



23 July 2007

Excellency,

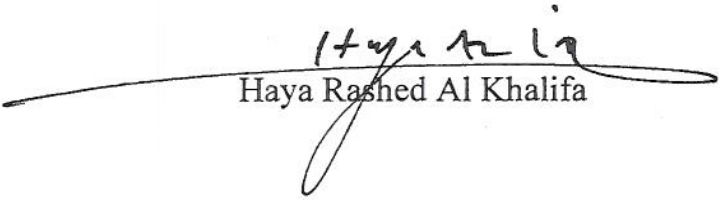
I would like to refer to my earlier letter dated 6 June 2007 in which I informed you of the appointment of H.E. Hilario G. Davide, Jr., the Permanent Representative of the Republic of the Philippines to the United Nations, to undertake on my behalf further consultations on the draft Declaration on the Rights of Indigenous Peoples.

I have the pleasure to enclose herewith the report of H.E. Ambassador Davide dated 13 July 2007, as well as his supplementary report dated 20 July 2007, regarding the process of consultations undertaken until now.

The reports outline a proposed way forward to advance this issue, in order to allow us to implement the mandate of the General Assembly and adopt the draft Declaration before the end of the 61st session. I would like to congratulate H.E. Ambassador Davide on his extensive efforts to bridge the different positions of Member States.

I am hopeful that you will consider this proposed way forward in a flexible and constructive manner. I am aware that consultations among Member States are still ongoing, and would like to encourage all of you to reach a swift common understanding to allow the General Assembly to take a decision on this very important issue during the first week of September 2007.

Please accept the assurances of my highest consideration.


Haya Rashed Al Khalifa

To:
All Permanent Representatives and
Permanent Observers to the United Nations

MISYON NG PILIPINAS SA MGA
NAGKAKAISANG BANSA



PHILIPPINE MISSION TO THE
UNITED NATIONS

556 FIFTH AVENUE
NEW YORK, N.Y. 10036
TEL. NO. (212) 764-1300

-0330

13 July 2007


Excellency,

I wish to refer to your letter of 6 June 2007 requesting me to undertake, on your behalf, further consultations on the draft Declaration on the Rights of Indigenous Peoples, and to submit a report thereon as soon as possible but not later than mid-July, 2007.

In compliance with your request, I would like to inform your Excellency that I convened several consultations with Member States as well as with representatives of the indigenous groups and other stakeholders in order to try to resolve outstanding issues and concerns on the draft Declaration. Options were also put forward and discussed during the meetings to try to find a middle-ground solution to address these issues and concerns.

Bearing in mind the deadline to submit the report, I have the honor to enclose herewith my report on the consultations that I steered on the draft Declaration.

Please accept, Excellency, the renewed assurances of my highest consideration.


HILARIO G. DAVIDE, JR.
Permanent Representative

Her Excellency Sheikha Haya Rashed Al Khalifa
President of the General Assembly
United Nations Headquarters
New York, New York



Report to the President of the General Assembly

on the consultations on the

Draft Declaration on the Rights of Indigenous Peoples

Submitted by:

H.E. Mr. Hilario G. Davide, Jr.

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

United Nations, New York

13 July 2007

I. PREFATORY NOTE

1. On 6 June 2007, H.E. Haya Rashed Al Khalifa, President of the 61st Session of the General Assembly, designated H.E. Mr. Hilario G. Davide, Jr., Permanent Representative of the Philippines to the United Nations in New York, (hereinafter referred to as “the Facilitator”) to undertake, on her behalf, open and inclusive consultations on the draft Declaration on the Rights of Indigenous Peoples (hereinafter referred to as “the Declaration”), in formats he would deem appropriate, with a view to reflecting the views of all parties concerned. The President also requested the Facilitator to submit a report on the outcome of the consultations as soon as possible, but not later than mid-July 2007.
2. This report is submitted in compliance with the mandate from the President in her letter of 6 June 2007. It summarizes the results of the consultations undertaken by the Facilitator within the five-week period¹ from his designation to the date of the submission of this report and provides some insights and assessment for the consideration of the President.

