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DEPARTMENT OF ECONOMIC AND SOCIAL AFFAIRS
Division for Social Policy and Development
Secretariat of the Permanent Forum on Indigenous Issues

**International expert group meeting on the role of the United Nations Permanent
Forum on Indigenous Issues in the implementation of article 42 of the
United Nations Declaration on the Rights of Indigenous Peoples**

14-16 January, 2009, New York

Presented by: Dr. Wilton Littlechild, IPC

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INTERNATIONAL EXPERT GROUP MEETING ON THE IMPLEMENTATION OF ARTICLE 42 OF THE UNITED NATIONS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES January 14-16, 2009 United Nations Headquarters New York

Introduction:

Thank you to the United Nations Permanent Forum Secretariat for convening this International Expert Group Meeting on the Implementation of Article 42 of the United Nations Declaration on the Rights of Indigenous Peoples; more specifically, to focus on Article 42 of the UN Declaration on the Rights of Indigenous Peoples as adopted by the 61st Session of the General Assembly on September 13, 2007. Our delegation, the International Organization of Indigenous Resource Development (IOIRD) at the earliest opportunity (late eighties) expressed the need for and the importance of having an implementation mechanism for the UN Declaration to be effective. Otherwise it was simply a Declaration of words with no enforcement possibility.

Recent Background Information:

Attached as an annex (*Annex 1*) to this presentation is some correspondence on Article 42 when the UN Permanent Forum began to be specifically referenced. It indicated the initial wording and the subsequent amendments to the final wording:

"Article 42: The United Nations, its bodies, including the Permanent Forum on Indigenous Issues, and specialized agencies, including at the country level, and States shall promote respect for and full application of the provisions of this Declaration and follow up the effectiveness of this Declaration"

Preliminary Comments:

First you will note there are two major parties referenced:

1. The United Nations, its bodies including the Permanent Forum on Indigenous Issues and specialized agencies, including at the country level; and
2. States

This is a large group whose duty it is to do three things:

1. ...shall promote respect for ...(the provisions of this Declaration); and
2. (shall promote) full application of the provisions of this Declaration; and
3. follow up the effectiveness of this Declaration

There does not appear to be a role for Indigenous Peoples although we would argue there could be an important participation. Indigenous Peoples responsibilities might include a pledge to undertake compliance and cooperation in line with the theme of the Second International Decade.

Second, it is important in assessing the scope of the article to read article 42 not in isolation but as a cluster with at least articles 38 to article 46 inclusive (*Annex 2*). These articles further amplify and clarify how article 42 could be or perhaps should be interpreted; and how its effectiveness might be assessed on follow up, otherwise there is no other criteria on which effectiveness will be measured.

Thirdly, it is also important to read into the reference the mandate of the UN Permanent Forum, for example, as to its coordination role.

Lastly, this presentation will address a narrow consideration of article 42 given the preceding preliminary observation, i.e. how shall the UN Permanent Forum (and States) promote respect for and full application of the provisions of this Declaration and follow up the effectiveness of this Declaration? In that regard, we propose consideration of three possible options as examples noting that the most difficult may be as to "effectiveness". It also should be noted the article calls for partnerships, i.e. the UN Permanent Forum and States shall promote respect for and full application of the provisions and follow up the effectiveness of this Declaration.

The options that could be considered among many are from the perspective of (1) the UN Permanent Forum mandated areas (2) the UN Permanent Forum thematic approach (3) existing international agreements.

1. UN Permanent Forum Mandate (Education)

Of the six mandated areas this presentation will only use one example, although a similar approach could be utilized in all the other five agenda items. The reason for starting with education is the current crisis regarding education of Indigenous Peoples and the recent decision of the Human Rights Council to direct the UN Expert Mechanism on the Rights of Indigenous Peoples to conduct a study on education. As a new UN body under article 42 and the coordination role of the UN Permanent Forum, the UN Permanent forum could promote respect for the provisions of the UN Declaration and promote the full application of the provisions of the UN Declaration on Education. In the method of work and the call for 5 year reports of States, the UN Permanent Forum could request specific accounts by States on how they have complied with articles 11-15, 17-23 on education (*Annex 3*). On the effectiveness Indigenous leaders, representatives, education experts could be requested for commentary, shadow reports on their views so that UN Permanent Forum members could assess the effectiveness, and whether the UN articles have been respected and fully applied.

2. UN Permanent Forum Thematic: Children

Since the UN Permanent Forum has decided on permanent themes for annual sessions, another optional approach might be thematic. Again as to the mandate approach, the thematic approach can be applied for the other areas to assess compliance: Indigenous women, MDGs, climate change...

