippine government, I communicated with Mr. Eugenio Insigne, the Chair of the National Commission on Indigenous Peoples in the Philippines, to ensure he will be able to come. We spoke before I left for New York and I encouraged him to come to New York to attend the session when the Declaration will be adopted. He agreed and he worked on this. He arrived exactly on the 13 morning and he was able to enter the GA Hall just as the session was starting.

The agenda item on the Declaration was the 6th and last item for that day. However, by 11:00am, the rest of the agenda items were done, so the President opened Agenda Item 6. The Resolution was presented by Luis Enrique Chavez, the Chairman-Rapporteur of the WGDD, who is now based in the Permanent Mission of Peru in New York. He mentioned the additional
co-sponsors for the resolution (A/61/L.67). The original co-
sponsors were Belgium, Bolivia, Costa Rica, Cuba, Denmark,
Dominican Republic, Ecuador, Estonia, Finland, Germany,
Greece, Guatemala, Hungary, Latvia, Nicaragua, Peru, Portug-
gal, Slovenia and Spain. He added the following; Andorra, Ar-
menia, Austria, Croatia, Cyprus, Fiji Republic, Lithuania, Lux-
embourg, Malta, Nauru, Italy, Panama, Serbia, South Africa,
Switzerland, TFYR-Macedonia.

After this, the President said that the statements in expla-
nation of vote will be made before the vote is cast. Australia,
through Robert Hill, spoke first and said that Australia was not
able to participate in the negotiations of the text and is deeply
disappointed that no such meeting was convened. He said Aus-
tralia will vote no. John Mcnee of the Government of Canada
followed and stated that “By voting against the text, Canada
put on record its disappointment with both the substance and
the process.” Rosemary Banks, the Permanent Representative
of New Zealand said that “the provision on lands and resources
could not be implemented in New Zealand..it was unable to
support a text that included provisions that were so incompat-
ible with its democratic processes, legislation and constitutional
arrangements.” It had to vote against it. The next speaker was
Robert Hagen of the United States who also said it will vote no,
followed by Russia who surprisingly abstained from voting.
Benin came next and said they will vote yes. Colombia, whom
were expecting to vote no, abstained.

When the President announced that the vote will
be taken at around 12 noon, Guatemala raised its flag
and asked who was calling the vote. She said it was the US,
Australia and New Zealand. Surprisingly Canada did not join
the group.

The Assembly then proceeded to vote and the recorded
vote was 143\(^{15}\) in favor, 4 (Australia, Canada, New Zealand and
USA) against and 11\(^{16}\) abstained. There were 34\(^{17}\) who were
absent. Thirtyeight (38) member states took the floor afterwards
to explain their vote after the vote and this included the Philip-
pines. Mr. Insigne spoke on behalf of the Philippines and said
that his “[D]elegation’s expression of support was premised on
the understanding that the right to self-determination shall not
be construed as encouraging any action that would dismember
or impair territorial integrity or political unity of a sovereign or independent State. It was also based on the understanding that land ownership and natural resources was vested in the State."

Then I was asked by the President to read my statement as the Chair of the Forum and Les Malezer to read his statement as the Chair of the Global Indigenous Peoples’ Caucus. These statements are part of this publication.

For those of us who were there, this historic day will never be forgotten. What needs to be done next is to discuss how this UN Declaration on the Rights of Indigenous Peoples will be implemented to make the lives of indigenous peoples of the world a life of dignity and pride.

13 October 2007

Endnotes:


2 This was established on the basis the Economic and Social Council (ECOSOC) resolution 1982/34.


5 30 yes votes by regions were as follows: Asia (9)
   – China, Indonesia, India, Japan, Malaysia, Pakistan, Sri Lanka and South Korea: Africa (4)
   – Cameroon, Mauritius, South Africa and Zambia: European Union (7)
   – Finland, France, Germany, Netherlands, Poland, Romania,
United Kingdom: Latin America and the Caribbean (7)  
– Brazil, Cuba, Ecuador, Guatemala, Mexico, Peru, Uruguay) : Eastern Europe (2) Azerbaijan and Czech Republic; and Switzerland also voted yes.

Abstained:
Algeria, Argentina, Bahrain, Bangladesh, Ghana, Jordan, Morocco, Nigeria, Senegal, Tunisia, Ukraine

This was co-sponsored by Armenia, Bolivia, Congo, Croatia, Cuba, Democratic Repubic of the Congo, Denmark, Ecuador, Estonia, Fiji, France, Greece, Guatemala, Haiti, Hungary, Latvia, Liechtenstein, Lithuania, Mexico, Panama, Paraguay, Peru, Poland, Portugal, Slovenia, Spain and the former Yugoslav Republic of Macedonia: When this was introduced in 2 November, Bosnia-Herzegovina, Cyprus and Finland joined as co-sponsors.

7 The ones who voted yes on this were 47 countries from Africa, 21 from Asia, 2 from Eastern Europe, 8 from Latin America and the Caribbean and 4 from the Western Europe and other Groups.


9 This group was composed of the following; Dr. Albert Barume, DRC as facilitator of the group, Dr. Naomi Kipuri, Kenya, Joseph Ole Simel, Kenya, Adele Wildschut, South Africa, Liberate Nikayenzi, Burundi, Hassan id Balkassm, Morocco.

10 Some of the Functional Commissions of the ECOSOC include the Commission on the Status of Women, the Comission on Sustainable Development, the Commission on Statistics, Commission on Population and Development, UN Forum on Forests, Commission on Social Development.

11 The members of this Steering Committee were the same ones in the HRC process. Africa
– Adele Wildschut (South Africa) and Joseph Ole Simmel (Kenya); Asia
– Vicky Tauli-Corpuz (Philippines) and Devasish Roy (Bangladesh), Joan Carling is an alternate if Devasish is not around; Arctic
– Mattias Ahren (Sweden) and Dalee Sambo (Alaska) with Hjalmar Dahl (Greenland); Latin America
– Hector Huertas (Panama), Jose Carlos Morales (Costa Rica), Azalene Kaingang (Brazil) and Adelfo Regino (Mexico); North America
– Andrea Carmen (USA) and Chief Ed John (Canada), alternate Celeste MacKay (Canada); Pacific
– Les Malezer (Australia) and Miliilani Trask (Hawaii); Russia
– Mikail Todishev. The support NGOs who sat in the meetings
of the Committee were Lola Alix Garcia (IWGIA), Jennifer Preston (AFSC), Miriam Anne Frank (NCIV), Marie Leger (Rights and Democracy), Paul Joffe

12 These were Articles 3, 4, 10, 11, 19, 26, 27, 28, 29, 30, 31, 32(2), 46.

13 These NGOs included the International Forum on Globalization (IFG), International Service for Human Rights, Amnesty International, Amazon Watch, Rainforest Action Network, Center for International Environmental Law (CIEL), etc.

14 The regional caucuses of the indigenous world is divided into 7. This is the division made by the Permanent Forum. So these are: Africa, Arctic, Asia, Eastern Europe, Latin America, North America, Pacific.

15 Yes: Argentina, Armenia, Austria, Bahamas, Bahrain, Barbados, Belarus, Belgium, Belize, Benin, Bolivia, Bosnia and Herzegovina, Botswana, Brazil, Brunei Darussalam, Bulgaria, Burkina Faso, Cambodia, Cameroon, Cape Verde, Central African Republic, Chile, China, Comoros, Congo, Costa Rica, Croatia, Cuba, Cyprus, Czech Republic, Democratic People’s Republic of Korea, Democratic Republic of the Congo, Denmark, Djibouti, Dominica, Dominican Republic, Ecuador, Egypt, El Salvador, Estonia, Finland, France, Gabon, Germany, Ghana, Greece, Guatemala, Guinea, Guyana, Haiti, Honduras, Hungary, Iceland, India, Indonesia, Iran, Iraq, Ireland, Italy, Jamaica, Japan, Jordan, Kazakhstan, Kuwait, Lao People’s Democratic Republic, Latvia, Lebanon, Lesotho, Liberia, Libya, Liechtenstein, Lithuania, Luxembourg, Madagascar, Malawi, Malaysia, Maldives, Mali, Malta, Mauritius, Mexico, Micronesia (Federated States of), Moldova, Monaco, Mongolia, Mozambique, Myanmar, Namibia, Nepal, Netherlands, Nicaragua, Niger, Norway, Oman, Pakistan, Panama, Paraguay, Peru, Philippines, Poland, Portugal, Qatar, Republic of Korea, Saint Lucia, Saint Vincent and the Grenadines, San Marino, Saudi Arabia, Senegal, Serbia, Sierra Leone, Singapore, Slovakia, Slovenia, South Africa, Spain, Sri Lanka, Sudan, Suriname, Swaziland, Sweden, Switzerland, Syria, Thailand, The former Yugoslav Republic of Macedonia, Timor-Leste, Trinidad and Tobago, Tunisia, Turkey, United Arab

16 Abstain: Azerbaijan, Bangladesh, Bhutan, Burundi, Colombia, Georgia, Kenya, Nigeria, Russian Federation, Samoa, Ukraine.

Statement of the Chairperson of the UNPFII on the Adoption of the UN Declaration on the Rights of Indigenous Peoples

Madame President of the General Assembly, H.E. Ambassador Haya Rashed Al Khalifa, Excellencies, Indigenous Chiefs, Elders, Sisters and Brothers, Ladies and Gentlemen, I open my statement by acknowledging the First Peoples of this territory of which some of the Chiefs are here with us today. Gawis ay agew ken datako am-in. Palalo ng gasing ko ay mang-ila ken dakayo.

I am Victoria Tauli-Corpuz, a Kankana-ey Igorot from the Cordillera Region in the Philippines. I speak as the Chair of the Permanent Forum on Indigenous Issues. Three of my co-members Aqaluuk Lynge, Willy Littlechild and Merike Kokajev are also here with us. I also speak as an indigenous person who has been actively engaged in the work around this Declaration.

It is a great honor and privilege to address you all in this historic day. Through the adoption of the Declaration on the Rights of Indigenous Peoples, the United Nations marks a historical milestone in its long history of developing and establishing international human rights standards.

It marks a major victory for Indigenous Peoples who actively took part in crafting this Declaration. This day will be forever be etched in our history and memories as a significant gain in our long struggle for our rights as distinct peoples and cultures.

The 13th of September 2007 will be remembered as a day when the United Nations and its Member States, together with Indigenous Peoples, reconciled with past painful histories and
decided to march into the future on the path of human rights. I thank very warmly all the States who voted for the adoption of the Declaration today. All of you will be remembered by us.

Madame President,

Let me express my warmest gratitude to you for your leadership and for keeping your word that you will do all you can to make sure this Declaration will be adopted before the end of your Presidency. Among many of your achievements, the adoption of the Declaration is the one which we, indigenous peoples and we as members of the Forum, will remember as your most important legacy.

I hail representatives of Indigenous Peoples who patiently exerted extraordinary efforts for more than two decades to draft and negotiate the Declaration. Indigenous Peoples attempts to get the ears of the international community started much earlier with the trip of Cayuga Chief Deskaheh to the League of Nations in 1923 and of Maori leader W. T. Ratana in 1925. We can now say that this historical trip, even if he was turned away, has not been in vain.

This Declaration has the distinction of being the only Declaration in the UN which was drafted with the rights-holders, themselves, the Indigenous Peoples. We see this is as a strong Declaration which embodies the most important rights we and our ancestors have long fought for; our right of self-determination, our right to own and control our lands, territories and resources, our right to free, prior and informed consent, among others. Each and every article of this Declaration is a response to the cries and complaints brought by indigenous peoples before the UN- Working Group on Indigenous Populations (WGIP). This is a Declaration which makes the opening phrase of the UN Charter, “We the Peoples...” meaningful for the more than 370 million indigenous persons all over the world.

Madame President,

While we respect the interpretative statements presented by States, today, we believe that the significance and legal implications of this Declaration should not be minimized in any
way because this will amount to discrimination against indigenous peoples. For us, the correct way to interpret the Declaration is to read it in its entirety or in a wholistic manner and to relate it with existing international law. Article 46 paragraph 1, for instance cannot be interpreted in a way which discriminates indigenous peoples. The first preambular paragraph, a new addition, which says “Guided by the purposes and principles of the Charter of the United Nations…” immediately establishes that indigenous peoples’ rights in the Declaration are within the context of international law.

Preambular Paragraph 16 confirms that the right of self-determination of “all peoples” is the right referred to in the Charter of the UN, the International Covenants on Civil and Political Rights and Economic, Social and Cultural Rights and Vienna Declaration and Programme of Action. The right of self-determination of Indigenous Peoples contained in Article 3 of the Declaration is the same right contained in international law. The reference to the Vienna Declaration and Programme of Action also affirms that the principle of territorial integrity found in Article 46 of the UN Declaration on the Rights of Indigenous Peoples only applies to the right of self-determination and not other rights.

Furthermore, the Vienna Declaration and the 1970 Declaration on Principles of International Law concerning Friendly Relations and Cooperation Among States in Accordance with the Charter of the United Nations say that for States to invoke territorial integrity, they must be “conducting themselves in compliance with the principle of equal rights and self-determination of peoples.”

I salute the independent experts, especially Madame Erica-Irene Daes who, as the Chair of the UN Working Group, worked closely with indigenous representatives to craft the original version of this Declaration. I hail the representatives of States and NGO who actively contributed to reach where we are today. This magnificent endeavour which brought you to sit together with us, Indigenous Peoples, to listen to our cries and struggles and to hammer out words which will respond to these is unprecedented.

The long time devoted to the drafting of the Declaration by the United Nations stemmed from the conviction that Indig-
enous Peoples have rights as distinct peoples and that a constructive dialogue among all would eventually lead to a better understanding of diverse worldviews and cultures, a realignment of positions and, finally, to the building of partnerships between states and Indigenous Peoples for a more just and sustainable world.

The Declaration and the Permanent Forum

For the UN Permanent Forum on Indigenous Issues, the Declaration will become the major foundation and framework in implementing its mandate to advise members of the Economic and Social Council and the UN agencies, programmes and funds on indigenous peoples human rights and development. It is a key instrument and tool for raising awareness on and monitoring progress of indigenous peoples’ situations and the protection, respect and fulfillment of indigenous peoples’ rights. It will further enflesh and facilitate the operationalization of the human rights-based approach to development as it applies to Indigenous Peoples. It will be the guide for States, the UN System, Indigenous Peoples and civil society in making the theme of the Second Decade of the World’s Indigenous Peoples “Partnership for Action and Dignity” a reality.

The United Nations Permanent Forum on Indigenous Issues is explicitly asked in Article 42 of the Declaration to promote respect for and full application of the provisions of the Declaration and follow-up the effectiveness of this Declaration. On behalf of the Permanent Forum on Indigenous Issues, I commit the Forum’s devotion to this duty.

This is a Declaration which sets the minimum international standards for the protection and promotion of the rights of Indigenous Peoples. Therefore, existing and future laws, policies, and programs on indigenous peoples will have to be redesigned and shaped to be consistent with this standard.

