

LEGAL COMMITTEE

Peru Model United Nations 2020

The Ninth Session



PeruMUN

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LETTER FROM THE SECRETARY GENERAL

Dear Delegates, Faculty Advisors, and Friends of Peru Model United Nations,

My name is Marcelo Peña, and it is my distinct honor to serve as your Secretary-General for the ninth Session of Peru Model United Nations. Founded in 2011 by AENU Perú, PeruMUN has come a long way as the first, most prestigious and most inclusive High School Model UN conference in Peru. Throughout these nine years, we've hosted more than 7000 students from 21 Peruvian regions in more than 100 committees, both in English and Spanish. We're home to fascinating discussions, captivating speeches and friendships that will last a lifetime.

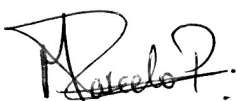
PeruMUN means a lot of different things for different people. For me, it's the end of a five-year journey that started as a delegate in LiMUN's UNESCO committee back in 2015. For our delegates, it's a forum where they can voice their opinions and listen to what their peers have to say on topics they've never discussed at school. For some faculty advisors, it's the reason why they raise funds to bring their students to Lima year after year for almost a decade.

Throughout these three days of debate you will begin to unravel the 193 distinct worlds and realities that make up the United Nations system. You will explore different cultures, understand their beliefs, and represent them in your committees. You will learn about the underlying struggle between worlds of plenty and worlds of want, between the modern and the ancient, between the local and the unknown. Most importantly, between all of these seemingly stark differences, you will hopefully find what binds us together as one people.

Your amazing Secretariat has worked tirelessly to make this edition of PeruMUN the best one so far, and to ensure the same level of substantive excellence PeruMUN has always stood for. I want to acknowledge the amazing work that Andrea, Marialejandra, Bianca, Renato and our more than 50 staffers have done to make PeruMUN a conference we can all be proud of. We all believe that you're never too young to advocate for the issues you deeply believe in, and thus in this edition of the conference, you will present, negotiate and draft resolutions that will be read by political officers in Lima, the EU and the OAS. In other words, your work here will shape policy.

This December, I want you to be bold, brave, and caring. Dare to reimagine Model UN with us.

I'm looking forward to getting to know each and every one of you over the course of the conference!



Marcelo Peña
Secretary-General PeruMUN 2020

LETTER FROM THE COMMITTEE DIRECTOR

Legal Committee

Topic: *Impact of Foreign Direct Investment on indigenous Communities in Developing Nations*

Dear Delegates,

Welcome to Peru Model United Nations 2020! My name is Gabriella Garcia and I will be your director for the Legal Committee and I am more than excited to be directing in this year's edition of PeruMUN. The deliberation that occurs within Model UN is the type of discussion that I value, and that has shaped my decision making in finding solutions that make a positive impact through humanitarian, political, economic and security measures.

I am a second year student at Stanford University, studying Political Science on the Pre-Law track. My interests are many as I have worked on and studied topics such as immigration, governance, development, economics, cultural identity, election security, and sexual assault among other issues.

I chose the topic of this committee carefully. It is one that needs to be discussed more as Indigenous communities continue to be impacted by our changing industrial landscape. Delegates from the Sixth Committee will be working together to develop a legal framework which tackles the diverse problems of poor legal regulation on Foreign Direct Investment on Indigenous Communities in developing nations. Indigenous people have always been marginalized and threatened as they have sought historical continuity throughout invasion and colonialism. Corporate power in international affairs have highlighted how indigenous people and their land are not protected enough under law. Direct foreign investors who don't promote equilibrium between economic development and indigenous rights continue to fail native communities in areas such as environmental degradation and loss of traditional lands and territories.

I have the honor of working alongside Alejandra Perea Rojas and Juan Diego De La Piedra, your assistant directors, and moderator Alexandra Becerra, for this Legal Committee. On behalf of the committee board, we trust you will be able to bring to the table a dynamic debate, full of content and dialogue, with real solutions to an ongoing problem. We look forward to meeting you all, and seeing how you all embrace diplomacy and strategize solutions and future plans!