This presentation will only use article 42 in reference to Indigenous children. The reason is because of the current proposed draft of the Committee on the Rights of the Child General Comment on Indigenous Children (October 06, 2008). It is important also because it was the UN Permanent Forum who called for a General Discussion day on Indigenous children (September 2003). Our delegation has expressed concern that the Committee on the Rights of the Child draft comment currently only has a couple of very brief references to the UN Declaration together with very brief reference by footnote.

In the call from article 42, the Committee on the Rights of the Child as a UN body could be requested to comply with States on the promotion and full application of the provisions of the Declaration. To link with the mandate approach for example, they could call for compliance on the full application on those articles on education.

State parties/Indigenous Peoples to ensure adequate attention is given to implementation may be requested to provide detailed information in their periodic reports on the special measures taken in order to guarantee Indigenous Peoples can enjoy the rights provided in the UN Declaration.

Also it is essential to consult with First Nations/Indigenous Peoples on how implementation can best be carried out such as this current International Expert meeting. In our view, for example, Implementation of Treaties is paramount as an overarching mechanism of all mandated areas of the UN Permanent Forum

In summary, perhaps with either approach, Mandate or Thematic, a compliance form could be submitted by parties to the UN Permanent Forum Annual Session and recorded:

<p>State _____</p> <p>UN Declaration Articles on Education, Health....</p> <p>Complied with by Action:</p>
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3. Existing International Laws, Agreements...Treaties

Another option could be from the perspective of existing international laws, fora, or agreements. Since there have been many comments and recommendations by UN Treaty bodies, reports with comments and recommendations by UN Studies, workshops and seminars, they all appear to suffer the same fate, i.e. lack of implementation.

A specific example is in the area of Treaties and Agreements between Indigenous Nations and States. Perhaps the UN Permanent Forum could call on Treaty parties to jointly work on an implementation mechanism(s) for Treaties given the preambular paragraphs 8, 14, 15 and

article 37 of the UN Declaration. Recall our submission in this regard presented to the UN Expert Seminar on Treaties held in the Maskwacis Territory (November 16, 2006) as recommendation 3> *“Implement Article 42 and call on U.N. Permanent Forum to effectively monitor implementation including calls for five (5) year reports from States, International Agencies and bodies, Indigenous Organizations on follow up.”*

We would also recall attention to the Spirit and Intent of Treaties as referenced in the UN Declaration, in particular to mandated areas:

- Spirit and Intent of Treaty to Education: Preambular Paragraph 12, Article 12(1)(2), Article 13(1), Article 14(1)(2)(3), Article 15(1), Article 17(2)
- Spirit and Intent of Treaty to Health: Article 24(1)(2), Article 29(3)
- Spirit and Intent of Treaty to Economic Development: Preambular Paragraphs 5 and 10, Article 17(1)(2), Article 23, Article 32(1)(2)(3)

In Conclusion:

There are two huge challenges from the perspective of the North American region. The first is that stated in our interventions at the Inter-Sessional Working Group on the UN Declaration. For effective application of article 42, the UN Permanent Forum has to be well resourced to support it in its work. Secondly, how can the UN Permanent Forum work with the CANZUS States in the call for partnership, i.e. “...and States” when they voted against the UN Declaration and have stated in their view it does not apply, for example, in Canada. It is our view that focus must begin with the articles receiving support as priorities and build on the strength of those agreements.

Thank you for your consideration on this important and crucial matter.

Dr. Wilton Littlechild, IPC

ANNEX 1

Correspondence

1. Dated November 05, 2004, Addressed to Ms. Stamatopoulou, SPFII
2. Dated November 23, 2004, Addressed to Ms. Stamatopoulou, SPFII

ANNEX 2

UN Declaration on the Rights of Indigenous Peoples Articles 38 to 46 Inclusive

Article 38

States, in consultation and cooperation with indigenous peoples, shall take the appropriate measures, including legislative measures, to achieve the ends of this Declaration.

Article 39

Indigenous peoples have the right to have access to financial and technical assistance from States and through international cooperation, for the enjoyment of the rights contained in this Declaration.

Article 40

Indigenous peoples have the right to access to and prompt decision through just and fair procedures for the resolution of conflicts and disputes with States or other parties, as well as to effective remedies for all infringements of the of their individual and collective rights. Such a decision shall give due consideration to the customs, traditions, rules and legal systems of the indigenous peoples concerned and international human rights.