Madame President,

Before I end my statement let me briefly thank the others whom I have not mentioned yet. I thank H.E. Ambassador Luis de Alba who chaired the Human Rights Council which adopted
the Declaration in 2006. I thank Luis Enrique Chavez, the Chair of the Working Group on the Draft Declaration who did his best to balance the interests of Indigenous Peoples and States in Working Group and in the text he submitted to the Human Rights Council. Let me also thank H.E. Ambassador Hilario Davide whom you appointed as a facilitator. He has contributed to this end result. And I thank the delegates of Mexico, Peru and Guatemala and the African Group of States who managed to come together and make the final version of this Declaration.

I also thank all my co-members of the Permanent Forum who gave their full support for the adoption of the Declaration and reiterated in our recommendation No. 68 in our 5th Session in 2006 and No. 73 in the 6th Session that this Declaration will be an “instrument of great value to advance the rights and aspirations of indigenous peoples.” We all feel proud that this Declaration has been adopted within the period that we sit as members of the Permanent Forum. I thank the Secretariat who were always there to support us.

The UN Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous Peoples, Rodolfo Stavenhagen, has to be thanked also for his contributions to raising the issues of indigenous peoples before the United Nations. I thank the NGOs especially IWGIA, NCIV, DOCIP, Quakers, Amnesty International, IFG, Rights and Democracy and many others, who helped us in various ways.

I also express my gratitude to Les Malezer, the chair of the Global Indigenous Peoples’ Caucus who successfully brought the indigenous peoples’ regional caucuses to agree on the most important decisions which had to be made.

Finally, let me reiterate my thanks again to all indigenous leaders, activists and experts and the NGO experts who all contributed to this historic achievement. Some of them are with us today also. Some indigenous elders and NGO experts have already passed away and I would like to specifically mention, Tony Blackfeather, Ed Burnstick, among other elders, and Andrew Gray, Howard Berman and Bob Epstein, the NGO experts who accompanied us in this work. Let us pay tribute to them and thank them in our hearts.

While I express my thanks to all the actors involved in the various stages of the process, I also call on everybody to take on
the responsibility to ensure the effective implementation of this Declaration.

The challenge to ensure the respect, protection and fulfillment of Indigenous Peoples Rights has just begun. We foresee that there will be great difficulties in implementing this Declaration because of lack of political will on the part of the governments, lack of resources and because of the vested interests of rich and powerful. However, we will be counting on the continuing good faith shown by States today who voted for the adoption of the Declaration. We will be counting on the United Nations System to help implement the Declaration.

Effective implementation of the Declaration will be the test of commitment of States and the whole international community to protect, respect and fulfill indigenous peoples collective and individual human rights.

I call on governments, the UN system, Indigenous Peoples and civil society at large to rise to the historic task before us and make the UN Declaration on the Rights of Indigenous Peoples a living document for the common future of humanity.

Thank you Madame President.

61st Session of the UN General Assembly
13 September 2007
New York
The adoption of the Declaration on the Rights of Indigenous Peoples by the United marks a momentous and historic occasion for both Indigenous Peoples and the United Nations.

One quarter of a century ago the United Nations agreed that the situation of Indigenous Peoples around the world was so desperate and consistently exploited, that it warranted international attention.

Within a few years of brief examination and assessment, the United Nations decided that a human rights standard on the rights of indigenous peoples was required.

Simultaneously, the indigenous peoples of the world were uniting, because of our increasing capacity to communicated to each other, but also out of necessity to achieve an international voice.

Together we found out that Indigenous Peoples around the world shared a common situation of loss of control of our lands, territories and resources and a history of colonisation.

The Declaration, as a deposition, represents a meeting of authorities, i.e. the United Nations and the Indigenous Peoples.

Today's adoption of the Declaration occurs because the United Nations and the Indigenous Peoples have found the common will to achieve this outcome.

The Declaration does not represent solely the viewpoint of the United Nations, nor does it represent solely the viewpoint of the Indigenous Peoples.

It is a Declaration which combines our views and interest and which sets the framework for the future.
It is a tool for peace and justice, based upon mutual recognition and mutual respect.

We emphasise once again that the Declaration on the Rights of Indigenous Peoples contains no new provisions of human rights. It affirms many rights already contained in international human rights treaties, but rights which have been denied to the Indigenous Peoples.

As Indigenous Peoples we now see a guarantee that our rights to self-determination, to our lands and territories, to our cultural identities, to our own representation and to our values and beliefs will be respected at the international level.

The Declaration is a framework for States to link and integrate with the Indigenous Peoples, to initiate new and positive relations but this time without exclusion, without discrimination and without exploitation.

These rights in the Declaration are already recognized in international law, but they are rights which have been denied to Indigenous Peoples everywhere.

They are rights which are seen by Indigenous Peoples as essential to our successful survival, dignity and well-being, and to maintain our strong cultural and spiritual relationship with mother earth and nature.

It has, after all, been our determination to defend our identity and our lands, territories and resources which has helped to protect and preserve the biological diversity of the world, the cultural diversity of the world, and the environmental stability of the world.

These are the very issues that governments are now so desperate trying to address, as matters requiring of emergency, recovery actions.

The Declaration carries a message for all States that have links and association with Indigenous Peoples.

That message is not about secession, as some States may fear, but about co-operation and partnership to ensure that all individuals, regardless of race or beliefs, are truly equal and that all peoples are respected and allowed to develop.

Indigenous Peoples’ right to self-determination is about our right to freely determine our political status and freely pursue our economic, social and cultural development.

It also includes our right to freely manage our natural
wealth and resources for mutual benefit, and out right to main-
tain and protect our own means of subsistence.

“Free, prior and informed consent” is what we demand as
part of self-determination and non discrimination from govern-
ments, multinationals and private sector.

We realize that a number of States have insisted that the
Declaration affirm “territorial integrity” (which by the way is
not a human right) as defined in the Declaration on Principles
of International Law concerning Friendly Relations and Co-
operation among States and in the Vienna Declaration.

We confirm that “territorial integrity” in fact obligates ev-
ery State to promote realization of the principle of equal rights
and self-determination of peoples, and to bring a speedy end to
colonialism, with due regard to the freely expressed will of the
peoples concerned.

“Territorial integrity” also requires that a State represent
the whole people without distinction, and reaffirms that subjec-
tion of peoples to alien subjugation, domination and exploita-
tion constitutes a violation of the principle, as well as a denial of
fundamental human rights, ans is contrary to the Charter.

The Declaration ensures treaties signed between Indig-
enous Peoples and States are respected and honored. This pro-
vision in the Declaration is extremely important for Indigenous
Peoples who have always placed much importance upon the
integrity and truthfulness of historical treaties, for these treaties
may contain special rights and economic and political agree-
ments with States.

However it is important that we keep focus on the integ-
rity of the Declaration, noting how each article is meant to be
interpreted in conjunction with the entire Declaration, its prin-
ciples and its purposes.

We are also assured by Article 46(3) that states: “The pro-
visions of the Declaration in this Declaration shall be interpreted
in accordance with the principles of justice, democracy, respect
for human rights, equality, non-discrimination, good governance
and good faith.”

Now that the Declaration has been adopted by the Gen-
eral Assembly, Indigenous Peoples can reasonably expect that
the States will, if they do not already have such a relationship,
form a collaborative and cooperative relationship with the rep-
resentatives of the indigenous peoples to ensure that the rights contained in the Declaration are protected and promoted.

In 2004 the General Assembly resolution 59/174 upon Governments to ensure that activities and objectives for the Second Decade are planned and implemented on the basis of full consultation and collaboration with indigenous people.

The programme of action, approved by consensus by the General Assembly in December 2005, urged governments to launch a review of national legislations to eliminated possible discriminatory provisions with the full and effective participation of indigenous experts.

The Programme of Action recommends that national constitutions should recognize the existence of indigenous peoples and make explicit reference to them, where relevant, and that governments should consider integrating traditional systems of justice into national legislations in conformity with international human rights law and international standards of justice.

This is the challenge for the future. With a Declaration now in place, affirming the rights of Indigenous Peoples, it will be important that States respond positively.

The Declaration give us the platform for addressing the continuing abuses of human rights against Indigenous Peoples and for shaping a future where it can be realised that all peoples are truly equal.

By Les Malezer
13 September 2007
The UN Declaration on the Rights of Indigenous Peoples: Towards Re-empowerment*

JURIST Guest Columnists S. James Anaya of the Rogers College of Law, University of Arizona, and Siegfried Wiessner of St. Thomas University School of Law say that the UN General Assembly’s recent landslide adoption of the UN Declaration on the Rights of Indigenous Peoples is a milestone in the re-empowerment of the world’s aboriginal groups, and that, in important parts, it reaffirms customary international law in the field...

The UN General Assembly’s adoption of the UN Declaration on the Rights of Indigenous Peoples on September 13, 2007 marked the end of a long journey, a milestone in the long and arduous march of what have come to be known as “indigenous peoples” through the major institution of organized intergovernmental society: the United Nations. It was a day of celebration for indigenous leaders and their rank and file scattered around the globe, united in a common fate of conquest, dispossession, marginalization and neglect, but also in the joy of rising again.

When the United Nations Working Group on Indigenous Populations was established in 1982, one of its key missions was the establishment of a declaration of rights of indigenous peoples. Indigenous peoples from around the world trekked to the Palais des Nations in Geneva each summer afterwards to articulate their claims to the members of the Working Group and state delegations. In 1993, under the inspirational leadership of long-time Chairperson Mrs. Erica-Irene Daes, agreement was reached by the Working Group on a “Draft Declaration on
the Rights of Indigenous Peoples.” This draft became the basis for discussion within the UN Commission on Human Rights, which was replaced in 2006 by the Human Rights Council. In its first substantive decision, the Council on June 29, 2006, by a vote of 30 in favor, 2 against and 12 abstentions, adopted a revised text of the Declaration, and passed it on to the General Assembly for its final approval.

Beyond recognition of the right to self-determination, the Council’s text formulated an array of tailor-made collective rights, such as the right to maintain and develop their distinct political, economic, social and cultural identities and characteristics as well as their legal systems and to participate fully, “if they so choose,” in the political, economic, social and cultural life of the State. They were guaranteed the right not to be subjected to genocide or ethnocide, i.e., action aimed at or affecting their integrity as distinct peoples, their cultural values and identities, including the dispossession of land, forced relocation, assimilation or integration, the imposition of foreign lifestyles and propaganda.

The stated rights guaranteed to indigenous peoples as groups, not only as individual persons, include the right to observe, teach and practice tribal spiritual and religious traditions; the right to maintain and protect manifestations of their cultures, archaeological-historical sites and artifacts; the right to restitution of spiritual property taken without their free and informed consent, including the right to repatriate Indian human remains; and the right to protection of sacred places and burial sites. Further listed are the rights to maintain and use tribal languages, to transmit their oral histories and traditions, to education in their language and to control over their own educational systems.

They are afforded the right to maintain and develop their political, economic and social systems, and to determine and develop priorities and strategies for exercising their right to development. Their treaties with States should be recognized, observed and enforced. Last, but not least, the Declaration supports the right of indigenous people to own, develop, control, and use the lands and territories which they have traditionally owned or otherwise occupied and used, including the right to restitution of lands confiscated, occupied or otherwise taken
without their free and informed consent, with the option of pro-
viding just and fair compensation wherever such return is not
possible. The document, in particular, goes beyond ILO Con-
vention No. 169 in its statements on self-determination, land
and resource rights, as well as political autonomy.

With very few changes to this content – amendments that
essentially emphasized already existing constraints on the right
to self-determination and recognized the diversity of contexts -
the Declaration was adopted last month by a landslide affirma-
tive vote of 144 states in the United Nations General Assembly.
Only four countries - the United States, Canada, Australia and
New Zealand - voted against it, while Azerbaijan, Bangladesh,
Bhutan, Burundi, Colombia, Georgia, Kenya, Nigeria, Russia,
Samoa and Ukraine abstained.

The political significance of this remarkable success of the
indigenous peoples’ movement cannot be understated. The
United Nations can be justly proud of this day. What, however,
is the legal effect of this instrument?

For one, a formal analysis of the Declaration dictates that
it does not have legally binding effect per se. That is true for any,
non-budget related resolution of the General Assembly. Yet, the
name “Declaration” appears to give it a more solemn ring, takes
it closer to most important policy statements of the organized
world community – into the vicinity of instruments such as the
1948 Universal Declaration of Human Rights. While these docu-
ments are clearly not binding as treaties, individual component
prescriptions of them might have become binding if they can be
categorized as reflective or generative of customary international
law.

States voting against this document, including the U.S.,
have rejected “any possibility that this document is or can be-
come customary international law.” They stated that it does not
constitute “evidence of customary international law,” as lack-
ing support in state practice, and that it cannot provide “a proper
basis for legal actions, complaints, or other claims in any inter-
national, domestic, or other proceedings."

This statement is true as it pertains to the non-binding
nature of the Declaration itself. As far as it proclaims the ab-
sence of state practice in support of the content of the Declara-
tion, the individual rights pronounced, it needs to be indepen-
dently assessed — just like any other claim to the customary international law character vel non of any new rule. In the case of the UN Declaration on the Rights of Indigenous Peoples, the negative vote by four governments, even though they have a significant number of indigenous peoples living in their midst, does not necessarily invalidate the claims to the customary international law character of individual key parts of the instrument or of principles embedded in it. This distinct body of customary international law concerning indigenous peoples, not necessarily coextensive with the full reach of the present Declaration, had formed long before this vote occurred. The starting-point for any such analysis is the ICJ’s definition of the requirements needed to establish new customary international law, as stated in the North Sea Continental Shelf Case, i.e. there needs to be a very widespread and representative state practice in support of the purported new rule, including the specially affected states, as well as a feeling to be obligated (opinio juris).

In analyzing the individual parts of the Declaration, we see that all new rules of customary international law, as found in our respective surveys of state and international practice of 1999, 2001, and 2004, still remain part of the global consensus. As stated in 1999, “indigenous peoples are entitled to maintain and develop their distinct cultural identity, their spirituality, their language, and their traditional ways of life.” Most of the provisions of the Declaration go to the preservation of culture, language, religion, and identity; and state practice in the states with indigenous peoples largely conforms to these legal tenets. Due to the strength of the indigenous renascence throughout the world, the original goal of assimilation of indigenous cultures into the maelstrom of the modern world has largely been abandoned in favor of preservation and reinvigoration of indigenous cultures, languages and religions. The legal guarantees of these claims are, however, not the real bones of contention.

One of the issues in contention remains the definition and extent of the right to self-determination. Due to the insistence of the African governments, this right was expressly conditioned by the principles favoring the territorial integrity and political unity of states, principles that are not absolute and that already conditioned the right of self-determination under international law. Now, very few, if any, indigenous peoples actually had
asked for anything approaching a threat to the territorial integrity or political unity of existing states. The goal of “indigenous sovereignty,” in particular, was mostly defined in the sense of cultural and spiritual reaffirmation much more than in the Western sense of independent political power. Looking at state practice, very widespread agreement persists, as stated in 1999, that indigenous peoples “hold the right to political, economic and social self-determination, including a wide range of autonomy and the maintenance and strengthening of their own system of justice.”