Do not hesitate to contact me if you have any questions regarding the flow of this committee as I will serve you as a source of general information in every step of the way. Best of Luck!

Kind Regards,



Gabriella Garcia
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Peru Model United Nations 2020

INTRODUCTION

Indigenous peoples are constantly marginalized, taken advantage of, and their voices are not heard. Foreign Direct Investment has negative effects on indigenous communities such as: displacing Indigenous local businesses, ecological depletion, and loss of traditional land and territories without reinvestment in local communities. Increasingly, governments are recognizing these threats, and matching such recognition with action. From land claims settlements and constitutional amendments to important symbolic actions such as apologies for past treatment of indigenous peoples, governments around the world are making important steps towards addressing indigenous peoples' concerns.

The right to natural resources, on the other hand, is usually restricted, especially when it comes to sub-soil resources. Even where indigenous peoples have legal title deeds to their lands, these lands are often leased out by the state as mining or logging concessions without consultation of indigenous peoples, let alone indigenous peoples feel that many development policies are either directly or indirectly geared toward weakening or eradicating their traditional modes of production their free and prior informed consent. The lack of legal security of tenure remains a crucial issue for indigenous peoples almost everywhere.

Economic policies, promoted by international agencies and triggered by free-trade agreements and globalization, have resulted in a proliferation of large-scale development projects on indigenous lands and territories. Such projects cover a wide array of activities: the large-scale exploitation of natural resources, including subsoil resources; the establishment of plantations and industrial plants; tourist developments; and the construction of ports, transportation networks, multipurpose dams, military bases or toxic waste dumps.

Evidence shows that indigenous peoples bear the costs of the resource-intensive projects disproportionately, and the human rights effects include loss of traditional territories and land, eviction, migration and eventual resettlement,

depletion of resources necessary for physical and cultural survival, destruction and pollution of the traditional environment, social and community disorganization, long-term negative health and nutritional impacts as well as, in some cases, harassment and violence.



HISTORY AND STRUCTURE OF THE COMMITTEE

The United Nations is a large and complex international organization, based on multinational cooperation. It is structured by a number of organs, the General Assembly being its main policy-making body. The Legal Committee is the sixth committee of the UN General Assembly. Established in 1946, therefore being one of the older committees, with the aim of promoting the development and advancement of international public law, as mandated by the foundational treaty of the UN – the United Nations Charter-. Among the latter's provisions, are the maintenance of international peace, the upholding international law between states, and the promotion of "universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion".

According to the foregoing, one of the main reasons for the existence of the United Nations is the maintenance of peace and the protection of human rights and freedoms. But such a venture,

considering the number of Member States -193-, as well as the vast religious, cultural, ideological and ethnic differences among those states and the populations that make them, may be only possible, as prescribed by the consensus in the international community, by the adoption of transboundary norms, as well as legislation models in order to member states to consider, for their best interest as well as those of others. In that sense, the Sixth Committee not only does propose legislation or enact international law for the General Assembly to vote upon and adopt, but also sets forth proposals for states to adapt to their own jurisdictions. Every Member State participates in the Legal Committee, and non-member states that enjoy observer status in the UN may participate in the debates and negotiations in it as well. It generally meets annually for a six-week period, but it may be convened by request of the General Assembly.

As mentioned, the Sixth Committee cannot effectively make or constitute international norms, instead it proposes draft legislation to the General Assembly. The scope of the Committee is rather vast, as law, and even more so pertaining cooperation at a planetary level, covers many areas and aspects of human activity, whether at a private or public, or international sphere. Accordingly, there is not a fix set of aspects that the Committee deals with, but it mostly focuses on topics such as; the promotion of justice and international law, accountability and internal UN justice matters, drug control, crime prevention, combating international terrorism, international trade and financial norms, among others.

The structure of the Legal Committee consists of specialized bodies, which report to it on an annual basis. These are namely; Committee on Relations with the Host Country, International Law Commission, United Nations Commission on International Trade Law, Special Committee on the Charter of the UN and the Strengthening of the Role of the Organization, UN Program of Assistance in the Teaching, Study, Dissemination, and Wider Appreciation of International Law, among others of rather temporary or circumstantial nature. Each of those bodies may undertake the role of discussing topics which are

proven too complex for the Committee.

