

**Supplement to the
Report of the Facilitator
On the Draft Declaration on the Rights of
Indigenous Peoples**

**Submitted by
Hilario G. Davide, Jr.
Permanent Representative of the
Republic of the Philippines
to the United Nations**

20 July 2007

1. This document is submitted to H.E. Sheikha Haya Rashed Al Khalifa, President of the 61st Session of the General Assembly, as a supplement to the Report of the Facilitator submitted on 16 July 2007. This supplemental report becomes necessary because of a request from the delegations of Australia, Canada, Colombia, Guyana, New Zealand, the Russian Federation and Suriname to meet with the Facilitator after his report of 16 July 2007 had been submitted to the President.

2. On 16 July 2007, the delegations of Australia, Canada, Colombia, Guyana, New Zealand, the Russian Federation and Suriname requested to meet with the Facilitator to elaborate further on their position/perspectives regarding the way forward on the draft Declaration. At the meeting, the delegations emphasized that only through amendments to the text of the Declaration, which address their most significant concerns, will it be possible for them to consider supporting the Declaration. These delegations also see that a limited re-opening of the text, addressing the nine areas of concern¹ they have identified would be the best approach to take. The group further explained that the substantive discussions on the concerns should be based on a thematic approach², which would entail negotiations on the relevant provisions of the current text as they relate to each area of concern.

3. The group cited that, on the basis of their position, they could support the second half of Option C (hybrid model) proposed by the Facilitator.

¹ See Annex I: non-paper on "Summary of Key Areas of Concern" submitted by Australia, Canada, Colombia, Guyana, New Zealand, the Russian Federation and Suriname

² See Annex II: non-paper elaborating the thematic approach proposed by Australia, Canada, Colombia, Guyana, New Zealand, the Russian Federation and Suriname

4. The group mentioned that they have decided not to pursue the concern regarding the definition of indigenous peoples. With this, the States in the group stated that they are in the process of developing amendments relating to the eight areas of concern, which would involve changes to sixteen (16) articles of the Declaration³.
5. The group also mentioned that the Facilitator may wish to consider recommending to the President the possible conduct of a second phase of consultations which could provide a forum to discuss the substantive aspects of the Declaration as they relate to the concerns identified. The Facilitator informed the group that after he submitted the report, his mandate had ended.
6. At the closure of the meeting, the Facilitator stated that he would submit a supplement to his 16 July 2007 report to the President concerning the meeting.



HILARIO G. DAVIDE, Jr.

Permanent Representative of the
Republic of the Philippines to the
United Nations

³ See Annex III - letter from Australia, Canada, Colombia, Guyana, New Zealand, the Russian Federation and Suriname dated 18 July 2007 addressed to H.E. Hilario G. Davide, Jr. which identifies the articles concerned.

ANNEX I

NON-PAPER

United Nations Declaration on the Rights of Indigenous Peoples

Summary of Key Areas of Concern

The General Assembly agreed to further consultations on the Draft Declaration to give the international community the opportunity to try to adopt a Declaration that all countries could support as a genuine standard of achievement to live up to. The President of the General Assembly has recently appointed the Permanent Representative of the Philippines, H.E. Mr. Hilario G. Davide, Jr., to facilitate an open and inclusive process of consultations to reach the broadest possible agreement on the Declaration, taking into account the views of all parties.

In this context, this non-paper is the result of informal and on-going consultations between a significant number of States with indigenous populations, and summarizes their key areas of concern with a view to supporting the objective of reaching agreement within the 61st Session of the General Assembly. These areas of concern are not necessarily shared by all States with concerns about the text. Amendments to the current text of the Draft Declaration will be required in order to secure support for adoption.

Self-determination, self-government and indigenous institutions:

The current text could be misconstrued so as to threaten the political unity, territorial integrity and stability of States, and confer a right of secession upon indigenous peoples. Provisions dealing with the need to achieve harmony with other levels of government are insufficiently developed.

Lands, Territories and Resources:

The text on lands, territories and resources is broad, imprecise, and not capable of being implemented, and asserts rights of ownership to all lands, territories and resources, whether owned currently or previously occupied - wherever there is a traditional connection. For many States, this might encompass all of the lands, territories and resources of the State, including those considered a national common good.

Redress and Restitution:

The text on redress and restitution is broad, and asserts that States should provide redress for property taken without free, prior and informed consent. The text could be interpreted as promoting the re-opening of settlements already reached between States and indigenous peoples and does not take adequate account of the different situations facing indigenous peoples and States.

Free, prior and informed consent or a veto power:

The text currently includes an unqualified right of free, prior and informed consent for indigenous peoples on all matters that may affect them, which implies that indigenous peoples may exercise a right of veto over all matters of the State including the laws and reasonable administrative measures democratically enacted by the State.

Lack of clarity as to who are "indigenous peoples":

There is uncertainty as to the text's application or non-application with respect to tribal groups, ethnic groups, minority groups, and indigenous peoples.

Military Defence Issues:

The text could be misconstrued so as to be inconsistent with existing legal obligations and to restrict the ability of the State to protect its population and territory, including efforts for civil defence and emergency preparedness.