Even the U.S. Mission to the United Nations, in the explanation of its negative vote, pointed out that the “U.S. government recognizes Indian tribes as political entities with inherent powers of self-government as first peoples. In our legal system, the federal government has a government-to-government relationship with Indian tribes. In this domestic context, this means promoting tribal self-government over a broad range of internal and local affairs, including determination of membership, culture, language, religion, education, information, social welfare, maintenance of community safety, family relations, Economic [sic] activities, land and resources management, environment and entry by non-members, as well as ways and means for financing these autonomous functions.”

This means at least the recognition of indigenous peoples’ control over their people within their lands. Canada, now an opponent, but under its previous government a longtime and fervent proponent of the Declaration, has guaranteed widespread autonomy via the concept of aboriginal and treaty rights in its 1982 Canadian Charter of Rights and Freedoms. In the 1840 Treaty of Waitangi, in exchange for the Crown’s sovereignty over New Zealand, the Maori retained what they called rangatiratanga, i.e. their chiefs’ authority, which included their power to own, use and manage Maori lands and other resources according to Maori ways. Colombia, a state abstaining from the Declaration, has accorded indigenous peoples in their various resguardos far-reaching rights of internal autonomy. Its 1991 Constitution guarantees respect for their institutions of self-government, including indigenous courts applying traditional customary standards.
The same is true for our finding according to which indigenous peoples have a right under customary international law to “demarcation, ownership, development, control and use of the lands they have traditionally owned or otherwise occupied and used.” This customary norm, found partly as the result of our global surveys of state practice, was cited by the Inter-American Commission in its referral of the Awas Tingni community’s complaint against Nicaragua to the Inter-American Court of Human Rights. The norm underlies the Inter-American Court’s interpretation of the right to property under Article 21 of the American Convention on Human Rights in its landmark decision in the Awas Tingni Case of August 31, 2001. Once a rule has attained the status of customary international law, it can only be abrogated by a new norm of customary law. This year, the African states dropped their initial lack of comfort with the land rights provisions of the Declaration.

The domestic practice of the four states opposing the Declaration likewise is not opposed to the principle of recognizing indigenous peoples’ right to lands. Australia’s courts had invigorated the international indigenous peoples’ movement with their decisions in Mabo and Wik, which preceded the Native Title Act and land settlements with Aboriginal peoples. The Canadian government had proceeded with land settlement claims and treaties; and the U.S., in its Observations on the Declaration, only objected to what it perceived to be the “overly broad and inconsistent” language of the provisions on land and resources. It maintained that the “intent of the States in the Working Group was to encourage the establishment of mechanisms at the national level for the full legal recognition and protection of the lands, territories and resources indigenous peoples possess by reason of traditional ownership, occupation, or use, as well [as] those which they have otherwise acquired. Furthermore, it was intended that such recognition should take into account the customs, traditions, and land tenure systems of the indigenous peoples concerned.” Thus, any potential disagreement with the Declaration is a matter of a possibly limiting interpretation, not a denial of the right itself.

Furthermore, no state opposed the provision of the Declaration that mandates the observance of treaties between States and indigenous peoples. That is in line with our finding ac-
cording to which “governments are to honor and faithfully ob-
serve their treaty commitments to indigenous nations.”

The U.S. has also stated that the declaration’s “failure to
define the phrase “indigenous peoples” is “debilitating to the
effective application and implementation of the declaration.”
“This obvious shortcoming will subject application of the de-
claration to endless debate, especially if entities not properly en-
titled to such status seek to enjoy the special benefits and rights
contained in the declaration.” One of us had made this argu-
ment years ago and suggested an appropriate definition, while
the other favors the flexibility retained in the Declaration as
passed. The most interesting aspect of the U.S. argument is, how-
ever, the at least implicit recognition that indigenous peoples
do have a “status,” that they enjoy “special benefits and rights
contained in the declaration.” Somehow, that does not sit well
with the other U.S. argument that it be solely an “aspirational
declaration with political and moral, rather than legal, force.”
The language of “rights” and “status” is the language of law.
By participating in this process and the concern shown over the
years for special rights and status of indigenous peoples on the
international plane, the four opposing states have demonstrated
an opinio juris, a willingness to be bound if the provisions as
finally formulated were in line with their detailed policy prefer-
ences.

In any event, only a jus cogens norm requires virtual una-
nimity of all members of the world community. The internal
practice of the four opposing states, as well as their consent to
accord a special status and rights to indigenous peoples in prin-
ciple, makes them part of the world consensus on customary
international law as formulated above. At most, they can be
considered persistent objectors to certain contents of the Decla-
ration. This status appears to be very much in doubt, however,
at least for Canada, as it counted itself through many years
amongst the staunchest supporters of the Declaration and in-
digenous peoples’ rights – until its government changed in Feb-
uary 2006.

The Declaration on the Rights of Indigenous Peoples and
the customary law character vel non of the various rights it
proclaims will be analyzed in further detail by a new Interna-
tional Law Association Committee on the Rights of Indigenous
Peoples. As Chair and Member of this body, we look forward to your comments and suggestions.

S. James Anaya is James J. Lenoir Professor of Human Rights Law and Policy at the James E. Rogers College of Law, University of Arizona. Siegfried Wiessner is Professor of Law and Director of the Graduate Program in Intercultural Human Rights at St. Thomas University School of Law in Miami, Florida.

October 03, 2007

*Reprinted from The Jurist Legal News and Research of the University of Pittsburgh College of Law, October 2007.

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How the UN Declaration on the Rights of Indigenous Peoples Got Adopted

By Victoria Tauli-Corpuz

When the UN Declaration on the Rights of Indigenous Peoples was adopted on 13 September 2007, the indigenous peoples who were present at the General Assembly Hall of the UN were ecstatic and very emotional. There could have been no better time to be at the UN Headquarters in New York than this day. More than two decades of work were put by us on this which makes it almost impossible to believe that we finally got the Declaration. But we did.

With the historic adoption of this Declaration which has been drafted and negotiated between independent experts, States and us, indigenous peoples, we deemed it important to disseminate this immediately. Since it will not be appreciated very much by our indigenous sisters and brothers if it is just in English we tried our best to get the Declaration translated into three major Philippine languages - Filipino, Cebuano and Ilocano. These are unofficial translations which are still works in progress. We hope to get comments and suggestions for improvement from those who speak these languages.

Aside from putting the Declaration in this booklet in English and the three languages, it will also contain this report which will present a historical background of work of indigenous peoples within the UN and an account of how this Declaration finally got adopted before the 61st Session of the UN General Assembly ended.

The beginnings of indigenous peoples engagement with the international community

The first attempt of indigenous peoples to reach out to the international community started as early as 1923 with the at-
tempt of Chief Deskaheh, the speaker of the Council of the Iroquois Confederacy, to get the League of Nations to address the Iroquois’ dispute with Canada. This was followed in 1925 by W.T. Ratana, a Maori leader, who wanted to bring the violations against the Waitangi Treaty by New Zealand. They were not given an audience by the League but the fact that they sought this was already an assertion that indigenous peoples are subjects of international law. With the establishment of the United Nations in 1945 and with human rights being one of the key foundational elements of its Charter, the justification for indigenous peoples’ engagement with the UN was strengthened.

The International Labour Organization was the first multilateral body which managed to adopt a Convention addressing indigenous peoples. This was Convention No. 107 Concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries which was adopted in June 26, 1957. Unfortunately, this took a paternalistic and assimilationist approach. Its solution to the indigenous problematique was to integrate indigenous peoples into the dominant society and within the dominant development model. To rectify this, the ILO, with pressure from indigenous peoples, proceeded to revise this and in 1989 it adopted the ILO Convention 169 Concerning Indigenous and Tribal Peoples in Independent Countries. This has been ratified by 20 countries, most of which are in Latin America with only two in Asia-Pacific.

ILO Convention No. 169 has already been used in several cases or complaints filed by indigenous peoples against their governments before the Inter-American Court of Human Rights, the Human Rights Committee and the Committee on the Elimination of Discrimination. In the Philippines the campaign to get this ratified by the government continues. Spain and Nepal are the countries which just ratified it this year.

The Martinez Cobo Study and the International Conference on Discrimination Against Indigenous Peoples in the Americas

Meanwhile, indigenous peoples started working on the UN to address their issues. In 1971 the UN Economic and Social
Council authorized the UN Sub-Commission on the Prevention of Discrimination and Protection of Minorities to undertake a study on the “Problem of Discrimination Against Indigenous Populations.” The Special Rapporteur, Mr. Martinez Cobo, came up with a series of partial reports between 1981-83 and the final paper which contains the Conclusions and Recommendations was released in 1986. This report, popularly known as the Martinez Cobo Study, became the major UN reference document on indigenous peoples.

On 20-23 September 1977 the NGO Subcommittee on Racism, Racial Discrimination, Apartheid, and Decolonization held the “International NGO Conference on Discrimination Against Indigenous Populations in the Americas” at the Palais des Nations in Geneva. Around 400 persons participated of which 100 of these are delegates of 60 indigenous nations and peoples coming from 15 countries in the Americas. Observers from 38 member states of the UN took part as well as UN agencies like the UNESCO and the ILO. This was the first major event which took place in the UN with a massive participation of indigenous peoples. This conference came up with a Declaration which called on the UN to set up a body which will address the violations of indigenous peoples rights. This echoes a recommendation made by the Martinez Cobo study.

The UN Working Group on Indigenous Populations (UN-WGIP)

The UN Working Group on Indigenous Populations (UN-WGIP) was established in 1982 and held its yearly session until last year, 2006. This is an expert body which consists of 5 independent experts, none of which are indigenous. Year by year the number of indigenous representatives participating in this body increased and at its peak, the number reached 600. This body was mandated to review developments concerning indigenous peoples and to work towards the development of international standards on indigenous peoples’ rights. Since then, indigenous representatives occupied this space and actively participated in drafting the UN Declaration on the Rights of Indigenous Peoples. The WGIP provided the opportunity for us, indigenous peoples, to come together not just to make state-
ments at the Working Group but to consolidate our own move-
ment at the global level.

From Asia, the first indigenous peoples represented in 1982 were the Igorots of the Cordillera Region in the Philippines and the Jummas of the Chittagong Hill Tracts in Bangladesh. The Igorot who participated in 1982 was Joji Carino. After the Cordillera Peoples’ Alliance was established in 1983 it participated in most of the sessions. Personally, my participation was in different capacities. First as a representative of the Cordillera Women’s Education and Resource Center, then as the Chairperson of the Cordillera Peoples’ Alliance and finally as a representative of Tebtebba.

It was in 1985 when the UN-WGIP decided to work on a “Draft Declaration on Indigenous Rights.” In the process of drafting the Declaration substantial dialogues between us, the experts and the states took place. This became the global forum where we discussed extensively our worldviews, justified why our rights to our ancestral lands, territories and resources should be respected, that we as distinct peoples have the right of self-determination, why free, prior and informed consent has to be part of the Declaration, among others.

There were several Chair-Rapporteurs of the WGIP but the one who stayed on the longest when the draft was being made, was Madame Erica-Irene Daes. The drafting finished in 1993 and was submitted to the UN Sub-Commission on the Prevention of Discrimination and Protection of Minorities. The Draft consisted of 19 preambular paragraphs and 45 operative articles. This body adopted the Draft in 1994 and submitted it to the Commission on Human Rights.

UN Working Group on the Draft Declaration

Since the WGIP is not an intergovernmental body, but just an expert body, the Draft it made has to be negotiated between governments before it can be finalized as a text that is agreed upon by States. Thus, the Commission on Human Rights set up the “Working Group established in accordance with Commission on Human Rights resolution 1995/32 of 3 March 1995” to further elaborate and negotiate the Draft. Since the name of this Working Group is too long, we call it the Working Group on the
Draft Declaration (WGDD). This Open-ended Intersessional Working Group had its first session from 20 November to 1 December 1995 and completed its work at its 12th Session in February 3, 2006. The first Chair-Rapporteur was Ambassador Jose Uruttia of the Government of Peru. He only stayed for the 1995 session and Luis Enrique Chavez Basgoitia, also from the Government of Peru, took over.

When this body first met in 1995 it had to work out its procedures and the first issue was whether indigenous representatives are allowed to have a voice in the meetings. The initial view of the States was no because this is now an intergovernmental process. We rejected this view and walked out of the process with the threat not to come back unless they agree that we have an equal voice as the governments. The Indigenous Caucus made a statement saying that any Declaration on the Rights of Indigenous Peoples which will come out of the UN will only have legitimacy if we, who are the subjects of the rights, are part of the drafting process. The States who are members of the UN Commission on Human Rights met and agreed that they will let us have a voice in the negotiations. So in all the sessions, we were allowed to speak in equal terms as the States.

When the negotiations started, the indigenous caucus position was that we will only push for the original draft as adopted by the Sub-commission. So year in and year out we went to the meetings and asserted that the original paragraphs should be adopted and we gave the justification why this was so in each article being discussed. In November 1997, two article were provisionally adopted. These were Article 5 (indigenous individual has the right to a nationality) and 43 (all rights and freedoms are equally guaranteed to male and female individuals). As these are referring to individual rights there was no controversy.

The pace was so slow as indigenous representatives kept asserting the “no change” stance, which meant that the WGDD can only adopt the Sub-Commission text. The States, on the other hand, started raising issues with the original text. For instance, the US refused to accept the term “indigenous peoples” without qualifying it by saying the use of the term “cannot be construed as having any implications as to rights under international law.” This is language from the ILO Convention 169 and also the Durban Declaration and Programme of Action of the World
Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance. Most of the articles were unacceptable to some States as these referred to collective rights which they thought were against International Human Rights Law which are basically about individual rights. Thus, they questioned whether we have the right to self-determination (Article 3), whether our rights to lands territories and resources are part of our right of self-determination, among others. One of their fears was that with the right of self-determination, indigenous peoples can justify secession which would damage State Sovereignty and Territorial Integrity. We questioned the validity of their positions using existing international human rights law.

Proposals for Changes in the Draft

By 2002, eight years after the WGDD started its work, some friendly governments led by Norway came up with a proposal to include a reference on territorial integrity which comes from the 1970 Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations. This can allay the fears of States. Some governments were comfortable with this proposal while others were not. Indigenous representatives had divided views. Some were of the view that by accepting this we were already going against the “no change” position of the Caucus.

Others thought that if we would not move to accommodate some changes, the negotiations would come to an end and we would lose our chance of getting a UN Declaration on our rights.

We were also made aware that the Commission on Human Rights could not continue to support a process which does not seem to have prospects of ending with an outcome. In fact in 2000, the CHR made a decision (2000/19) which set five years as the specific time-frame for a working group to finish its task. The WGDD had been going on for eight years already, so we had to work harder to come up with agreements.