Article 41

The organs and specialized agencies of the United Nations system and other intergovernmental organizations shall contribute to the full realization of the provisions of this Declaration through the mobilization, inter alia, of financial cooperation and technical assistance. Ways and means of ensuring participation of indigenous peoples on issues affecting them shall be established.

Article 42

The United Nations, its bodies, including the Permanent Forum on Indigenous Issues, and specialized agencies, including at the country level, and States shall promote respect for and full application of the provisions of this Declaration and follow up the effectiveness of this Declaration.

Article 43

The rights recognized herein constitute the minimum standards for the survival, dignity and well-being of the indigenous peoples of the world.

Article 44

All the rights and freedoms recognized herein are equally guaranteed to male and female indigenous individuals.

Article 45

Nothing in this Declaration may be construed as diminishing or extinguishing the rights indigenous peoples have now or may acquire in the future.

Article 46

1. Nothing in this Declaration may be interpreted as implying for any State, people, group or person any right to engage in any activity or to perform any act contrary to the Charter of the United Nations or construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States.
2. In the exercise of the rights enunciated in the present Declaration, human rights and fundamental freedoms of all shall be respected. The exercise of the rights set forth in this Declaration shall be subject only to such limitations as are determined by law and in accordance with international human rights obligations. Any such limitations shall be non-discriminatory and strictly necessary solely for the purpose of securing due recognition and respect for the rights and freedoms of others and for meeting the just and most compelling requirements of a democratic society.
3. 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.

ANNEX 3

UN Declaration on the Rights of Indigenous Peoples Articles 11-15, 17-23

Article 11

1. Indigenous peoples have the right to practise and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artefacts, designs, ceremonies, technologies and visual and performing arts and literature.
2. States shall provide redress through effective mechanisms, which may include restitution, developed in conjunction with indigenous peoples, with respect to their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs.

Article 12

1. Indigenous peoples have the right to manifest, practice, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites; the right to the use and control of their ceremonial objects; and the right to the repatriation of their human remains.
2. States shall seek to enable the access and/or repatriation of ceremonial objects and human remains in their possession through fair, transparent and effective mechanism developed in conjunction with indigenous peoples concerned.

Article 13

1. Indigenous peoples have the right to revitalize, use, and develop and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems and literatures, and to designate and retain their own names for communities, places and persons.
2. States shall take effective measures to ensure that this right is protected and also to ensure that indigenous peoples can understand and be understood in political, legal and administrative proceedings, where necessary through the provision of interpretation or by other appropriate means.

Article 14

1. Indigenous peoples have the right to establish and control their educational systems and institutions providing education in their own languages, in a manner appropriate to their cultural methods of teaching and learning.
2. Indigenous individuals, particularly children, have the right to all levels and forms of education of the State without discrimination.
3. States shall, in conjunction with indigenous peoples, take effective measures, in order for indigenous individuals, particularly children, including those living outside their communities, to have access, when possible, to an education in their own culture and provided in their own language.

Article 15

1. Indigenous peoples have the right to the dignity and diversity of their cultures, traditions, histories and aspirations which shall be appropriately reflected in education and public information.
2. States shall take effective measures, in consultation and cooperation with the indigenous peoples concerned, to combat prejudice and eliminate discrimination and to promote tolerance, understanding and good relations among indigenous peoples and all other segments of society.

Article 17

1. Indigenous individuals and peoples have the right to enjoy fully all rights established under applicable international and domestic labour law.
2. States shall in consultation and cooperation with indigenous peoples take specific measures to protect indigenous children from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development, taking into account their special vulnerability and the importance of education for their empowerment.
3. Indigenous individuals have the right not to be subjected to any discriminatory conditions of labour and, inter alia, employment or salary.

Article 18

Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.

Article 19

States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.

Article 20

1. Indigenous peoples have the right to maintain and develop their political, economic and social systems or institutions, to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities.
2. Indigenous peoples deprived of their means of subsistence and development are entitled to just and fair redress.

Article 21

1. Indigenous peoples have the right, without discrimination, to the improvement of their economic and social conditions, including, inter alia, in the areas of education, employment, vocational training and retraining, housing, sanitation, health and social security.
2. States shall take effective measures and, where appropriate, special measures to ensure continuing improvement of their economic and social conditions. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities

Article 22

1. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities in the implementation of this Declaration.
2. States shall take measures, in conjunction with indigenous peoples, to ensure that indigenous women and children enjoy the full protection and guarantees against all forms of violence and discrimination.

Article 23

Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development. In particular, indigenous peoples have the right to be actively involved in developing and determining health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions.