A trait of the Legal Committee is that it does not hold a main debate at the beginning of any session, but rather a discussion of items pertaining the given agenda are had specifically, in accordance with a work agenda established in the first meeting. Any adopted proposals are further submitted to the General Assembly for consequential voting.

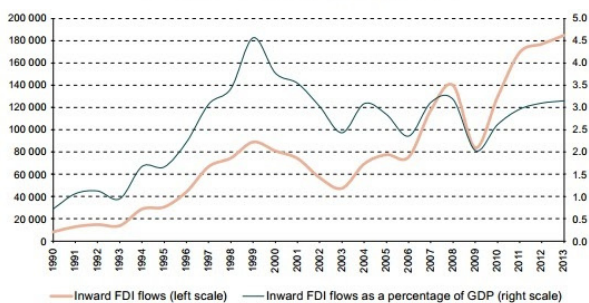
HISTORY OF THE TOPIC

The impact of foreign direct investment (FDI) on indigenous communities in developing nations is, albeit a phenomena that has quite recently gathered the attention not only of governments or involved parties, but rather that of intellectuals as well of the general public, has accompanied the rise of international trade and investment, since the rise of capitalist societies and the colonialism, beginning around the mid-eighteenth century.

The dynamics between economic ventures of foreigner entities or states and the livelihoods of indigenous populations has proven to be complex and rather morally unsettling, the latter mainly due to the ordeals many nations, ethnic groups, and tribes have suffered from the former. This is coupled with the fact that in the vast majority of cases indigenous communities are not necessarily considered, let alone benefited, by FDI. Among other, certain aspects that intervene in such dynamics are; differing attitudes of natural resources, property and development between indigenous population and FDI agents, different conceptions of livelihoods and sense of belonging or alienation of indigenous communities towards the State or populations that make up the majority of that State in which those communities have lived for generations. These, which consist in most cases stark differences between those native to a given area in which a second party has an investment interest, has been the main dialectic structure of those relationships. A historical analysis might show that those relationships have not been of a tender and peaceful nature in general, and that the interests of foreign parties have- for the majority of cases- not been in the best interest of those populations that had lived

for centuries or millennia in the areas in which such business ventures were performed.

Figure 1
Latin America and the Caribbean: foreign direct investment inflows and FDI inflows as a proportion of GDP, 1990-2013^a
(Millions of current dollars and percentages of GDP)



In the past, due to reasons pertaining technological and technical equipment, as well as colonial and/or identity cues, companies and governments tended to stay much longer in areas inhabited and claimed by indigenous communities, and in many cases, putting not only the environment at risk – a sometimes crucial aspect of those communities economies but also culture and ethos- but the livelihoods of those communities. History has shown the horror of a number of instances in which rising nation's or imperial ambitions have taken a serious toll among indigenous lives and culture. The westward expansion of the United States, although mainly driven by a Eurocentric vision underpinned by the Manifest Destiny, was also based on corporate ventures. In the Southern United States, there were a number of related tribes, such as the Creek, Chocktaw and Cherokee. When the US was expanding southwards, US Presidents encouraged militias and even sent armies to displace those cultures, or rather forcibly "civilize them", in order to populate the South. Because some tribes would resist this policies, an event known as "The Trail of Tears", would take place, one in which hundreds of thousands of natives were forcibly removed from Southern areas which are now Florida, Alabama, Georgia, among others, into a new state for the natives, sanctioned by the government: Oklahoma. The construction of the Transcontinental Railroad, which connected New York and San Francisco and thus the eastern and western continental United States' coasts, was