By this time, some of us in the caucus decided that a “no change” position was untenable and so we had to show some flexibility. Since the only position put forward has been a global
caucus position, the regions asserted that they would like to also present their own positions. The Arctic and Asia indigenous peoples' caucuses came out to say they can consider some changes as long as these would not undermine the most fundamental rights such as self-determination and rights to land, territories and resources. With the regions becoming the center of decision-making, the global caucus was not anymore used by some indigenous representatives to impose the “no change” position.

During the 61st Session of the Commission on Human Rights, the International Indian Treaty Council initiated a process to call for a recess of the WGDD. Without consulting the regional caucuses, it sent a letter to the President of the Commission on Human Rights, Ambassador Makarin Wibisono (Indonesia) dated March 15, 2005 asking the Commission to adopt the Sub-Commission Text and if this was not possible, then they would support the CHR to call

for a pause or recess in this process in order to take effective steps that would make the chances of success much greater. This recess will provide the Commission on Human Rights, beginning at this session, with the opportunity to establish, in full consultation with Indigenous Peoples,…

I was present at the Session where the IITC was pushing for this, although they did not inform me of what they were up to. I found it unacceptable that a major step such as this was being taken by a group of indigenous persons without bringing it to the attention of the other regions. If it was presented before the indigenous caucus during the previous WGDD and there was a chance to discuss it, then this would have been a different story. I thought this was political suicide for indigenous peoples as many governments who were against the Declaration would jump on this and support it. So I sent out an alert to other indigenous colleague and, together with the Saami Council led by Mattias Ahren, mobilized to get other views from indigenous peoples in other parts of the world. The result of this was a joint letter addressed to the President of the CHR stating that what was sent by the IITC was just one view. Many other indigenous
peoples’ organizations from other parts of the world do not agree that a recess should be called because this would bring a lot of uncertainty on the future of the Declaration. This was distributed widely to all the governments. The IITC tried to get a State to sponsor a resolution on this but they did not succeed. Several organizations, like the Grand Council of the Crees and the Inuit Circumpolar Conference, sent their joint letter to the President of the CHR protesting against this proposal. In the end, the proposal was killed.

**Human Rights Council Adopts the Declaration**

Between 2003 to 2005 there were already movements towards revisions in some articles. In 2006, the Commission on Human Rights ended its existence and was replaced by the Human Rights Council. The WGDD held its 11th and last session in December 2005 and it requested for an extension in 2006 so it could complete its work. The Chairman came up with a draft which we would be working on when we come back the next year. The last day of the WGDD-extended 11th session was February 3, 2006. There was still no complete agreement on the full text but most of the articles were more or less acceptable to most States and indigenous representatives. The Chairman was then asked to complete the text and have this circulated before it would be brought before the First Session of the Human Rights Council.

To prepare the ground for a favorable vote at the Human Rights Council, indigenous representatives started lobbying states during the 2006 session of the UN Permanent Forum on Indigenous Issues (UNPFII) which was held the last two weeks of May. I was already the Chair of the Forum by that time and we came up with a strong recommendation that the Human Rights Council adopt the Declaration and also that the 61st Session of the General Assembly also adopts it. The Human Rights Council had 47 member states so we had to lobby each and everyone of these states.

During the Human Rights Council, we were very apprehensive on which way the votes would go. The States in which we had confidence that will deliver the yes votes were those from Latin America and the European Union. We were not sure
about Asia and Africa. The burden of lobbying States from the regions rested with the regional caucuses. So in Asia, we tried our best to talk with the governments. The Philippines, whom I was expecting to vote yes, abstained in spite of our efforts to convince them.

On 29 June 2006, the Declaration, through Human Rights Council Resolution 2006/2, was adopted through a vote: 30 voted yes, 2 voted against (Canada and Russia) and 12 abstained. This was the first major victory for us.

For this we expressed our thanks first to, indigenous peoples, of course, because we did not lose hope that this would happen one day. We also thanked the governments who voted yes and those who played key roles in convincing other governments to vote yes. Among these were Peru, Mexico, Guatemala, Norway and Denmark. The Chair of the 1st Session of the Human Rights Council was Ambassador Luis de Alba of the Government of Mexico. His government sponsored a meeting in Patzcuaro, Michoacan, Mexico in September 2005 which brought governments and indigenous peoples together to bridge their differences. This was through the work of Xothchil Galvez, the head of the National Commission on Indigenous Peoples’ Development of Mexico. She is an indigenous person herself. Through the whole HRC session, she was also there lobbying other governments to vote yet. We also thanked Luis Enrique Chavez, the Chairman-Rapporteur, who was able to bring the WGDD to a successful conclusion with a text on the Declaration. Finally, we thanked the support NGOs like the International Workgroup on Indigenous Affairs (IWGIA) which accompanied us in this whole journey.

Back to the Philippines

When I came back from the HRC session, Tebtebba together with other organizations of indigenous peoples, held an activity to celebrate the International Day of the World’s Indigenous Peoples. This was held from 7-9 August 2006 at the SEAMEO-INNOTECH in Diliman, Quezon City, Philippines. We invited representative of indigenous peoples’ organizations from all over the country, representatives of government agencies, NGOs, the UN and other multilateral bodies like the Euro-
pean Union and the Asian Development Bank and members of Congress. I told the story on how the Declaration got adopted by the HRC and discussed the contents of the Declaration. We also shared the Second Decade of the World’s Indigenous Peoples Programme of Action. The abstention of the Philippine government was decried by the indigenous participants. A strong request was put before the government agencies and the members of Congress to push the government to vote yes when the Declaration is put for adoption by the General Assembly.

On August 9, the Chair of the National Commission on Human Rights, Hon. Purificacion Quisumbing invited me to meet with government agencies whom she invited. She was present at the HRC shortly before the Declaration was adopted and promised me that when we were back home, she would organize a meeting with the various government agencies to discuss the Declaration. This meeting was attended by the members of the National Commission on Human Rights, representatives of the Department of Foreign Affairs (Section on the UN and Other International Organizations), Office of the Solicitor General (OSG), National Commission on Indigenous Peoples, among others. The OSG, which penned the legal opinion on why the Philippines should abstain, explained their position. The Department of Foreign Affairs also spoke up. Chair Quisumbing demolished the arguments made by the OSG and all the Commissioners spoke up to say they thought that the Philippine Government should vote for its adoption at the General Assembly.

In the meantime, the National Commission on Indigenous Peoples prepared an en banc resolution asking the Philippine Government to adopt the Declaration. This was presented to me as the Chair of the Permanent Forum at the gathering we organized. According to the then Chair of the NCIP, Janette Cansing Serrano, they were going to work on this. A few months later, there was a budget hearing in Congress for the NCIP. Just before their turn came, the Department of Foreign Affairs Budget was being heard. She invited several Party-List representatives, Rafael Mariano and Riza Hontiveros, to question the DFA on why they abstained during the adoption of the Declaration in Geneva. They asked them to explain why their budget should be approved when they were going against a Declaration which
was consistent with the Indigenous Peoples’ Rights Act (IPRA), a legislation passed by Congress. A short recess was called and the DFA had a caucus among themselves. They came back and committed that they would vote yes when the Declaration would come up for adoption at the General Assembly. Serrano reported this to me so I got assured that there would be no problems during the GA, as far as the Philippines was concerned.

61st Session of the General Assembly: September – December 2006 session

The HRC-adopted Declaration was brought before the 61st Session of the General Assembly, in particular, in its September to December 2006 session. The Global Indigenous Caucus held strategy meetings to talk about the lobbying activities. There were apprehensions about the fact that this would be brought before the Third Committee (Social, Humanitarian and Cultural Committee) of the General Assembly. This was the Committee which could reopen the Declaration and amend it. The Human Rights Council wanted the resolution on the adoption of the Declaration to immediately go to the Plenary without passing through the Third Committee. In the end, this was still brought to the Committee.

The date for the discussion of the Declaration was set for November 28, 2006. There was news that the Africans were not happy with the Declaration and that they might table an amendment to the resolution of Peru and other co-sponsors calling for the adoption of the Declaration. They claimed that it was the first time for most of them to see the Declaration so they needed time to discuss this among themselves and also in the capitals. This made the co-sponsoring governments and the indigenous caucus worried. Indigenous representatives tried to get to the African governments to talk with them but they were not interested. They had the view that this was a negotiation between member-states of the UN and not between them and non-state actors.

Before November came, some of us paid visits to the Permanent Missions of Asian governments like that of China, the Philippines, Indonesia to ask how they would respond to the African position. It was obvious to us that if Africa will, indeed,
table a resolution it will be difficult for Asian countries to oppose them. We were advised that we should work hard to clarify with the Africans their doubts and encourage them to support the adoption.

In a document dated October 31, 2006, the government of Peru and a number of co-sponsors tabled a draft resolution A/C.3/61/L.18. This resolution called on the General Assembly to adopt the UN Declaration on the Rights of Indigenous Peoples, as adopted by the Human Rights Council on June 29, 2006. This was formally introduced at the 37th meeting of the Third Committee on November 2.

Then on November 28 at the 53rd meeting of the Third Committee, Peru, again with the same co-sponsors but with Albania, Andorra and Malta joining, introduced an amended version of the earlier draft resolution (A/C.3/61/L.18/Rev.1). This contained some changes to accommodate some of the concerns of the African Group of States.

**Deferral of the Adoption of the Declaration**

In spite of this, though, Namibia, on behalf of the Group of African States still presented an amendment to the amendment (resolution A/C.3/61/L.57 - Peru’s resolution.). This is to “defer consideration and action on the United Nations Declaration on the Rights of Indigenous Peoples to allow time for further consultations.” Peru then withdrew its resolution. Then at the 57th Meeting on December 3, the Chairman of the Committee then presented the Draft Resolution which would be presented to the General Assembly which reads;

**Draft resolution II**

Working group of the Commission on Human Rights to elaborate a draft declaration in accordance with paragraph 5 of General Assembly resolution 49/214 of 23 December 1994

*The General Assembly,*

*Guided by the purposes and principles of the Charter*
of the United Nations, in particular the principles of
self-determination of peoples, respect for the territo-
rial integrity of States and good faith regarding the
fulfilment of the obligations assumed by States in ac-
cordance with the Charter,
Taking note of the recommendation of the Human
Rights Council contained in its resolution 1/2 of 29
June 2006,1 by which the Council adopted the text of
the United Nations Declaration on the Rights of In-
digenous Peoples,
Recognizing that the situation of indigenous peoples
varies from country to country and from region to re-

gion,
1. Expresses its appreciation to the Working Group of
the Commission on Human Rights for the work done
in the elaboration of a draft declaration on the rights
of indigenous peoples,
2. Decides to defer consideration and action on the
United Nations Declaration on the Rights of Indig-
enous Peoples to allow time for further consultations
thereon;
3. Also decides to conclude its consideration of the
Declaration, as contained in the annex to the present
resolution, before the end of its sixty-first session.

The Africa group also released a Draft Aide-Memoire in
November 9 which contained their concerns with the Declara-
tion and this included, among others, definitions of indigenous
peoples, self-determination, rights to lands, territories and re-
ources, establishment of distinct political and economic institu-
tions and national unity and territorial integrity. On the basis
of these concerns, they proposed that a deferment on action on
the Declaration for one year be taken to allow time for these to be
addressed.

In November 28, 2006, the draft Namibia Resolution to
defer the adoption was passed through a vote at the Third Com-
mittee. Eightytwo (82) voted yes, 67 voted no and 25 abstained.7
This was a terrible day for the indigenous peoples. This was not
what we expected at all. We thought that because this is one of
the two standard-setting instruments adopted by the Human
Rights Council in its First Session, the General Assembly would adopt it without much fanfare. We could not imagine that the General Assembly would behave this way.

Obviously, we were wrong with our projection. The various regions came up with statements condemning the Africa States for their action. As Chair of the Permanent Forum, I also came up with a statement during the International Human Rights Day, December 10, stating that there was nothing to be celebrated because the General Assembly failed in its responsibility to recognize indigenous peoples’ rights when it deferred the adoption of the Declaration.

Those who voted with the Africans from Southeast Asia were Brunei, Indonesia, Myanmar, Singapore and Thailand. Indonesia behaved strangely because it voted yes at the HRC but voted with the Africans for the deferral. This time, the Philippines abstained.

Role of the African Commission on Human and Peoples’ Rights

The co-sponsoring governments for the adoption and the indigenous peoples had to recover from this defeat and start picking up the pieces again. As the resolution of Namibia still says that the Declaration should still be adopted before the end of the 61st Session of the GA, there was still time to repair this damage and still attain the objective of getting the Declaration adopted. The end of the 61st Session is September 17, 2007. One of the things which should be done is to change the position of the African Group of States. While there might be a possibility to win the votes if we work hard on those who abstained on the Namibian Amendment, this was going to be a high risk proposition.

The Africans were able to get the Assembly of Heads of State and Government of the African Union to concur with the resolution passed at the GA. Because of this, the African Commission on Human and Peoples’ Rights (ACHPR) prepared an Advisory Opinion which responded to the concerns raised in the Aide-Memoire of 9 November 2006. This was given to the governments with the hope that this would allay some of the concerns raised and will help lead towards the adoption of the
Declaration. This was the result of the work of the African Commission Working Group of Experts on Indigenous Populations/Communities. This Working Group had done a study on the concept of indigenous populations in the African Continent and the report on this was adopted by the ACHPR in its 34th Ordinary Session in November 2003.

The ACHPR advisory opinion tackled the concerns one by one. I will not go into all of these but just to give an example, this is what it said on the concern on the lack of definition of indigenous populations.

From the studies carried out on this issue and the decisions it has made on this matter, the ACHPR is of the view that a definition is not necessary or useful as there is no universally agreed definition of the term and no single definition can capture the characteristics of indigenous populations. Rather, it is much more relevant and constructive to try to bring out the main characteristics allowing the identification of the indigenous populations and communities in Africa.8

In spite of this, the Africa Group prepared their amendments which they released in May 2007. There were around 36 changes which effectively would mangle the whole Declaration. Indigenous peoples condemned these as discriminatory. There was not much movement between January to May except for this.

The African Indigenous Peoples’ Caucus decided that the Experts of the African Commission Working Group on Indigenous Populations, together with a few indigenous representatives8 should go to New York to lobby the African delegations based there. With the support of IWGIA, this trip materialized on April 28 – May 4, 2007. They were able to visit many Permanent Missions of the African countries and a roundtable was also held where they had a discussion with African and other governments.

6th Session of the Permanent Forum on Indigenous Issues
Before the 6th Session of the Permanent Forum, there were some regions which held their preparatory meetings for the session. Asia was one of these which held their meeting in Cambodia in April. In this meeting, we discussed the situation regarding the Declaration and tasked each of the representatives from all the countries who attended to do their share of the work in terms of lobbying their governments. We specifically made a resolution addressing the President of Indonesia as AMAN, the National Federation of Indigenous Peoples’ Organizations in that country, will hold their General Assembly. They would like to present their own resolution and the regional one to the President. Among the countries singled out for special attention were Indonesia and Thailand, because they voted yes for the Namibia Amendment. Laos, Cambodia and Vietnam were also included as they were absent during the HRC adoption in Geneva.