Protections for the Rights of Others:

The text suggests that indigenous rights prevail over the rights of others, without sufficiently taking into account the rights of other individuals and groups, and the welfare of society as a whole.

Intellectual Property Rights:

In stating that indigenous peoples have a right to maintain, control, protect and develop their cultural heritage, cultural expressions and traditional knowledge, as well as rights to human and genetic resources, the text goes well beyond current and evolving intellectual property rights regimes and could undermine complex negotiations in other fora.

Education

The current text could be interpreted in a manner inconsistent with national and sub-national educational systems. The text does not take into account the diversity of culture and language within many States, or the need to meet applicable educational standards.

ANNEX II

Non-Paper

United Nations Draft Declaration on the Rights of Indigenous Peoples Negotiation Framework to Achieve an Irreducible Minimum of Amendments

28 June 2007

In a previous non-paper summarizing "Key Areas of Concern", a number of states with significant indigenous populations identified nine key areas of concern with the current Draft Declaration on the Rights of Indigenous Peoples. Amendments to the current text offer the possibility of further clarity and a much wider and significant consensus in its favour.

A methodology that will serve to achieve an irreducible minimum of amendments is required. The text should be addressed thematically, using the key areas of concern that have been identified as a way of organizing focused discussion. Text would be negotiated under the heading of each key area of concern.

During consultations held on June 25 and 26, 2007, the moderator invited states to comment on substance and process, with a view to identifying an irreducible minimum number of amendments to the current text. In response to this request, we note the following:

- There are nine key areas of concern in the current text: self-determination, self-government and indigenous institutions; lands, territories and resources; redress and restitution; free, prior and informed consent; lack of clarity as to who are "indigenous peoples"; military defence issues; protections for the rights of others; intellectual property rights; and education.
- A thematic approach will be the most effective means of working towards an irreducible minimum number of amendments to the current text, using the key areas of concern as a basis to structure discussions and negotiations. This would provide clear parameters for the exercise, while providing flexibility in addressing concerns.
- In a thematic approach, provisions of the current text would be discussed as they relate to each key area of concern, rather than sequentially as they appear in the text. Such an approach avoids unnecessary discussion of text on which there is already agreement, and enhances the ability of the moderator and delegations to focus on those areas on which further work is required. Following a thematic approach may also have the effect of reducing the numbers of Articles on which discussion and negotiation will be necessary.

- The Africa Group text helpfully provides a basis and reference point for consideration of text.

We are committed to working to minimize revisions to the current text to address outstanding concerns, and we will engage constructively and positively with all parties in efforts aimed at securing for this Declaration the widest possible consensus.

ANNEX III

Permanent Mission of Australia
Permanent Mission of Canada
Permanent Mission of Colombia
Permanent Mission of Guyana
Permanent Mission of New Zealand
Permanent Mission of the Russian Federation
Permanent Mission of Suriname

H.E. Hilario G. Davide
Permanent Representative of the Philippines to the United Nations
New York

Excellency,

As you know, our countries place great importance on the rights of indigenous peoples and on reaching a broader agreement on the Draft Declaration on the Rights of Indigenous Peoples, and one which includes the diverse range of countries with significant indigenous populations. We reaffirm our commitment to participating constructively in an open, inclusive and transparent process to that end.

Only through amendments to the text of the Declaration, which address our most significant concerns, will it be possible for us to consider supporting the Declaration. We reiterate our support for a limited re-opening of the text, based on a thematic approach, and with the objective of achieving an irreducible minimal number of amendments.

The attached non-paper of 29 June outlined a thematic approach to concerns. We consider that such an approach would provide the necessary flexibility for interested parties to achieve an irreducible minimum. We can advise that countries in our group are working intensively to provide amendments based on key concerns and with this objective. These will be provided to the President of the General Assembly shortly.

In an effort to narrow concerns, amendments are being discussed in eight areas to 16 Articles:

Self-Determination, Self-Government and Indigenous Institutions (3, 4, 5, 33)
Lands, Territories and Resources (26, 29)
Redress (11, 27, 28)
Free, prior and informed consent (19 and 32(2))
Rights of Third parties (46 only)
Intellectual Property Rights (11, 31)
Military Issues (10, 30)
Education (14)

For many countries, this represents a significant narrowing down of concerns and preparedness to address minor concerns through interpretative statements. We are also aiming to make only the most minimal amendments to the Articles identified while still addressing key concerns.

Not all members of the group have identified all of these Articles: the list is a composite.

We draw your attention to the decision that countries in our group have agreed not to pursue the concern regarding the definition of indigenous peoples. In our view a definition is not necessary if the text is consistent with international law and does not imply that indigenous rights prevail over others. Our countries share, however, the concern with the Africa Group that indigenous situations vary from State to State and group to group, and that this text must be capable of being universal in its scope and application. For that reason, amendments to the Declaration to render it consistent with international law and constitutional frameworks are essential.

We would be grateful if you could ensure that this information is included in your report to the President of the General Assembly and circulated to all member States.

18 July 2007