accomplished by what academics know firmly consider a genocide, perpetuated by public and private interests; millions of plains buffalo were hunted in order to feed railroad workers, instead of taking food supplies, with the aim of depriving the Sioux, Cheyenne, Arapahoe and other native American tribes "hostile" to US expansion, of a basic food, cloth, and fuel source: the bison, as well as a cultural and spiritual symbol of those native American nations. Another grim episode of US history is the discovery of gold in the Black Hills, a sacred place for the Sioux in western South Dakota. The US government sponsored prospectors to flock in the tenths of thousands into the area, damaging a sacred area of the Sioux, as well as their cultural identity. The Sioux were a warrior tribe, so they retaliated against the invaders, nonetheless, the US government sent the cavalry, and a war ensued between the Lakota Sioux and the US, one that would be immortalized in film and novels, but just recently acknowledged as a direct attempt- and a largely successful one- of a State with an expansionist agenda, to take resources or land for their own interest, notwithstanding the native populations in the area, and even waging war and attempting genocidal acts upon them or, in the most "benign" cases, forcibly removed from their culture and identity, to on that fitted the government ideal of citizens, or exiled from the land they called home. These events have not happened only in the US, not at all. The same happened in places such as Canada, Australia and New Zealand, areas in which the native population was displaced and forced to "westernize" and, mainly in the latter to areas, war was waged against them, or even in more recent cases, such as the German genocide upon the native Herrero and San populations in present day Namibia. It is important not to view native populations as entirely hostile, or even categorize them as xenophobic, to any foreign advancement in their territory, but rather as populations trying to protect their livelihoods, people and culture. The historical literature shows that no real attempt of dialogue was in most cases made by the foreign parties, but rather violent and unjust actions based on prejudice; that is how affairs were undertaken in that time.

As mentioned above, in the past, commercial interests in the search of resources in indigenous populations territory generally occurred in areas that claimed sovereignty of such areas. These could be the cases of the British East India Trading Company in its dealings with Mughal controlled Bengal (present day West Bengal in India and Bangladesh), considering the Mughals as Muslim Turkic overlords of a vast and extremely diverse territory as the Indian Subcontinent and the East India Trading Company as a public and private venture of the British that embarked on the foundations of the British Empire.



So, a line between colonialism or imperialism in a sense, coupled with the rise of capitalism and its effects upon international trade, have had impacts upon indigenous populations. It is important to state that the term indigenous, although applying to the first settlers or original inhabitants of a given area, in the context of this Committee is applied to such groups of indigenous peoples that have tried and managed to maintain their distinct cultural and economic ways of live apart from the other groups that conform the majority of the states in which they now inhabit, states that were developed centuries or in some cases millennia after those indigenous populations settled in the areas in which they now strive to live. In the last decades, these interests originate from areas that do not hold such claims, but rather consist of

powerful or either industrialized countries that enable such companies-whether private or state-owned- to flourish, and their dealings with other countries are a type of foreign direct investment. Now, although in the latter part of the XX century there have not been wars waged entirely by corporate interests upon native populations, those investments may and in practice pose a threat to indigenous populations, as they have managed to retain their culture and livelihoods mainly because they live in areas that are remote, and this is underpinned by the fact that the resources that exist in these areas are not exploited by domestic foreigners (the non-native people living in the same country) because the former lack the means for it. The experience in areas such as Ecuador or even Peru, in which rather recent clashes between government authorities and native populations have occurred, leaving dozens of people dead, were regarding a foreign direct investment, in these cases, oil and gas developments, which would generate a temporal impact upon the environment in which the natives live. Again, it is important to bear in mind that attitudes regarding topics such as property, development, natural resources or even concepts such as a nation, differ when dealing with native populations. History has shown that those differences, as well as their affinity to their land, next of kin and past, and not to the "State" that seems far away and many times unwilling to even dialogue with them, has been the perfect storm for conflict, in which not only do company stocks fall in the stock market index if such happens, but native populations are at risk of losing it all; land, people, identity.

CURRENT SITUATION

Because foreign direct investment (FDI) is less prone to crises, as direct investors establish a long-term engagement when working with a host country, foreign direct investment has risk sharing benefits and provides a stronger stimulus for economic development. With the recent developments of COVID-19, developing countries find themselves depending on FDI in attempts of economic recovery even though it is at the

expense of its people and/or its environment.