Indigenous peoples renewed their lobbying efforts and during the 6th Session of the UN Permanent Forum on Indigenous Issues in the last two weeks of May, strategy meetings were held. The African indigenous representatives were urged to do more work with their governments so that in the next round they would vote for the Declaration. The aim was still to get the GA to adopt the UN Human Rights Council Text.

The Permanent Forum invited the President of the 61st Session of the General Assembly, Ambassador Sheikha Haya Rashed Al Khalifa (Bahrain), the President of ECOSOC, and the President of the Human Rights Council, H.E. Ambassador Luis de Alba (Mexico) to speak at the opening plenary session. This was an opportunity to get their commitments for the adoption of the Declaration before the indigenous representatives who were in the session. In my opening statement as the elected Chair for the 6th Session of the Forum, I appealed to the member states of the ECOSOC, especially to the African Group of States, to support the adoption.

Many of the indigenous representatives who intervened also said the same. Some of the States who co-sponsored the resolution for adoption at the Third Committee spoke up to say that they would do all they can to make sure that this happens. The Forum reiterated its 2006 recommendation that the Declaration be adopted before the 61st Session ends as this will be an important framework for the work of the Forum. While the Fo-
rum was meeting, the indigenous peoples used their time to keep talking with the governments. The Arctic representatives, for instance, met with the European Union and the Pacific caucus met with the Pacific States. There were dinners organized by the Quakers of Canada which brought the indigenous representatives and the African Group of States and the Asian States together.

Some of the regional coordinators of the Caucus met with the President of the General Assembly to express our concern about the fate of the Declaration and to impress on her that she should do all she can to ensure that this be adopted during her Presidency. If this happens, the indigenous peoples will forever remember her. She told us that since nothing has moved in relation to the informal consultations held so far, she was going to appoint a facilitator to try once more to bring together governments, informally, to agree on the changes. The Secretariat of the Forum helped set up the meeting with the President and also the press conferences where we did not only to talk about the Forum issues, but also to appeal to governments to support the adoption.

Appointment of Ambassador Davide as the Facilitator

There were a lot of speculations on who would be appointed as the facilitator. Guatemala told us that President was considering Bahamas or Singapore. This did not look good as these countries were not interested at all in the Declaration. But it seemed nobody really liked to be in this position. By June 6, the President came out with a letter appointing Ambassador Hilario Davide of the Philippines to be the facilitator. He was instructed to conduct informal consultations and then to come back with a report on July 15.

In the meantime the Steering Committee of the Indigenous Peoples' Caucus requested Les Malezer, who was chairing the Global Caucus, to make provisions to stay in New York from June until the Declaration is adopted. We needed a person who can be an anchor in New York to monitor developments and to constantly speak with the States. He agreed to do this and so he based himself there by mid-June 2007. We agreed that some of us would try to be in New York for some days or weeks to be
with him and help him.

Since the facilitator was the Philippine Ambassador, as a member of the Steering Committee from Asia and from the Philippines, I scheduled some meetings with him and his technical expert, Ivy Banzon, from the Philippine Permanent Mission. I flew to New York at the end of June to help Les Malezer. There was an information that some of the co-sponsors were asking what my position as the Chair of the Permanent Forum is and some members of the Steering Committee felt that I had to go to New York to meet with some of them. So instead of going to Salekhard, Russia where the Permanent Forum was having a meeting, I had to make a decision to reroute and fly to New York instead. Les Malezer and I met with several delegations on a one-on-one basis. We met with Mexico, Guatemala and Libya. I met with Ivy Banzon who briefed me about the results of the consultations Ambassador Davide held with various groups.

Amd. Davide met with the African group of States, then combined them with the co-sponsors and they also held meetings with Canada, Australia and New Zealand. The indigenous peoples asked that he also holds a meeting with them which also took place. Davide invited the indigenous caucus to a meeting he was holding with governments. When they were all in the room, the Russian Federation complained that non-state actors were in the room. So, as per General Assembly ruling that if a member state complains, then a decision has to be made to let these non-state actors leave. After this government meeting, Davide still met with the indigenous caucus to brief them on the situation.

I had to go to Geneva to attend the ECOSOC Functional Commissions Meeting which was scheduled July 10. The Permanent Forum on Indigenous Issues is a subsidiary body of the ECOSOC so it takes part in the meetings of the Functional Commissions. The Chair of this meeting was Ambassador Davide as he was one of the Vice-Presidents of the ECOSOC. After the ECOSOC session, I scheduled to meet with him. I and Mattias Ahren, a Saami from Sweden who is the co-coordinator for the Arctic Indigenous Peoples’ Caucus, went to meet him. He told us about his own assessment of the situation and he said that he was finishing his report to the President of the General Assembly. His conclusion was that there was no consensus that
can be reached. However, he said that States cannot complain anymore that they were not heard as he spent time hearing their concerns and discussing these with them.

The situation so far was that the position of the co-sponsors was still to stick with the Human Rights Council text, that the Africans were still pushing their 36 amendments and that Canada, Australia, New Zealand, Russia, Colombia, Guyana and Surinam (we call them the Group of 7) will present their own proposal which was to reopen the discussion around several themes. So he will say in his report that this was the situation and that he would propose a way forward which is to agree on a few amendments. He posed questions which should be asked to judge whether the amendments are acceptable.

• Does it represent a genuine effort to address the various concerns?
• Does it build on, and not undermine, the efforts and achievements of the process at the Commission on Human Rights and Human Rights Council?
• Does it preserve the purpose for the Declaration for indigenous peoples?
• Will it ensure that the Declaration does not fall below existing human rights standards?

In July 16, he submitted his report to the President of the General Assembly, thus ending his role as a facilitator. The Group of 7 met with him after the submission to present their amendments, requesting that these be included in his report. He said that his report was already submitted so he would just send these as an annex. By this time, we got the impression that the Africans no longer wanted to be seen as the bad guys so they were reaching out to the co-sponsors to see what they can work on. This was a major development in the process.

**The Strategy of the Global Indigenous Caucus Steering Committee**

The Global Indigenous Caucus Steering Committee continued to hold electronic discussions on the next steps should
be. We already got word that there were ongoing informal negotiations between the co-sponsors (led by Mexico, Peru and Guatemala) and the leaders of the African Group of States (Namibia and Botswana). So the developments around this was what we were closely monitoring. While the official position of the Caucus was still to push for the adoption of the Human Rights Council text, there were several of us who were open to see the amendments and to judge whether these were acceptable or not. We felt that the best chance that we would get the Declaration was to bring the Africans on board. It would be very difficult to bring the Middle East countries and the other Asian countries to support the adoption if the Africans would vote against it. To do this, we had to show good faith that we were willing to accommodate some of their amendments. But we still kept counting the possible votes we would get in case we insisted that the Human Rights Council text be adopted.

There were a few voices within the Caucus suggesting that maybe we should drop the plan to get this Declaration adopted by the General Assembly. We can just settle with the Human Rights Council version and implement it together with the 30 States who voted for it. The General Assembly can just note the existence of this Declaration and then it was up to indigenous peoples to use it as they wish. Mattias Ahren of the Saami Council wrote a long email stating his vehement disagreement with this option because there are 192 member-states of the General Assembly and only 30 voted for this in the HRC. Its legitimacy as an international instrument will be very compromised if this was the route we would take.

We were also monitoring the moves of Canada, Australia, New Zealand and Russia as they were doing their own moves to undermine the process and the Declaration. They submitted their amendments dated August 13, 2007 which were on 13 articles. Like the amendments of the African Group of States, these were totally unacceptable to the indigenous peoples caucus. One example of this was their proposal to change Article 26 (right to lands, territories and resources) to say that indigenous peoples “… may have rights to the lands, territories and resources which they have traditionally owned, occupied or used.”

The Group of 7 were not being consulted anymore by the co-sponsors as their concentration was with the Africans. We
also agreed with this move as we did not see any possibility of these countries changing their position to vote against the Declaration. We still might get Guyana and Surinam as the Latin American indigenous peoples were working on them. The indigenous peoples from Canada went all out to condemn their government who still took the hardline position inspite of the fact that it was a Minority government and the opposition in the Parliament made a stand to support the Declaration. We were not clear on what the US was doing but what we heard was that it was not actively lobbying. We surmised that Canada was already doing the work, so why should the US bother?

We decided that most of us should be in New York by the last week of August to monitor the developments and to make recommendations to the regional caucuses based on the possible amendments which will be agreed upon by the co-sponsors and African states.

To get the involvement of NGOs based in the United States, I worked closely with the International Forum on Globalization, of which I am the co-President, to work on this. The IFG organized a meeting in Washington in August where we, Les Malezer and I, met with almost 20 representatives of international NGOs based in Washington. It was there where we planned that we would hold a rally on August 30 before the Permanent Missions of Canada, Australia and New Zealand. This was to shame them publicly for their opposition to the Declaration.

This mass demonstration, which was organized by the International Forum on Globalization, took place in August 30 and we managed to get a group of around 50 persons who went to the Canadian Permanent Mission, the New Zealand Mission - which was just in front of the UN Building - and the Australian Mission on 42nd Street. The indigenous persons and NGO representatives from these countries were the ones who spoke. A joint letter from the NGOs13 were brought to the missions and at the Australian Mission, the Deputy Permanent Representative came down to receive the statement. Rainy Bluecloud, a young Mohawk activist who was hired by IFG was the one who mainly anchored this activity. Most of the indigenous representatives present in New York took part in this historic demonstration.
On 27 August 2007, the Steering Committee met for updates and to plan out what we will do while we were in New York. During this period, continuous negotiations were already taking place between Mexico, Guatemala and Peru on one hand, and the African Group of States represented by Namibia and Botswana on the other. We were being updated by Mexico, Guatemala and Peru on the developments and we set a meeting with them on August 29 to get the latest situation.

On August 30, just before the rally took place, I met Enrique Javier Ochoa Martinez, the lead Mexican negotiator, on the way to the UN. I asked him what the situation was and he said they stayed up late the night before because they could not yet come to an agreement on the Preambular Paragraph which says “Recognizing that indigenous peoples have the right on an equal basis with others freely to determine their relationships with States in a spirit of coexistence, mutual benefit and full respect.” The UK was not happy with this as they see it as recognizing that others also have collective rights. So I suggested that they strike this out as the essence of this has been said in other parts of the Declaration. He said that he would suggest this and he would inform us if they already have agreed. I assured him that the caucus won’t mind this. By 2:00pm, while we were in the rally, he called up and said that they finally agreed and there was now a text which they can present to us the next day.

The Global Indigenous Peoples Steering Committee prepared a very comprehensive account of what happened in the meeting with the co-sponsor group on the 29th of August and on the 31st. This report was sent to all the regional caucuses. Instead of recounting what happened, I will quote most parts of this report as this is a report of the body I was part of.


Developments this week

“On Tuesday, August 29, the co-sponsors met with the Steering Committee to report on their negotiations with the African Group. They reported that this has been a very difficult process, but that they were now very close to an agreement, however, a few details still need to be resolved. They did not
provide the Steering Committee with any of the language being discussed, and did not go into any details as to what the emerging agreement looked like. They assured us that the provisions on land, territories and resources, self-determination, free prior and informed consent and treaties remained intact but they have to agree to the insertion of a reference to state territorial integrity in the Declaration text. The co-sponsors thanked the indigenous peoples for putting a lot of pressure on the African States as this has definitely helped in bringing them to negotiate with them.

They further explained that they had no option but to enter into negotiations on the actual Declaration text as it is evident that it would be impossible to reach an agreement with the African Group if they did not consider some amendments to the Declaration text. Further, the co-sponsor group deemed it too risky to try to push the Declaration as adopted by the Human Rights Council through the General Assembly against the opposition of the African Group. To do so would seriously jeopardize the adoption of the Declaration and would ensure that very unfavourable amendments would be presented on the floor during the debate at the General Assembly. Hence, in the co-sponsor group’s assessment it was necessary to enter into text negotiations with the African Group.

The Steering Committee responded by expressing its gratitude for the co-sponsors’ efforts to reach an agreement on the Declaration. The Steering Committee further stated that it would not be in a position to comment on any agreement until they had been provided with the actual agreed text. The states responded that they would provide the Steering Committee with the agreed text as soon as a formal agreement with the African Group had been reached.

The co-sponsors further said that the momentum to have a Declaration adopted is strong at this time. An agreement between the co-sponsors and the Africa Group has to be reached in the next few days as the opposing states – predominantly Canada and New Zealand – are trying very hard to stop the coming into being of such an agreement. Pressure from the opposing states is reaching the heads of states of some of the co-sponsors. The forthcoming Asia-Pacific Economic Cooperation (APEC) meeting on 4-7 September 2007, which will be held in Australia and attended by heads of states from the CANZUS
(Canada, Australia, New Zealand and the US) group will be a fertile ground for such lobbying thus, the urgency of finalizing the agreement. The opposing states demanded to be included in the negotiations and that their proposed language (see attachment) also be considered. The co-sponsors expressed the opinion that if the deliberations on the Declaration are extended beyond the General Assembly’s 61st session, it would no longer be possible to keep Canada, New Zealand et. al – nor their proposed amendments - out of the negotiations. The outcome of such a process could only, in the co-sponsors’ opinion, be a seriously diluted Declaration.

The co-sponsor group also informed the Steering Committee that an agreement with the African Group would include a pact to jointly vote down any amendments on the floor of the General Assembly, coming from Canada, or other opposing nations.

The Chair of the Steering Committee distributed a document containing the amendments to the Declaration that he foresaw might be included in a negotiated agreement between the co-sponsor group and the African Group. Since these amendments were not confirmed, the Steering Committee decided not to distribute the document. It was considered better to wait for an official text before circulating the agreement in the regions.

Nevertheless, the Steering Committee discussed and analysed the amendments, as foreseen and presented by the committee Chair. The Steering Committee quickly concluded that of the envisioned amendments, the one that caused the most concern was the inclusion of a reference to territorial integrity in Article 46. The committee understood that it would be nearly impossible to avoid a reference to territorial integrity in the Declaration. It is evidently too important to many African (and also Asian) states. Some committee members, however, thought that the proposal was discriminatory, and potentially could be harmful to Indigenous peoples and the rights in the Declaration. Other committee members did not see any problem with the proposed language as this is standard language in most international instruments and this is balanced and safeguarded with several clauses in the various parts of the Declaration.

Given that an agreement between the co-sponsor group
and the African Group was imminent, the Steering Committee recognized that it would be very difficult, probably impossible, to influence the text amendments at this stage. Some committee members thought that the language on territorial integrity, if it had to be included, should be stated in a way that was more consistent with texts that already exist in international law. The committee decided to make an attempt to craft language on territorial integrity to be handed over to Mexico for use in the final negotiations with the African Group. Two paragraphs with suggested wording along those lines were drafted to present to the co-sponsors without delay.