II. BACKGROUND

3. On 29 June 2006, the Human Rights Council, in its resolution 1/2 , recommended that the General Assembly adopt an annexed draft Declaration on the Rights of Indigenous Peoples. The recommendation was adopted by a recorded vote of 30 votes to 2, with 12 abstentions.
4. Acting on this recommendation, the General Assembly, in its resolution 61/178, adopted on 20 December 2006, decided to defer the consideration of and action on the draft Declaration to allow time for further consultations thereon. However, in the same resolution, the General Assembly also decided that it would conclude its consideration of the Declaration before the end of its sixty-first session.
5. The need for consultations was prompted by difficulties raised by some delegations on the current text. These concerns included political issues relating to territorial integrity and self-determination, natural resources, and the definition of indigenous peoples. They also included concerns on possible inconsistencies with legal frameworks and systems.

¹ Approximately five (5) weeks between 6 June - 16 July 2007

6. Prior to the designation of a facilitator, two concrete attempts were made to address the concerns. The first proposal², from the African Group, consisted of a set of amendments to various paragraphs in the text of the Declaration. The second proposal³, from States which co-sponsored the Declaration, presented a possible covering resolution aimed at addressing the concerns, without any change or amendment in the text of the Declaration.

III. THE PROCESS OF CONSULTATIONS

7. Following his designation, the Facilitator undertook separate preliminary consultations with delegations which have expressed strong positions on the Declaration. These dialogues revealed that various States have different opinions on how to best address the concerns on the Declaration. One of such opinions is for an approach aimed at revising the language of various parts of the text, while the other approach resists any change to the text.
8. The preliminary consultations also revealed other factors that presented dilemmas that held back forward-moving steps. One is the perspective that not all States had had an equal opportunity to participate in the discussions in Geneva and, therefore, the States concerned are viewing the process in New York, where representation of Missions is wider, as a chance to resolve the representation and participation issue. Another factor is the fact that indigenous groups had been able to fully participate in the process in Geneva, seemingly in contrast to the reduced latitude accorded to them in the context of the General Assembly. In this regard, some view the reopening of the Declaration in the General Assembly as renegeing on the commitment to fully involve indigenous groups in the crafting of the Declaration. Another factor relates to the possible impact of a situation wherein decisions of the Human Rights Council, the entity primarily tasked to further human rights, are overturned.
9. In this regard, the Facilitator deemed it important to conduct the consultations in a manner that would address the issue of adequate opportunity for the participation of States, as well as indigenous groups. The Facilitator also deemed it crucial to ensure that consultations were

² contained in a letter dated 10 May 2007 to the President of the General Assembly from the African Union

³ contained in a letter dated 14 May 2007 to the President of the General Assembly from the sixty-seven (67) original co-sponsors of the draft Declaration as adopted by the Human Rights Council

conducted in a progressive manner, involving a balanced representation of different views, as well as of geographic regions.

10. Following preliminary separate consultations with the major interest groups, the Facilitator proceeded with wider informal cross-regional consultations intended to focus on the best possible middle ground approach (details on the middle-ground approach follow in the next section). The Facilitator conducted three of these consultations in order to keep the meetings to a manageable size and, therefore, allow better opportunity for delegations to participate.
11. In keeping with the need to ensure the involvement of indigenous groups in the process, the Facilitator undertook consultations with representatives of indigenous groups and human rights organizations. During these consultations, indigenous groups emphasized that the text of the Declaration already contains the minimum standards of respect for the rights of indigenous peoples, and that it was painstakingly crafted in order to allow much room to address the concerns. On the whole, the indigenous groups were concerned about possibly going backward from what has already been achieved by the Commission on Human Rights and the Human Rights Council. Nonetheless, after assessing the outcome of the meeting, the Facilitator observed that indigenous groups seemed to be prepared to consider some proposals, but only to the extent that the proposals do not compromise the results of the long negotiation process in Geneva in which they had participated.
12. Subsequent to the cross-regional consultations and the meeting with indigenous groups, the Facilitator convened open-ended informal consultations of the plenary of the General Assembly on 29 June 2007⁴. At that juncture, the Facilitator urged delegations to focus attention to the ways to achieve the best possible middle-ground approach. Even while most delegations reiterated their respective positions on the Declaration, the Facilitator noted that, although a number of delegations said they needed time to study the various options, delegations, appeared to be open to the idea of proceeding by way of a middle-ground approach. The Facilitator also noted that what would therefore be crucial was to determine the exact elements that would constitute an acceptable middle-ground solution.