The Amazon Rainforest, being a natural asset for 30 million people, a home to indigenous people, and a principal stabilizer to Earth's climate, now contains large expanding infrastructure projects which lack no regard towards environmental protection). For example, long before COVID-19, foreign direct investment on the Amazon by Chinese companies increased for its production of mining, petroleum, and grains. Now, as a result of increased economic hardship, the Brazilian government, among other developing nations, find themselves reopening projects such as Highway BR-319. Highway BR-319 would connect Porto Velho, an area of intense deforestation of the Amazon, to Manaus, one of the richest parts of the rainforest. This connection would increase deforestation by more than 1200% by 2100, and it could negatively affect 63 official Indigenous lands and the homes of 18,000 indigenous people. Brazil's Public Ministry condemns these predictions as "bad faith," but paved roads would increase highway traffic leading to more migration, land speculation, and deforestation. Other developments such as hydroelectric dams and the Barao de Rio Branco project would also build roads in areas of biodiversity and of indigenous people's homes. The combination of deforestation and drought has already led to more wildfires and health risks which could make COVID-19 worse among Amazonians.



The Camisea natural gas fields, located in the San Martin Reservoir of the Amazon Rainforest, hold one of the largest and central energy projects in the Peruvian economy, and the work for this project includes frequent explosions and intrusion

of the Nahua-Nanti Reserve. In 2013, the UN called for suspension of this project, but Peru continues to receive investment and expand its southern gas pipeline projects such as an online transportation network called SITGAS.

Similarly, the Escobal mine in south-east Guatemala has brought conflict and turmoil to the Xinka, a non-Mayan indigenous group in Guatemala. In 2018, Pan American Silver acquired GoldCorp for \$1.1B, a Canadian mining company, which had rights for three exploration and exploitation licenses in the departments Santa Rosa and Jalapa of Guatemala. And currently, Guatemalan president Alejandro Giammattei appointed Juan Cabrera, a former director for Pan American Silver, as a Special Secretary to the Vice President.



Foreign investment in Latin American companies puts local people at risk because their future economic security is highly dependent on the profitability of the FDI. And because of COVID-19, developing countries such as Brazil, Peru, and Guatemala in Latin America seek FDI as a means of economic relief. However, FDI is predicted to drop by 50% Latin America because of COVID-19.

China, as both an investor and a developing nation, is not just investing internationally, but is also expanding at the national level with the support of FDIs. Furthermore, the Chinese government is actively seeking to maneuver control over the autonomous areas of Tibet, Xinjiang, and Inner Mongolia due to its richness of oil, land, and water reserves. This comes at the cost of the social and legal marginalization of the Chinese minorities such as Uighurs, and other Muslim and Mongolian minorities. China relies on foreign investment to produce forced and cheap

expense of its people and/or its environment.

The Amazon Rainforest, being a natural asset for 30 labor mainly in Xinjiang and Tibet at the cost of the livelihoods of the minorities in China as there is evidence from individuals who manage to escape describing practices which infringe and violate human rights. Recent satellite mapping has uncovered concentration and labor camps which is where China produces cheap and forced labor. The U.S. is seeking to uncover these concentration camps to impose taxation and reduce the profit of forced labor.



In contrast to Latin America and Asia, FDI inflow to Africa will decrease by 25% to 40% this year as a result of COVID-19. FDI in Africa had already decreased by 10% in 2019 compared to 2018. For example, investment flows in Morocco, Nigeria, and Sudan decreased by 55%, 48.5%, and 27% respectively. Comparatively, FDI inflow has increased in Egypt, Ivory Coast, Uganda, and Senegal. Many if not most developing countries find themselves in similar situations such as the few examples described here.

RELEVANT UN ACTION

In 1992, a major advancement occurred in the United Nations Conference on Environment and Development (UNCED, often called the Earth Summit), when indigenous peoples were included as a “major group” that their specific relationship with the environment was recognized and some of their concerns taken into consideration. This was, among other things, the result of efforts made by

The international indigenous movement prior to the Earth Summit. However, the most significant United Nations action was the creation of the Declaration on the Rights of Indigenous Peoples in 2007 and a permanent forum at the United Nations that meets regularly to discuss indigenous peoples’ issues and make recommendations to the UN system and beyond.