On the evening of August 29, the Chair of the Steering Committee together with the Chair of the Permanent Forum, and also regional member of the Steering Committee, Victoria Tauli-Corpuz met with the co-sponsors and presented the committee’s suggested wording for improvements on the language on territorial integrity.

The Co-sponsor/ Africa Agreement

On the afternoon of August 30, the government of Mexico informed the Steering Committee that the co-sponsor group and the African Group had reached an agreement on the Declaration. On August 31 the co-sponsors met with the Steering Committee and presented the text of the negotiated agreement, which contained nine changes to the Declaration as passed by the Human Rights Council.

Committee members first expressed gratitude to the co-sponsors for all their efforts and for being able to successfully reach an agreement with the African Group. The Steering Committee stated that Indigenous peoples in the seven regions would now study the agreement, and come back to the co-sponsors with their position. Since time is short, it was decided that the committee would meet with the co-sponsors after the regional consultations and report back indigenous people’s positions on the Declaration with the negotiated changes.

Responding to questions and concerns from members of the Steering Committee, the co-sponsors offered the following information about the agreement:

- In their view this is the final document. The African Group has committed to not come forward with any
further request for additional amendments to the Declaration and has agreed to vote against any amendments made on the floor.

- The co-sponsors were satisfied that they had managed to reach an agreement with the African Group that includes amendments to very few of the provisions in the Declaration, in particular compared to the long list of amendments that the African Group initially wanted to see included in the Declaration. The co-sponsors further stated that they were very pleased to present an agreed Declaration that leaves all – in their opinion – the most central articles in the Human Rights Council Declaration intact. These include the articles on self-determination; lands, territories and natural resources; free, prior and informed consent; treaties; and preambular paragraphs recognizing inherent and equal rights of Indigenous peoples.

- The co-sponsors stated that even though technically speaking it is not a closed document, that in their view it would not be possible to open up the negotiated text for any further amendments without other interested parties – such as opposing states like Canada, New Zealand and the Russian Federation – also being invited to the negotiating table.

- They further stated that the agreement must be seen as an integrated whole or “package”. This means that if the co-sponsor group would go back to the African Group and attempt to re-negotiate the language on territorial integrity, the African Group would instantly respond by wanting to open up the articles on lands and natural resources for negotiation, which are unchanged from the Human Rights Council text. Hence, in the co-sponsor group’s opinion, it is not a viable option for Indigenous peoples to try to further amend the agreed changes as presently drafted. Their interest now is to know whether Indigenous peoples can accept the Declaration or not with the newly negotiated changes.

- They repeated what has always been the case: that the
co-sponsors will not go ahead and push for adoption of a Declaration that Indigenous peoples do not want. They said that this amended text should be analysed from a political lens than from a legalistic lens.

• If a Declaration that enjoys the support of the African Group is presented to the UN General Assembly, the co-sponsor group is certain that the vast majority of Asian, Eastern European and Caribbean states will also support the Declaration. Western Europe and Latin America’s votes have already been secured. If the Indigenous peoples of the world support the adoption of the Declaration as agreed to by the co-sponsors and the African Group, the co-sponsors believe it will be adopted by the UN General Assembly with overwhelming majority. (Currently there are 67 co-sponsors plus the 53 countries of the African Group which adds up to 120 votes. This is a clear majority as there are a total of 192 members of the General Assembly).

Discussions regarding changes to Article 46 and “territorial integrity”

The co-sponsors were well aware that many Indigenous peoples had argued for many years against the inclusion of a provision upholding state territorial integrity in the Declaration. They explained that they understood that this might be the most difficult provision for Indigenous peoples to accept in the newly negotiated text. They also once again expressed that an agreement with the African Group would not be possible without this inclusion.

Members of the Steering Committee again asked the co-sponsors why their suggested wording on territorial integrity had not been included in the final agreed changes. The co-sponsor group responded that it was not possible to include the language on territorial integrity submitted by the Steering Committee, because it would have lead to the African Group insisting on opening up the land and resource articles for changes. They were also asked if the opening phrase of Article 46 which says “Nothing in this Declaration may be interpreted as implying…” would affect all the rights in Declaration. The co-sponsors said that in existing international law, territorial integrity
is clearly tied to the exercise of the right to self-determination and therefore would not be construed as affecting other rights. They further added that the reference to the Vienna Declaration and Programme of Action in the preamble would reaffirm this.

In further discussions, members of the Steering Committee responded to concerns expressed for Indigenous peoples’ territorial integrity by affirming that in their view Article 26 left intact in fact recognizes Indigenous peoples’ territorial integrity over lands they have traditionally owned and occupied. Article 37 on treaties further affirms these rights. They also agreed that the reference to the Vienna Declaration and Program of Action will be an additional safeguard clause.”

Feedback from Indigenous Peoples’ Organizations from the Regions

This letter quoted above was sent to all the members of the various regional caucuses which came with the Amended Text of the Declaration (9 changes) which highlighted the changes from the HRC Text; the Canada/New Zealand/Russia/Colombia Proposals (20 changes, Aug. 13, 2007); and the original Africa Proposed Amendments (36 changes, May 2007). These additional attachments were sent for them to compare what was finally agreed upon with the earlier proposals. The instruction was that they should send back their position not later than September 4, at 12 noon, New York time. The regional coordinators were in charge of sending out the information and receiving the responses from their regions. Then the Steering Committee will meet on Sept. 5 to consolidate the results. I prepared one for Asia, as I was the only one left again in New York after Joan Carling of the Cordillera Peoples Alliance, who stayed for the first week, had to leave. Different modes were adopted. I mainly sent this through email and asked my office in the Philippines to call those who were not responding. The North American caucus and Latin America did conference calls in addition to the emails.

The time given was short because we already knew that the Declaration would be presented before the General Assembly on 13 September 2007. By September 5, we will have to inform the co-sponsors if the indigenous caucuses agree with the
changes. Then this has to be translated into the six UN languages. All the caucuses, except the North American caucus (mainly the US groups), had a consensus that they accepted the amendments. The few indigenous organizations in the US who did not accept the changes said they would not block the consensus. All the Asia indigenous peoples’ organizations from 11 countries which I emailed replied positively that they would accept the amendments. The Steering Committee met in September 5 to get the regional reports.

The next day, 6 September, we held a press conference at the UN Press room. Those who spoke were Les Malezer, the Chair of the Global Caucus and the Co-coordinator for the Pacific, Joseph Ole Simmel the Co-coordinator for Africa and I, as the Chair of the Permanent Forum and the Co-coordinator for Asia. Before the press conference I also consulted with my colleagues in the Permanent Forum whether they agreed with the changes in the text. Most of them emailed back saying they did; and so I stated in the press conference that it was not just the Asia Indigenous Peoples’ Organizations who supported the amended text but also most of the members of the Permanent Forum.

We met with the co-sponsors on 7 September to inform them of the consolidated position. We also looked at the draft resolution that they were going to present. This was a simple resolution saying that it takes note of the HRC adoption of the Declaration and then calling on the General Assembly to adopt the Declaration (revised version) annexed to the resolution. They assured us that the Africans will not put any amendments nor will the Canadians. It will be put to a vote but they are confident that we will get the majority.

The Historic Day, September 13, 2007

Between the 7th to the 12th of September, we spent the time preparing our regional caucus statements. I prepared the Asia Indigenous Peoples’ Regional Caucus Statement and my own statement as the Chair of the Permanent Forum. The co-sponsors suggested that I, as the Chair, and Les Malezer should speak before the General Assembly when the Declaration is adopted. I suggested this to Elsa Stamatopoulou, the Chief of
the Secretariat of the Forum. She said this was a difficult challenge because it was not the practice of the GA to allow non-state members to speak, especially if this was a UN body. Anyway, she said that she will do what she can. She wrote the General Assembly Secretariat who finally answered after a few days saying that we can speak, but only after all the governments have spoken. There will be a recess called for the formal session and the GA will go into informal session. Then I and Les can speak.

On this day there, were many indigenous representatives who came from Canada and the US to witness the event. The Secretariat of the Forum arranged with the GA secretariat that the regional coordinators and other indigenous representatives would have a seat at the main floor of the GA Hall. The others will be at the Public Gallery. Some of those involved in the drafting of the Declaration from the beginning were there. These were Professor James Anaya of the University of Arizona and Tim Coulter of the Indian Law Resource Center, among others. John Henriksen of the Saami Council was also present. He was the one who recommended at an early stage of the WGDD that a reference on territorial integrity be included as the States will never accept a Declaration without this. He was vilified by other indigenous organizations for this proposal but it turned out he was right after all. Many Chiefs from Canada were present which included Phil Fontaine, the Grand Chief of the Assembly of First Nations.

From the side of the Philippine government, I communicated with Mr. Eugenio Insigne, the Chair of the National Commission on Indigenous Peoples in the Philippines, to ensure he will be able to come. We spoke before I left for New York and I encouraged him to come to New York to attend the session when the Declaration will be adopted. He agreed and he worked on this. He arrived exactly on the 13 morning and he was able to enter the GA Hall just as the session was starting.

The agenda item on the Declaration was the 6th and last item for that day. However, by 11:00am, the rest of the agenda items were done, so the President opened Agenda Item 6. The Resolution was presented by Luis Enrique Chavez, the Chairman-Rapporteur of the WGDD, who is now based in the Permanent Mission of Peru in New York. He mentioned the additional
co-sponsors for the resolution (A/61/L.67). The original co-sponsors were Belgium, Bolivia, Costa Rica, Cuba, Denmark, Dominican Republic, Ecuador, Estonia, Finland, Germany, Greece, Guatemala, Hungary, Latvia, Nicaragua, Peru, Portugal, Slovenia and Spain. He added the following: Andorra, Armenia, Austria, Croatia, Cyprus, Fiji Republic, Lithuania, Luxembourg, Malta, Nauru, Italy, Panama, Serbia, South Africa, Switzerland, TFYR-Macedonia.

After this, the President said that the statements in explanation of vote will be made before the vote is cast. Australia, through Robert Hill, spoke first and said that Australia was not able to participate in the negotiations of the text and is deeply disappointed that no such meeting was convened. He said Australia will vote no. John Mcnee of the Government of Canada followed and stated that "By voting against the text, Canada put on record its disappointment with both the substance and the process." Rosemary Banks, the Permanent Representative of New Zealand said that "the provision on lands and resources could not be implemented in New Zealand. It was unable to support a text that included provisions that were so incompatible with its democratic processes, legislation and constitutional arrangements." It had to vote against it. The next speaker was Robert Hagen of the United States who also said it will vote no, followed by Russia who surprisingly abstained from voting. Benin came next and said they will vote yes. Colombia, whom were expecting to vote no, abstained.

When the President announced that the vote will be taken at around 12 noon, Guatemala raised its flag and asked who was calling the vote. She said it was the US, Australia and New Zealand. Surprisingly Canada did not join the group.

The Assembly then proceeded to vote and the recorded vote was 143\(^{15}\) in favor, 4 (Australia, Canada, New Zealand and USA) against and 11\(^{16}\) abstained. There were 34\(^{17}\) who were absent. Thirtyeight (38) member states took the floor afterwards to explain their vote after the vote and this included the Philippines. Mr. Insigne spoke on behalf of the Philippines and said that his "[D]elegation’s expression of support was premised on the understanding that the right to self-determination shall not be construed as encouraging any action that would dismember
or impair territorial integrity or political unity of a sovereign or independent State. It was also based on the understanding that land ownership and natural resources was vested in the State.”

Then I was asked by the President to read my statement as the Chair of the Forum and Les Malezer to read his statement as the Chair of the Global Indigenous Peoples’ Caucus. These statements are part of this publication.

For those of us who were there, this historic day will never be forgotten. What needs to be done next is to discuss how this UN Declaration on the Rights of Indigenous Peoples will be implemented to make the lives of indigenous peoples of the world a life of dignity and pride.

13 October 2007

Endnotes:


2 This was established on the basis the Economic and Social Council (ECOSOC) resolution 1982/34.

3 By resolution 1995/32 of 3 March 1995, the Commission on Human Rights decided to establish an open-ended intersessional working group of the Commission on Human Rights with the sole purpose of elaborating a draft declaration, considering the draft contained in the annex to resolution 1994/45 of 26 August 1994 of the Sub-Commission on Prevention of Discrimination and Protection of Minorities (now the Sub-Commission on the Promotion and Protection of Human Rights) entitled “Draft United Nations declaration on the rights of indigenous peoples” for consideration and adoption by the General Assembly within the International Decade of the World’s Indigenous People. This decision was endorsed by the Economic and Social Council in its resolution 1995/32 of 25 July 1995.’


5 30 yes votes by regions were as follows: Asia (9)
   – China, Indonesia, India, Japan, Malaysia, Pakistan, Sri Lanka and South Korea: Africa (4)
   – Cameroon, Mauritius, South Africa and Zambia: European Union (7)
   – Finland, France, Germany, Netherlands, Poland, Romania,
United Kingdom: Latin America and the Caribbean (7)
– Brazil, Cuba, Ecuador, Guatemala, Mexico, Peru, Uruguay)
Eastern Europe (2) Azerbaijan and Czech Republic; and Switzerland also voted yes.
Abstained:
Algeria, Argentina, Bahrain, Bangladesh, Ghana, Jordan, Morocco, Nigeria, Senegal, Tunisia, Ukraine
This was co-sponsored by Armenia, Bolivia, Congo, Croatia, Cuba, Democratic Republic of the Congo, Denmark, Ecuador, Estonia, Fiji, France, Greece, Guatemala, Haiti, Hungary, Latvia, Liechtenstein, Lithuania, Mexico, Panama, Paraguay, Peru, Poland, Portugal, Slovenia, Spain and the former Yugoslav Republic of Macedonia: When this was introduced in 2 November, Bosnia-Herzegovina, Cyprus and Finland joined as co-sponsors.
7 The ones who voted yes on this were 47 countries from Africa, 21 from Asia, 2 from Eastern Europe, 8 from Latin America and the Caribbean and 4 from the Western Europe and other Groups.
9 This group was composed of the following: Dr. Albert Barume, DRC as facilitator of the group, Dr. Naomi Kipuri, Kenya, Joseph Ole Simel, Kenya, Adele Wildschut, South Africa, Liberate Nikayenzi, Burundi, Hassan id Balkassm, Morocco.
10 Some of the Functional Commissions of the ECOSOC include the Commission on the Status of Women, the Commission on Sustainable Development, the Commission on Statistics, Commission on Population and Development, UN Forum on Forests, Commission on Social Development.
11 The members of this Steering Committee were the same ones in the HRC process. Africa
– Adele Wildschut (South Africa) and Joseph Ole Simmel (Kenya); Asia
– Vicky Tauli-Corpuz (Philippines) and Devasish Roy (Bangladesh), Joan Carling is an alternate if Devasish is not around; Arctic
– Mattias Ahren (Sweden) and Dalee Sambo (Alaska) with Hjalmar Dahl (Greenland); Latin America
– Hector Huertas (Panama), Jose Carlos Morales (Costa Rica), Azalene Kaingang (Brazil) and Adelfo Regino (Mexico); North America
– Andrea Carmen (USA) and Chief Ed John (Canada), alternate Celeste MacKay (Canada); Pacific
– Les Malezer (Australia) and Miliilani Trask (Hawaii); Russia
– Mikail Todishev. The support NGOs who sat in the meetings
of the Committee were Lola Alix Garcia (IWGIA), Jennifer Preston (AFSC), Miriam Anne Frank (NCIV), Marie Leger (Rights and Democracy), Paul Joffe.