⁴ see Annex I

IV. MIDDLE-GROUND OPTIONS PRESENTED

13. In order to stimulate thinking on the best middle-ground approach, the Facilitator informally presented, at the cross-regional consultations and at the open-ended informal consultations of the plenary, three possible options⁵, including some sample language to illustrate the options. The first option would be to add a chapeau or a new preambular paragraph crafted to address the major substantive concerns mentioned in paragraph five. The second option would be to amend Article 46 of the text of the Declaration in order to create an explicit linkage between the Declaration and the resolution adopting it, to ensure that the Declaration and the resolution will be read together for proper application and interpretation.
14. The Facilitator had received initial feedback from delegations that neither the first option nor the second option could lead to a possible compromise. On the one hand, States that wanted changes in the text were not satisfied with what they mentioned was “a fix” outside the text of the Declaration. On the other hand, the States which did not want any change to the text mentioned that the options tampered with the text of the Human Rights Council. In addition, some delegations expressed the view that a thematic approach focusing on issues rather than specific amendments to the existing articles, may be a better way to address the concerns on the Declaration.
15. Notwithstanding the initial feedback from delegations, particularly on the two options, the Facilitator gathered that certain elements from the options presented could still be useful in formulating a possible third option. The Facilitator thus invited delegations to explore a possible hybrid model⁶ which could combine worthwhile elements of the other options.

V. MOVING FORWARD

16. In the view of the Facilitator, it is evident that action on the current text of the Declaration, without allowing room for certain adjustments to address the concerns raised, might result in wide-ranging polarizations on the

⁵ see Annex II

⁶ *id.*, option “C”

the concerns raised, might result in wide-ranging polarizations on the Declaration among Member States. In that case, the General Assembly may be faced with the impact that such deep differences could have on the status, scope and imperative of the Declaration. It is for this reason, including the commitment to fulfill the goal that the draft Declaration should not fall below existing international standards⁷, that the General Assembly must exert every effort, within the timeframe it set⁸, to achieve the widest possible support for the Declaration.

17. Taking into account the absence of any objection to a middle ground approach by way of a hybrid model, the Facilitator believes that the hybrid approach may be the best recourse to obtain the broadest support for the Declaration. To achieve this, diplomatic channels in various levels would need to be fully utilized.
18. In the Facilitator's view, the hybrid model should seek to reconcile the main questions of how to address the concerns in the text of the Declaration and how to remain faithful to the Geneva process. The General Assembly would then need to craft a hybrid model in a manner that it builds on the fruits of the negotiation processes in the Commission on Human Rights and the Human Rights Council, with a view to gaining broader acceptability of the Declaration in the General Assembly. Bearing this in mind, the Facilitator is convinced that an effective hybrid model would be one that represents *an adjustment that does not undermine the essence and purpose of the Declaration, but rather one that can be a vehicle for the proper contextualization of the Declaration.*
19. Given the remaining time before the deadline for the consideration of the Declaration, the Facilitator concludes that any attempt towards a middle-ground/hybrid model should be of a specific nature that presents clear and tangible adjustments to the language of the Declaration. Proposals that are merely conceptual and general in nature may not be workable to enable the General Assembly to reach its target of concluding consideration before the end of its 61st session in September 2007.
20. The Facilitator hopes that this report provides some guidance to the President on the elements necessary for a middle-ground approach that can win the broadest support for the Declaration. In summary, the

⁷ The goal to ensure that the draft Declaration "shall not fall below existing international standards" is one of the goals of the Programme of Action for the Second International Decade of the World's Indigenous People (A/60/270) adopted by consensus by General Assembly in its resolution A/60/142.