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November 5, 2004

Ms. Elsa Stamatopoulou
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DESA Room DC2-1772
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Fax: (917) 367-5102

Dear Madam:

Re: **U.N. Declaration on the Rights of Indigenous Peoples**
Next Session - Geneva , November 28 to December 3, 2004

Proposed Article 42 of the U.N. Declaration on the Rights of Indigenous Peoples.

Please recall at our brief meeting regarding the Inter-Agency Support Group , that I raised the issue of the current discussion of the U.N. Declaration on the Rights of Indigenous Peoples by the Inter-Sessional Working Group of the Commission on Human Rights. During the September session, there was a proposal by a group of States which is contained in CRP I as follows:

~~“The United Nations shall take the necessary steps to ensure the implementation of this Declaration including the creation of a body at the highest level with special competence in this field and with the direct participation of Indigenous Peoples. All relevant United Nations bodies, including at the country level, shall promote respect for and full application of the provisions of this Declaration.~~

The United Nations Permanent Forum on Indigenous Issues and States shall follow-up the effectiveness of this Declaration.”

This proposal was later amended to read as follows:

~~“The United Nations shall take the necessary steps to ensure the implementation of this Declaration including the creation of a body at the highest level with special competence in this field and with the direct participation of Indigenous Peoples. All United Nations bodies shall promote respect for and full application of the provisions of this Declaration.~~

The United Nations, its bodies, especially the Permanent Forum on Indigenous Issues and specialized agencies , including at the country level and States, shall promote respect for and full application of the provisions of this Declaration and follow up the effectiveness of this Declaration.”

This latter wording was as a result of a Working Group which met in Geneva. My concern is that I do not believe any of the Permanent Forum Members who attended the meetings were present at this consideration of proposed wording. After the first proposal was tabled, I addressed the Plenary indicating that we as Permanent Forum Members had not been consulted nor had we participated in any proposed drafting of this article. I then stated that I would like to consult with all sitting and future Members of the Permanent Forum for their input on the proposed wording.

The most recent report entitled, “Chairperson’s Summary of Proposals [Mr. Luis-Enrique Chavez]” states as follows:

“Article 41: The United Nations, its bodies, especially the Permanent Forum on Indigenous Issues and specialized agencies, including at the country level, and States, shall promote respect for and full application of the provisions of this Declaration and follow up the effectiveness of this Declaration.”

The Chairperson’s notes indicate that this was “the text presented by the facilitators. No further discussion required.” I am concerned that this wording might stay as it is currently proposed without any direct participation or comments by Permanent Forum Members. So might I propose the following:

- (i) That we e-mail everyone this information
- (ii) Ask for perhaps an analysis on the proposals - pros and cons as to its impact on the U.N. Permanent Forum
- (iii) Which of the proposals is most preferable to the Permanent Forum Members
- (iv) If this is not satisfactory wording, then might someone propose alternative wording

I realize that this might be too late because this matter may not be open for discussion at the upcoming meeting, however, I did indicate that we would make some sort of comment on the proposals. Thank you very much for your consideration on these matters and as you know, the next session begins on Monday, November 28, 2004, and if everyone could respond to us or through you at the New York office, then I would be prepared to take it to the meeting in Geneva.

E-mail: stamatopoulou@un.org

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November 23, 2004

Memo to: **Ms. Elsa Stamatopoulou**
Secretariat of the Permanent Forum On Indigenous Issues

Memo from: Mr. Wilton Littlechild, I.P.C.

Re: **U.N. Declaration Proposed Article 42**

My preference for the two proposals was the first because it reflects the composition of the U.N.P.F. and we need these to have a stronger relationship with States [increase the circle of friends of the Forum possibilities]. We will need resources to carry out the follow up and working closely with States on the effectiveness of the Declaration may secure the necessary support.

With regard to the second proposal from the Chairman's Summary, we have the Inter-Agency support group which seems to be an increasingly effective working relationship. It should be all these "relevant United Nations" bodies, including at the country level that shall promote respect for and full application of the provisions of the Declaration". The I.A.S.G. could do this perhaps from existing resources. [Guessing]

I believe it puts the U.N.P.F. in a better position to work with States on the follow up while all other bodies and specialized agencies of the U.N. promote respect for and full application of the Declaration. In any case, I think we will need extra or additional resources to put into effect either proposal.

Working in a better coordinated way with States also secures the U.N.P.F. a better likelihood of a good evaluation on our five [5] year review. [Next year] At least I think it gives a chance to the U.N.P.F. to establish stronger relations with more States that ensures or garners permanency for the U.N.P.F.

Finally, I believe this would help us with the part of our mandate that calls for us to coordinate, i.e. coordinate with States directly. Thank you for your consideration on these matters.

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