12 These were Articles 3, 4, 10, 11, 19, 26, 27, 28, 29, 30, 31, 32(2), 46.

13 These NGOs included the International Forum on Globalization (IFG), International Service for Human Rights, Amnesty International, Amazon Watch, Rainforest Action Network, Center for International Environmental Law (CIEL), etc.

14 The regional caucuses of the indigenous world is divided into 7. This is the division made by the Permanent Forum. So these are: Africa, Arctic, Asia, Eastern Europe, Latin America, North America, Pacific.

15 Yes: Argentina, Armenia, Austria, Bahamas, Bahrain, Barbados, Belarus, Belgium, Belize, Benin, Bolivia, Bosnia and Herzegovina, Botswana, Brazil, Brunei Darussalam, Bulgaria, Burkina Faso, Cambodia, Cameroon, Cape Verde, Central African Republic, Chile, China, Comoros, Congo, Costa Rica, Croatia, Cuba, Cyprus, Czech Republic, Democratic People’s Republic of Korea, Democratic Republic of the Congo, Denmark, Djibouti, Dominica, Dominican Republic, Ecuador, Egypt, El Salvador, Estonia, Finland, France, Gabon, Germany, Ghana, Greece, Guatemala, Guinea, Guyana, Haiti, Honduras, Hungary, Iceland, India, Indonesia, Iran, Iraq, Ireland, Italy, Jamaica, Japan, Jordan, Kazakhstan, Kuwait, Lao People’s Democratic Republic, Latvia, Lebanon, Lesotho, Liberia, Libya, Liechtenstein, Lithuania, Luxembourg, Madagascar, Malawi, Malaysia, Maldives, Mali, Malta, Mauritius, Mexico, Micronesia (Federated States of), Moldova, Monaco, Mongolia, Mozambique, Myanmar, Namibia, Nepal, Netherlands, Nicaragua, Niger, Norway, Oman, Pakistan, Panama, Paraguay, Peru, Philippines, Poland, Portugal, Qatar, Republic of Korea, Saint Lucia, Saint Vincent and the Grenadines, San Marino, Saudi Arabia, Senegal, Serbia, Sierra Leone, Singapore, Slovakia, Slovenia, South Africa, Spain, Sri Lanka, Sudan, Suriname, Swaziland, Sweden, Switzerland, Syria, Thailand, The former Yugoslav Republic of Macedonia, Timor-Leste, Trinidad and Tobago, Tunisia, Turkey, United Arab

16 Abstain: Azerbaijan, Bangladesh, Bhutan, Burundi, Colombia, Georgia, Kenya, Nigeria, Russian Federation, Samoa, Ukraine.

Madame President of the General Assembly, H.E. Ambassador Haya Rashed Al Khalifa, Excellencies, Indigenous Chiefs, Elders, Sisters and Brothers, Ladies and Gentlemen, I open my statement by acknowledging the First Peoples of this territory of which some of the Chiefs are here with us today. Gawis ay agew ken datako am-in. Palalo ng gasing ko ay mang-ila ken dakayo.

I am Victoria Tauli-Corpuz, a Kankana-ey Igorot from the Cordillera Region in the Philippines. I speak as the Chair of the Permanent Forum on Indigenous Issues. Three of my co-members Aqaluuk Lynge, Willy Littlechild and Merike Kokajev are also here with us. I also speak as an indigenous person who has been actively engaged in the work around this Declaration.

It is a great honor and privilege to address you all in this historic day. Through the adoption of the Declaration on the Rights of Indigenous Peoples, the United Nations marks a historical milestone in its long history of developing and establishing international human rights standards.

It marks a major victory for Indigenous Peoples who actively took part in crafting this Declaration. This day will be forever be etched in our history and memories as a significant gain in our long struggle for our rights as distinct peoples and cultures.

The 13th of September 2007 will be remembered as a day when the United Nations and its Member States, together with Indigenous Peoples, reconciled with past painful histories and
decided to march into the future on the path of human rights. I thank very warmly all the States who voted for the adoption of the Declaration today. All of you will be remembered by us.

Madame President,

Let me express my warmest gratitude to you for your leadership and for keeping your word that you will do all you can to make sure this Declaration will be adopted before the end of your Presidency. Among many of your achievements, the adoption of the Declaration is the one which we, indigenous peoples and we as members of the Forum, will remember as your most important legacy.

I hail representatives of Indigenous Peoples who patiently exerted extraordinary efforts for more than two decades to draft and negotiate the Declaration. Indigenous Peoples attempts to get the ears of the international community started much earlier with the trip of Cayuga Chief Deskaheh to the League of Nations in 1923 and of Maori leader W. T. Ratana in 1925. We can now say that this historical trip, even if he was turned away, has not been in vain.

This Declaration has the distinction of being the only Declaration in the UN which was drafted with the rights-holders, themselves, the Indigenous Peoples. We see this is as a strong Declaration which embodies the most important rights we and our ancestors have long fought for; our right of self-determination, our right to own and control our lands, territories and resources, our right to free, prior and informed consent, among others. Each and every article of this Declaration is a response to the cries and complaints brought by indigenous peoples before the UN- Working Group on Indigenous Populations (WGIP). This is a Declaration which makes the opening phrase of the UN Charter, “We the Peoples...” meaningful for the more than 370 million indigenous persons all over the world.

Madame President,

While we respect the interpretative statements presented by States, today, we believe that the significance and legal implications of this Declaration should not be minimized in any
way because this will amount to discrimination against indigen-
ous peoples. For us, the correct way to interpret the Declara-
tion is to read it in its entirety or in a wholistic manner and to
relate it with existing international law. Article 46 paragraph 1,
for instance cannot be interpreted in a way which discriminates
indigenous peoples. The first preambular paragraph, a new
addition, which says “Guided by the purposes and principles
of the Charter of the United Nations...” immediately establishes
that indigenous peoples’ rights in the Declaration are within
the context of international law.

Preambular Paragraph 16 confirms that the right of self-
determination of “all peoples” is the right referred to in the Char-
ter of the UN, the International Covenants on Civil and Political
Rights and Economic, Social and Cultural Rights and Vienna
Declaration and Programme of Action. The right of self-determi-
nation of Indigenous Peoples contained in Article 3 of the Decl-
oration is the same right contained in international law. The
reference to the Vienna Declaration and Programme of Action
also affirms that the principle of territorial integrity found in
Article 46 of the UN Declaration on the Rights of Indigenous
Peoples only applies to the right of self-determination and not
other rights.

Furthermore, the Vienna Declaration and the 1970 Decla-
ration on Principles of International Law concerning Friendly
Relations and Cooperation Among States in Accordance with
the Charter of the United Nations say that for States to invoke
territorial integrity, they must be “conducting themselves in com-
pliance with the principle of equal rights and self-determina-
tion of peoples.”

I salute the independent experts, especially Madame Erica-
Irene Daes who, as the Chair of the UN Working Group, worked
closely with indigenous representatives to craft the original
version of this Declaration. I hail the representatives of States and
NGO who actively contributed to reach where we are today.
This magnificent endeavour which brought you to sit together
with us, Indigenous Peoples, to listen to our cries and struggles
and to hammer out words which will respond to these is un-
precedented.

The long time devoted to the drafting of the Declaration by
the United Nations stemmed from the conviction that Indig-
enous Peoples have rights as distinct peoples and that a constructive dialogue among all would eventually lead to a better understanding of diverse worldviews and cultures, a realignment of positions and, finally, to the building of partnerships between states and Indigenous Peoples for a more just and sustainable world.

**The Declaration and the Permanent Forum**

For the UN Permanent Forum on Indigenous Issues, the Declaration will become the major foundation and framework in implementing its mandate to advise members of the Economic and Social Council and the UN agencies, programmes and funds on indigenous peoples human rights and development. It is a key instrument and tool for raising awareness on and monitoring progress of indigenous peoples’ situations and the protection, respect and fulfillment of indigenous peoples’ rights. It will further enflesh and facilitate the operationalization of the human rights-based approach to development as it applies to Indigenous Peoples. It will be the guide for States, the UN System, Indigenous Peoples and civil society in making the theme of the Second Decade of the World’s Indigenous Peoples “Partnership for Action and Dignity” a reality.

The United Nations Permanent Forum on Indigenous Issues is explicitly asked in Article 42 of the Declaration to promote respect for and full application of the provisions of the Declaration and follow-up the effectiveness of this Declaration. On behalf of the Permanent Forum on Indigenous Issues, I commit the Forum’s devotion to this duty.

This is a Declaration which sets the minimum international standards for the protection and promotion of the rights of Indigenous Peoples. Therefore, existing and future laws, policies, and programs on indigenous peoples will have to be redesigned and shaped to be consistent with this standard.

*Madame President,*

Before I end my statement let me briefly thank the others whom I have not mentioned yet. I thank H.E. Ambassador Luis de Alba who chaired the Human Rights Council which adopted
the Declaration in 2006. I thank Luis Enrique Chavez, the Chair of the Working Group on the Draft Declaration who did his best to balance the interests of Indigenous Peoples and States in Working Group and in the text he submitted to the Human Rights Council. Let me also thank H.E. Ambassador Hilario Davide whom you appointed as a facilitator. He has contributed to this end result. And I thank the delegates of Mexico, Peru and Guatemala and the African Group of States who managed to come together and make the final version of this Declaration.

I also thank all my co-members of the Permanent Forum who gave their full support for the adoption of the Declaration and reiterated in our recommendation No. 68 in our 5th Session in 2006 and No. 73 in the 6th Session that this Declaration will be an “instrument of great value to advance the rights and aspirations of indigenous peoples.” We all feel proud that this Declaration has been adopted within the period that we sit as members of the Permanent Forum. I thank the Secretariat who were always there to support us.

The UN Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous Peoples, Rodolfo Stavenhagen, has to be thanked also for his contributions to raising the issues of indigenous peoples before the United Nations. I thank the NGOs especially IWGIA, NCIV, DOCIP, Quakers, Amnesty International, IFG, Rights and Democracy and many others, who helped us in various ways.

I also express my gratitude to Les Malezer, the chair of the Global Indigenous Peoples’ Caucus who successfully brought the indigenous peoples’ regional caucuses to agree on the most important decisions which had to be made.

Finally, let me reiterate my thanks again to all indigenous leaders, activists and experts and the NGO experts who all contributed to this historic achievement. Some of them are with us today also. Some indigenous elders and NGO experts have already passed away and I would like to specifically mention, Tony Blackfeather, Ed Burnstick, among other elders, and Andrew Gray, Howard Berman and Bob Epstein, the NGO experts who accompanied us in this work. Let us pay tribute to them and thank them in our hearts.

While I express my thanks to all the actors involved in the various stages of the process, I also call on everybody to take on
the responsibility to ensure the effective implementation of this Declaration.

The challenge to ensure the respect, protection and fulfillment of Indigenous Peoples Rights has just begun. We foresee that there will be great difficulties in implementing this Declaration because of lack of political will on the part of the governments, lack of resources and because of the vested interests of rich and powerful. However, we will be counting on the continuing good faith shown by States today who voted for the adoption of the Declaration. We will be counting on the United Nations System to help implement the Declaration.

Effective implementation of the Declaration will be the test of commitment of States and the whole international community to protect, respect and fulfill indigenous peoples collective and individual human rights.

I call on governments, the UN system, Indigenous Peoples and civil society at large to rise to the historic task before us and make the UN Declaration on the Rights of Indigenous Peoples a living document for the common future of humanity.

Thank you Madame President.

61st Session of the UN General Assembly
13 September 2007
New York
The adoption of the Declaration on the Rights of Indigenous Peoples by the United marks a momentous and historic occasion for both Indigenous Peoples and the United Nations.

One quarter of a century ago the United Nations agreed that the situation of Indigenous Peoples around the world was so desperate and consistently exploited, that it warranted international attention.

Within a few years of brief examination and assessment, the United Nations decided that a human rights standard on the rights of indigenous peoples was required.

Simultaneously, the indigenous peoples of the world were uniting, because of our increasing capacity to communicated to each other, but also out of necessity to achieve an international voice.

Together we found out that Indigenous Peoples around the world shared a common situation of loss of control of our lands, territories and resources and a history of colonisation.

The Declaration, as a deposition, represents a meeting of authorities, i.e. the United Nations and the Indigenous Peoples.

Today's adoption of the Declaration occurs because the United Nations and the Indigenous Peoples have found the common will to achieve this outcome.

The Declaration does not represent solely the viewpoint of the United Nations, nor does it represent solely the viewpoint of the Indigenous Peoples.

It is a Declaration which combines our views and interest and which sets the framework for the future.
It is a tool for peace and justice, based upon mutual recognition and mutual respect.

We emphasise once again that the Declaration on the Rights of Indigenous Peoples contains no new provisions of human rights. It affirms many rights already contained in international human rights treaties, but rights which have been denied to the Indigenous Peoples.

As Indigenous Peoples we now see a guarantee that our rights to self-determination, to our lands and territories, to our cultural identities, to our own representation and to our values and beliefs will be respected at the international level.

The Declaration is a framework for States to link and integrate with the Indigenous Peoples, to initiate new and positive relations but this time without exclusion, without discrimination and without exploitation.

These rights in the Declaration are already recognized in international law, but they are rights which have been denied to Indigenous Peoples everywhere.

They are rights which are seen by Indigenous Peoples as essential to our successful survival, dignity and well-being, and to maintain our strong cultural and spiritual relationship with mother earth and nature.

It has, after all, been our determination to defend our identity and our lands, territories and resources which has helped to protect and preserve the biological diversity of the world, the cultural diversity of the world, and the environmental stability of the world.

These are the very issues that governments are now so desperate trying to address, as matters requiring of emergency, recovery actions.

The Declaration carries a message for all States that have links and association with Indigenous Peoples.

That message is not about secession, as some States may fear, but about co-operation and partnership to ensure that all individuals, regardless of race or beliefs, are truly equal and that all peoples are respected and allowed to develop.

Indigenous Peoples’ right to self-determination is about our right to freely determine our political status and freely pursue our economic, social and cultural development.

It also includes our right to freely manage our natural
wealth and resources for mutual benefit, and out right to maintain and protect our own means of subsistence.

“Free, prior and informed consent” is what we demand as part of self-determination and non discrimination from governments, multinationals and private sector.

We realize that a number of States have insisted that the Declaration affirm “territorial integrity” (which by the way is not a human right) as defined in the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States and in the Vienna Declaration.