⁸ before the end of the sixty-first session of the General Assembly (A/RES/61/178)

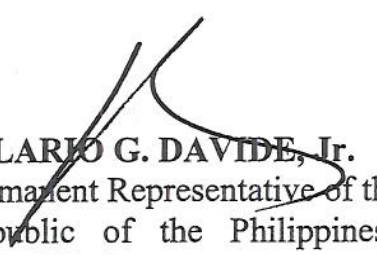


Facilitator is of the view that an effective middle-ground approach should, as much as possible, meet the following test:

- 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 of the Declaration for indigenous peoples?
- Is it tangible and specific enough to enable the General Assembly to determine the particular adjustments to be made to the current text within the remaining period before the end of the 61st session?
- Will it ensure that the Declaration does not fall below existing human rights standards?

21. This report represents a genuine effort of the Facilitator to fulfill the mandate given to him by the President of the General Assembly in her letter of 6 June 2007.

The Facilitator avails of this opportunity to express to Her Excellency, President Haya Rashed Al Khalifa, his renewed assurances of the highest consideration.



HILARIO G. DAVIDE, Jr.
Permanent Representative of the
Republic of the Philippines to the
United Nations

ANNEX I



556 FIFTH AVENUE
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0796

27 June 2007

Excellencies,


I have the honor to refer to my letter dated 19 June about the convening of open-ended informal consultations of the plenary on the draft *Declaration of the Rights of Indigenous Peoples* on Friday, 29 June from 10am-1pm at Conference Room 4, following the holding of initial or preliminary and cross-regional informal consultations.

The objective of the open-ended informal consultations of the plenary is to focus discussions on a more tangible and concrete possible approach that would provide the middle-ground to the major positions on the draft Declaration. In my preliminary and cross-regional consultations, I had an opportunity to listen closely to the various perspectives and to encourage the reduction of major concerns to the irreducible minimum. Bearing in mind the views expressed, and with the sole aim of initiating or provoking a starting basis about a possible middle-ground to expedite the process, I presented three possible options which the delegations may consider and reflect on. I sincerely believe that we could be more systematic and productive if we could start deliberating on some concrete ideas, which the delegations can keep in mind in the search for a workable and acceptable middle-ground solution.

Hereto attached are the suggested options, including some sample texts to assist in illustrating these options.

Your Excellencies, I would highly appreciate it if you could consider and reflect on these options with a view of finding the best workable and acceptable middle-ground solution.

All Permanent Representatives and
Permanent Observers to the United Nations
New York

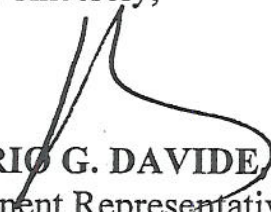


I look forward to receiving more enlightenment from delegations on the elaboration of the best middle-ground, as a way of obtaining and securing the broadest support for the Declaration.

It may be recalled that in its resolution 61/178 adopted on 20 December 2006, the General Assembly also decided to conclude the consideration of the Declaration before the end of the 61st session.

Accept, Excellencies, the assurances of my highest consideration.

Very sincerely,



HILARIO G. DAVIDE JR.
Permanent Representative

MISYON NG PILIPINAS SA MGA
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UNITED NATIONS

556 FIFTH AVENUE
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0799

27 June 2007

Excellencies,

Further to my letter this morning, due to an overlap in the schedules of informal meetings of the GA plenary, may I inform you that open-ended informal consultations of the plenary on the draft Declaration of the Rights of Indigenous Peoples will be held on **Friday, 29 June from 3pm to 6pm only, at Conference Room 4**. The original morning schedule has to be cancelled.

Accept, Excellencies, the assurances of my highest consideration.

