U. S. Intervention
Organization of American States
Special Session on the
"Proposed American Declaration on the Rights of Indigenous Peoples"
Section Four
March 14, 2002 Washington D.C.

Since the earliest days of the Republic, the U.S. has recognized that indigenous peoples have inherent sovereign rights that existed prior to the formation of the United States. This inherent sovereign status exists to this day and is the foundation on which the U.S. builds its relationship with indigenous peoples or to use the phrase with which most of you have become familiar, our relationship with federally recognized tribes. At the foundation of this government- to- government relationship lies self-determination – the ability of the tribe to control its own affairs.

Last year we said that part of our task as representatives of nation states, in consultation with you – the representatives of indigenous nations is to forge a common understanding of what we each mean when we use the phrase self-determination. For the U.S. this is a core issue in this document and that we are here today discussing it with you speaks volumes on how our hemisphere has progressed and provides the hope that together we can bring healing to our relationship and to our lands. So for us, the most important part of our task in this section is to create with you an understanding of how self-determination can apply in the unique circumstances of our shared history. Our history has tied us together and only together can we resolve this issue.

Article 14 (1), we believe, speaks to the ability of indigenous peoples to organize and to relate to the State as a group. It is expressed in human rights terminology and so one addition to the text we would want to make would be to express these rights as a **right of freedom of association, peaceful assembly and expression**. We would also include **"the right to hold opinions without interference"** in the listing. We would delete "according to their values, usages, customs, ancestral traditions, beliefs and religions." The U.S. believes this last phrase is not necessary and could be construed as a limit on fundamental freedoms.

We firmly believe and strongly support the right of federally recognized tribes to express the will of their people and their right to meet together – this is a fundamental part of sovereign status. As we expressed yesterday, however, the U.S. is troubled by the confusion that could result in international human rights jurisprudence in the way these rights are expressed in the draft declaration. When expressed as individual human rights, the meaning and content of these fundamental freedoms are clear and the obligation of the state to respect an individual's fundamental freedoms is equally clear. As a right that applies to a group, however, the meaning of these fundamental freedoms is less clear. For now, the U.S. prefers that this cluster of rights in Article 14 attach to individuals and so we would not, right now, support a formulation that includes "indigenous peoples." But we view this formulation as a problem as we see the need for a provision that speaks to the ability of indigenous peoples to express themselves, to assemble together and to associate together. We will study this issue further and listen with interest to the commentary of states and representatives of indigenous peoples.

On Article 14 (2), the U.S. withdraws its 1999 proposal and supports the chairs text subject to some additions and to the resolution of the issue of individual human rights and collective rights as was just stated. We would adjust the chair's text in the following ways: Indigenous peoples have the right to **freedom** of assembly, to the use of their sacred and ceremonial areas, ~~observing~~ **on extended lands subject to** the rights of third parties and **on public lands subject to reasonable accommodation**. The also have the right ...."

The U.S. supports inclusion of third party rights. We do not believe that this places any value judgments upon the importance of use and access to ceremonial and sacred sites, rather this provision is intended to ensure equality. While, we understand that there are other instruments, which address third party rights, we believe that third party rights must be included here so that the meaning is clear.

On Article 15 (1) – the U.S. withdraws its 1999 proposal. Last year in the section on definitions we introduced the following language: **"Indigenous peoples have the right to internal self-determination. By virtue of that right, they may negotiate their political status within the framework of the existing nation-state and are free to pursue their economic, social and cultural development. Indigenous peoples in exercising their right of internal self-determination, have the internal right to autonomy or self-government in matters relating to their local affairs, including determination of membership, culture, language religion, education, information,**

media, health, housing, employment, social welfare, maintenance of community safety, family relations, economic activities, lands and resources management, environment and entry by non-members, as well as ways and means of financing these autonomous functions." We offer this language in this section as well. We do see that the Chair's suggestion is very similar, but believe the language on self-determination lies at the heart of this document and would want to see it included in this section.

On Article 15 (2) – We believe it is essential to state that indigenous individuals have the right to participate on an equal basis with other citizens in all national for a, including local, provincial and national elections. This right has been denied all too often. However, it may be useful to move this proposal to the section on human rights as it squarely addresses an individual right and not organizational and political rights.

When State policy or actions are implicated, the U.S. believes that the voice of indigenous peoples should be heard. We offer the following language on that point: **"Where a national policy, regulation, decision, legislative comments or legislation will have substantial or direct effects for indigenous peoples, States should consult with indigenous peoples prior to the taking of such actions, where practicable and permitted by law."**

On 16 (2) the U.S. believes that indigenous peoples do have a right to maintain and develop their own decision-making institutions – but that right is both explicit and implicit in the rights to autonomy and self-government. We withdraw our 1999 proposal

and offer the following language: **"Consistent with international human rights standards, indigenous peoples may develop, maintain and reinforce their legal systems, to apply indigenous law to the internal and local affairs of their communities, including systems pertaining to ownership, management and development of lands and natural resources, resolution of conflict with and between indigenous communities, prevention of crime, law enforcement and maintenance of peace and harmony."**

With respect to 16 (3) we believe it is extremely important that individuals understand legal proceedings and offer the following language, but believe this provision should be covered in Section 3, Article 8 which addresses linguistic issues.