We confirm that “territorial integrity” in fact obligates every State to promote realization of the principle of equal rights and self-determination of peoples, and to bring a speedy end to colonialism, with due regard to the freely expressed will of the peoples concerned.

“Territorial integrity” also requires that a State represent the whole people without distinction, and reaffirms that subjection of peoples to alien subjugation, domination and exploitation constitutes a violation of the principle, as well as a denial of fundamental human rights, and is contrary to the Charter.

The Declaration ensures treaties signed between Indigenous Peoples and States are respected and honored. This provision in the Declaration is extremely important for Indigenous Peoples who have always placed much importance upon the integrity and truthfulness of historical treaties, for these treaties may contain special rights and economic and political agreements with States.

However it is important that we keep focus on the integrity of the Declaration, noting how each article is meant to be interpreted in conjunction with the entire Declaration, its principles and its purposes.

We are also assured by Article 46(3) that states: “The provisions of the Declaration in this Declaration shall be interpreted in accordance with the principles of justice, democracy, respect for human rights, equality, non-discrimination, good governance and good faith.”

Now that the Declaration has been adopted by the General Assembly, Indigenous Peoples can reasonably expect that the States will, if they do not already have such a relationship, form a collaborative and cooperative relationship with the rep-
resentatives of the indigenous peoples to ensure that the rights contained in the Declaration are protected and promoted.

In 2004 the General Assembly resolution 59/174 upon Governments to ensure that activities and objectives for the Second Decade are planned and implemented on the basis of full consultation and collaboration with indigenous people.

The programme of action, approved by consensus by the General Assembly in December 2005, urged governments to launch a review of national legislations to eliminated possible discriminatory provisions with the full and effective participation of indigenous experts.

The Programme of Action recommends that national constitutions should recognize the existence of indigenous peoples and make explicit reference to them, where relevant, and that governments should consider integrating traditional systems of justice into national legislations in conformity with international human rights law and international standards of justice.

This is the challenge for the future. With a Declaration now in place, affirming the rights of Indigenous Peoples, it will be important that States respond positively.

The Declaration give us the platform for addressing the continuing abuses of human rights against Indigenous Peoples and for shaping a future where it can be realised that all peoples are truly equal.

By Les Malezer
13 September 2007
The UN Declaration on the Rights of Indigenous Peoples: Towards Re-empowerment*

JURIST Guest Columnists S. James Anaya of the Rogers College of Law, University of Arizona, and Siegfried Wiessner of St. Thomas University School of Law say that the UN General Assembly’s recent landslide adoption of the UN Declaration on the Rights of Indigenous Peoples is a milestone in the re-empowerment of the world’s aboriginal groups, and that, in important parts, it reaffirms customary international law in the field...

The UN General Assembly’s adoption of the UN Declaration on the Rights of Indigenous Peoples on September 13, 2007 marked the end of a long journey, a milestone in the long and arduous march of what have come to be known as “indigenous peoples” through the major institution of organized intergovernmental society: the United Nations. It was a day of celebration for indigenous leaders and their rank and file scattered around the globe, united in a common fate of conquest, dispossession, marginalization and neglect, but also in the joy of rising again.

When the United Nations Working Group on Indigenous Populations was established in 1982, one of its key missions was the establishment of a declaration of rights of indigenous peoples. Indigenous peoples from around the world trekked to the Palais des Nations in Geneva each summer afterwards to articulate their claims to the members of the Working Group and state delegations. In 1993, under the inspirational leadership of long-time Chairperson Mrs. Erica-Irene Daes, agreement was reached by the Working Group on a “Draft Declaration on...
the Rights of Indigenous Peoples.” This draft became the basis for discussion within the UN Commission on Human Rights, which was replaced in 2006 by the Human Rights Council. In its first substantive decision, the Council on June 29, 2006, by a vote of 30 in favor, 2 against and 12 abstentions, adopted a revised text of the Declaration, and passed it on to the General Assembly for its final approval.

Beyond recognition of the right to self-determination, the Council’s text formulated an array of tailor-made collective rights, such as the right to maintain and develop their distinct political, economic, social and cultural identities and characteristics as well as their legal systems and to participate fully, “if they so choose,” in the political, economic, social and cultural life of the State. They were guaranteed the right not to be subjected to genocide or ethnocide, i.e., action aimed at or affecting their integrity as distinct peoples, their cultural values and identities, including the dispossession of land, forced relocation, assimilation or integration, the imposition of foreign lifestyles and propaganda.

The stated rights guaranteed to indigenous peoples as groups, not only as individual persons, include the right to observe, teach and practice tribal spiritual and religious traditions; the right to maintain and protect manifestations of their cultures, archaeological-historical sites and artifacts; the right to restitution of spiritual property taken without their free and informed consent, including the right to repatriate Indian human remains; and the right to protection of sacred places and burial sites. Further listed are the rights to maintain and use tribal languages, to transmit their oral histories and traditions, to education in their language and to control over their own educational systems.

They are afforded the right to maintain and develop their political, economic and social systems, and to determine and develop priorities and strategies for exercising their right to development. Their treaties with States should be recognized, observed and enforced. Last, but not least, the Declaration supports the right of indigenous people to own, develop, control, and use the lands and territories which they have traditionally owned or otherwise occupied and used, including the right to restitution of lands confiscated, occupied or otherwise taken
without their free and informed consent, with the option of providing just and fair compensation wherever such return is not possible. The document, in particular, goes beyond ILO Convention No. 169 in its statements on self-determination, land and resource rights, as well as political autonomy.

With very few changes to this content – amendments that essentially emphasized already existing constraints on the right to self-determination and recognized the diversity of contexts – the Declaration was adopted last month by a landslide affirmative vote of 144 states in the United Nations General Assembly. Only four countries - the United States, Canada, Australia and New Zealand - voted against it, while Azerbaijan, Bangladesh, Bhutan, Burundi, Colombia, Georgia, Kenya, Nigeria, Russia, Samoa and Ukraine abstained.

The political significance of this remarkable success of the indigenous peoples' movement cannot be understated. The United Nations can be justly proud of this day. What, however, is the legal effect of this instrument?

For one, a formal analysis of the Declaration dictates that it does not have legally binding effect per se. That is true for any, non-budget related resolution of the General Assembly. Yet, the name “Declaration” appears to give it a more solemn ring, takes it closer to most important policy statements of the organized world community – into the vicinity of instruments such as the 1948 Universal Declaration of Human Rights. While these documents are clearly not binding as treaties, individual component prescriptions of them might have become binding if they can be categorized as reflective or generative of customary international law.

States voting against this document, including the U.S., have rejected “any possibility that this document is or can become customary international law.” They stated that it does not constitute “evidence of customary international law,” as lacking support in state practice, and that it cannot provide “a proper basis for legal actions, complaints, or other claims in any international, domestic, or other proceedings.”

This statement is true as it pertains to the non-binding nature of the Declaration itself. As far as it proclaims the absence of state practice in support of the content of the Declaration, the individual rights pronounced, it needs to be indepen-
dently assessed — just like any other claim to the customary international law character vel non of any new rule. In the case of the UN Declaration on the Rights of Indigenous Peoples, the negative vote by four governments, even though they have a significant number of indigenous peoples living in their midst, does not necessarily invalidate the claims to the customary international law character of individual key parts of the instrument or of principles embedded in it. This distinct body of customary international law concerning indigenous peoples, not necessarily coextensive with the full reach of the present Declaration, had formed long before this vote occurred. The starting-point for any such analysis is the ICJ’s definition of the requirements needed to establish new customary international law, as stated in the North Sea Continental Shelf Case, i.e. there needs to be a very widespread and representative state practice in support of the purported new rule, including the specially affected states, as well as a feeling to be obligated (opinio juris).

In analyzing the individual parts of the Declaration, we see that all new rules of customary international law, as found in our respective surveys of state and international practice of 1999, 2001, and 2004, still remain part of the global consensus. As stated in 1999, “indigenous peoples are entitled to maintain and develop their distinct cultural identity, their spirituality, their language, and their traditional ways of life.” Most of the provisions of the Declaration go to the preservation of culture, language, religion, and identity; and state practice in the states with indigenous peoples largely conforms to these legal tenets. Due to the strength of the indigenous renascence throughout the world, the original goal of assimilation of indigenous cultures into the maelstrom of the modern world has largely been abandoned in favor of preservation and reinvigoration of indigenous cultures, languages and religions. The legal guarantees of these claims are, however, not the real bones of contention.

One of the issues in contention remains the definition and extent of the right to self-determination. Due to the insistence of the African governments, this right was expressly conditioned by the principles favoring the territorial integrity and political unity of states, principles that are not absolute and that already conditioned the right of self-determination under international law. Now, very few, if any, indigenous peoples actually had
asked for anything approaching a threat to the territorial integrity or political unity of existing states. The goal of “indigenous sovereignty,” in particular, was mostly defined in the sense of cultural and spiritual reaffirmation much more than in the Western sense of independent political power. Looking at state practice, very widespread agreement persists, as stated in 1999, that indigenous peoples “hold the right to political, economic and social self-determination, including a wide range of autonomy and the maintenance and strengthening of their own system of justice.”

Even the U.S. Mission to the United Nations, in the explanation of its negative vote, pointed out that the “U.S. government recognizes Indian tribes as political entities with inherent powers of self-government as first peoples. In our legal system, the federal government has a government-to-government relationship with Indian tribes. In this domestic context, this means promoting tribal self-government over a broad range of internal and local affairs, including determination of membership, culture, language, religion, education, information, social welfare, maintenance of community safety, family relations, Economic [sic] activities, land and resources management, environment and entry by non-members, as well as ways and means for financing these autonomous functions.”

This means at least the recognition of indigenous peoples’ control over their people within their lands. Canada, now an opponent, but under its previous government a longtime and fervent proponent of the Declaration, has guaranteed widespread autonomy via the concept of aboriginal and treaty rights in its 1982 Canadian Charter of Rights and Freedoms. In the 1840 Treaty of Waitangi, in exchange for the Crown’s sovereignty over New Zealand, the Maori retained what they called rangatiratanga, i.e. their chiefs’ authority, which included their power to own, use and manage Maori lands and other resources according to Maori ways. Colombia, a state abstaining from the Declaration, has accorded indigenous peoples in their various resguardos far-reaching rights of internal autonomy. Its 1991 Constitution guarantees respect for their institutions of self-government, including indigenous courts applying traditional customary standards.
The same is true for our finding according to which indigenous peoples have a right under customary international law to “demarcation, ownership, development, control and use of the lands they have traditionally owned or otherwise occupied and used.” This customary norm, found partly as the result of our global surveys of state practice, was cited by the Inter-American Commission in its referral of the Awas Tingni community’s complaint against Nicaragua to the Inter-American Court of Human Rights. The norm underlies the Inter-American Court’s interpretation of the right to property under Article 21 of the American Convention on Human Rights in its landmark decision in the Awas Tingni Case of August 31, 2001. Once a rule has attained the status of customary international law, it can only be abrogated by a new norm of customary law. This year, the African states dropped their initial lack of comfort with the land rights provisions of the Declaration.

The domestic practice of the four states opposing the Declaration likewise is not opposed to the principle of recognizing indigenous peoples’ right to lands. Australia’s courts had invigorated the international indigenous peoples’ movement with their decisions in Mabo and Wik, which preceded the Native Title Act and land settlements with Aboriginal peoples. The Canadian government had proceeded with land settlement claims and treaties; and the U.S., in its Observations on the Declaration, only objected to what it perceived to be the “overly broad and inconsistent” language of the provisions on land and resources. It maintained that the “intent of the States in the Working Group was to encourage the establishment of mechanisms at the national level for the full legal recognition and protection of the lands, territories and resources indigenous peoples possess by reason of traditional ownership, occupation, or use, as well [as] those which they have otherwise acquired. Furthermore, it was intended that such recognition should take into account the customs, traditions, and land tenure systems of the indigenous peoples concerned.” Thus, any potential disagreement with the Declaration is a matter of a possibly limiting interpretation, not a denial of the right itself.

Furthermore, no state opposed the provision of the Declaration that mandates the observance of treaties between States and indigenous peoples. That is in line with our finding ac-
cording to which “governments are to honor and faithfully observe their treaty commitments to indigenous nations.”

The U.S. has also stated that the declaration’s “failure to define the phrase “indigenous peoples” is “debilitating to the effective application and implementation of the declaration.” “This obvious shortcoming will subject application of the declaration to endless debate, especially if entities not properly entitled to such status seek to enjoy the special benefits and rights contained in the declaration.” One of us had made this argument years ago and suggested an appropriate definition, while the other favors the flexibility retained in the Declaration as passed. The most interesting aspect of the U.S. argument is, however, the at least implicit recognition that indigenous peoples do have a “status,” that they enjoy “special benefits and rights contained in the declaration.” Somehow, that does not sit well with the other U.S. argument that it be solely an “aspirational declaration with political and moral, rather than legal, force.” The language of “rights” and “status” is the language of law. By participating in this process and the concern shown over the years for special rights and status of indigenous peoples on the international plane, the four opposing states have demonstrated an opinio juris, a willingness to be bound if the provisions as finally formulated were in line with their detailed policy preferences.

In any event, only a jus cogens norm requires virtual unanimity of all members of the world community. The internal practice of the four opposing states, as well as their consent to accord a special status and rights to indigenous peoples in principle, makes them part of the world consensus on customary international law as formulated above. At most, they can be considered persistent objectors to certain contents of the Declaration. This status appears to be very much in doubt, however, at least for Canada, as it counted itself through many years amongst the staunchest supporters of the Declaration and indigenous peoples’ rights – until its government changed in February 2006.

The Declaration on the Rights of Indigenous Peoples and the customary law character vel non of the various rights it proclaims will be analyzed in further detail by a new International Law Association Committee on the Rights of Indigenous
Peoples. As Chair and Member of this body, we look forward to your comments and suggestions.

S. James Anaya is James J. Lenoir Professor of Human Rights Law and Policy at the James E. Rogers College of Law, University of Arizona. Siegfried Wiessner is Professor of Law and Director of the Graduate Program in Intercultural Human Rights at St. Thomas University School of Law in Miami, Florida.

October 03, 2007

*Reprinted from The Jurist Legal News and Research of the University of Pittsburgh College of Law, October 2007.

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Stories of Eugene, the Earthworm
The 13th of September 2007 will be remembered as a day when the United Nations and its Member States, together with Indigenous Peoples, reconciled with past painful histories and decided to march into the future on the path of human rights. I thank very warmly all the States who voted for the adoption of the Declaration today. All of you will be remembered by us.

Victoria Tauli-Corpuz
Chairperson
UN Permanent Forum on Indigenous Issues

As Indigenous Peoples we now see a guarantee that our rights to self determination, to our lands and territories, to our cultural identities, to our own representation and to our values and beliefs will be respected at the international level. The Declaration is a framework for States to link and integrate with the Indigenous Peoples, to initiate new and positive relations but this time without exclusion, without discrimination and without exploitation.

Les Malezer
Chairman
Global Indigenous Caucus