Very sincerely,



HILARIO G. DAVIDE, JR.
Permanent Representative

**All Permanent Representatives and
Permanent Observers to the United Nations
New York**

ANNEX II
(MIDDLE-GROUND OPTIONS)

Possible middle-ground options as perceived by Facilitator

A	B	C
<p>Addition of a new paragraph to the Declaration, possibly as chapeau or foremost preambular paragraph</p>	<p>Establishment of an explicit linkage between the Declaration and the resolution by amending Article 46.</p> <p>Resolution to be crafted to address the most critical concerns</p>	<p>“HYBRID” solution:</p> <p>Addition of 2-3 new paragraphs to the Declaration + slight revision to Article 46</p> <p>OR</p> <p>Any other configuration of the elements deemed appropriate by the General Assembly</p>



OPTION A

Sample chapeau to the draft Declaration

“We, the members of 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 and domestic jurisdiction of States and good faith regarding the fulfillment of the obligations assumed by States in accordance with law, and respecting the fact that the situation of indigenous peoples, as identified by the respective countries themselves, varies across regions, countries and communities, do hereby declare that:”



OPTION B

Slight revision to Article 46, paragraph 3 of the draft Declaration as follows:

“ The provisions set forth 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, and in conjunction with the resolution adopting this Declaration.”



**Possible draft resolution can read as follows:
[A/RES/61/178 as basis]**

The General Assembly,

Recalling its resolution 61/178,

Guided by the purposes and principles of the Charter of United Nations, in particular the principles of self-determination of peoples, respect for the territorial integrity of States and good faith regarding the fulfillment of the obligations assumed by States in accordance with the Charter, **international and national laws, and recalling in this respect, General Assembly resolution 1514 (XV) of 14 December 1960, in particular its provisions on national unity and the territorial integrity of the State,** [*incorporating African Group and Co-sponsors' proposals*]

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

Recognizing that the situation of indigenous peoples, **as identified by countries themselves, varies from country to country and from region to region, across regions, countries and communities,** [*based on African and Co-sponsors' proposal*]

Reaffirming in this regard that the nature and scope of the measures to be taken to give effect to this Declaration shall be determined in a flexible manner, bearing in mind the peculiarities and conditions characteristic of each region, country and community, [*African proposal incorporated into ILO Convention No. 169, Art. 34*]

Stressing that the application of the provisions of the Declaration shall not adversely affect the rights and benefits of the peoples concerned pursuant to other relevant Conventions, international instruments, treaties or national laws, awards, customs or agreements, [*based on ILO Convention No. 169, Art. 35*]

- ~~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 of and action on the UN 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 of the present resolution, before the end of the its sixty-first session.~~

- 1. Adopts the Declaration as contained in the annex to the present resolution.**



OPTION C

Hybrid approach

- addition of 2-3 paragraphs to the Declaration + slight revision to Article 46

or

- any other configuration of the elements deemed appropriate by the General Assembly



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PHILIPPINE MISSION TO THE
UNITED NATIONS

0843

20 July 2007

Excellency,

This has reference to my letter of 13 July 2007 enclosing my report on the consultations on the draft Declaration on the Rights of Indigenous Peoples.

I wish to inform your Excellency that a group of Member States composed of Australia, Canada, Colombia, Guyana, New Zealand, The Russian Federation and Suriname, which have expressed strong positions on the draft Declaration have requested a meeting with me on 16 July 2007, after the submission of my report. At that meeting, the group of States emphasized their position on the Declaration and provided their views in writing. In this regard, I am submitting the attached "Supplement to the Report of the Facilitator on the Draft Declaration on the Rights of Indigenous Peoples" to reflect a development on the matter after the submission of the report.

Please accept, Excellency, the renewed assurances of my highest consideration.



HILARIO E. DAVIDE, JR.
Permanent Representative

Her Excellency Sheikha Haya Rashed Al Khalifa
President of the General Assembly
United Nations Headquarters
New York, New York

**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