These remarkable advances do not mean, however, that the struggle of indigenous peoples for their rights and concerns when it comes to lands and natural resources is over. At the international level, indigenous peoples’ voices are still often marginalized, and vital indigenous interests not taken into consideration at the moment of formulating policies. In many regions, the experience of indigenous peoples has been “that inadequate legal frameworks resulted in disruption to their traditional land tenure and use patterns, fragmentation and loss of traditional land, changes in settlement patterns, privatization of communal lands, degradation of land and/ or resources, lack of recognition of territorial rights, insufficient and inequitable land allocation, lack of effective mechanisms for conflict resolution, inefficient official land registers, and difficult procedures for land demarcation and titling.” In a number of Latin American countries, where the total size of protected areas has nearly doubled over the past 10 years, there is some progress at the national level in terms of recognising the role of indigenous peoples in the conservation of biodiversity and protected areas management. A number of indigenous communal reserves or indigenous protected areas have been established, for instance, in Peru and Brazil, and

the participation of indigenous peoples in the management of other types of protected areas has increased. Nevertheless, co- management of protected areas is still limited, and difficult relationships have often been reported to exist between indigenous communities and the management of protected areas. This has been attributed to limitations imposed on the use of resources in the protected areas and to a lack of formal recognition of land and resource rights within such areas.

In certain instances such as in Peru, the government took steps to expand mining and oil operations by multinational enterprises in the Peruvian Amazon. In this case, outside commercial interests discovered valuable natural resources on native lands and sought to exploit them despite opposition from local indigenous peoples. And in this case, a national government sided with commercial interests and used military force to quash the opposition and secure access to the resources. The factors these conflicts have in common have manifested countless times over the centuries, all over the world. They are therefore best seen as forming part of a broad, global pattern of encroachment of private commercial interests onto the lands of indigenous peoples, facilitated by national governments, which began long ago and has never stopped.

From Peru to Papua New Guinea, from Siberia to Sudan, indigenous peoples have suffered, and continue to suffer, the loss of their lands, the erosion of their cultures, and even the decimation of their populations as a result of this pattern. At one time, the commercial interests seeking access to indigenous resources generally originated in jurisdictions claiming sovereignty over the territory in question.

BLOC POSITIONS

Latin America

Latin American countries aren't just rich and diverse in culture but also in resources. From exotic fruits to minerals and gas, this region is one of the most attractive for FDI in the world. However, obtaining such resources has mostly impacted negatively its indigenous populations. A clear example is the extraction of oil and gas in

Peru by french company Pluspetrol between 1996 and 2001, which deeply affected the health and well-being of the Achuar community. The Achuar had been living in the Peruvian amazon for centuries and lived a very traditional lifestyle based on fishing, agriculture and hunting. However, when Petroperu decided to invest in the area, the Achuar reported the highest mortality rates they had ever experienced in history. Cancer and food poisoning were the main causes of death among this community, which had never experienced anything alike. When the peruvian government started investigating the root causes of the problem, they found out that several toxic products had been dumped and spilled into the nearby lakes and rivers the Achuar community used as their main source of water for cooking, drinking and cleaning. It wasn't until 2011, more than a decade later, that the peruvian government approved the "previous consultation" law, which gives indigenous people the right to be consulted before any FDI projects start in their homeland.



Asia-Pacific

During the last decade of the twentieth century, several asian countries became very flexible about logging and mining legislations in order to attract FDI to improve their economy. However, the large amounts of FDI brought with them big problems, such as deforestation. Large-scale logging was legal until 2010, when it was totally banned because of the repercussions it was having on native populations. . Deforestation deeply affected several indigenous communities that depended on trees and vegetation for hunting and gathering as means for survival, causing the size of indigenous populations to decrease in alarming levels during the first decade of the 2000s. Mining-

related FDI also had strong negative effects on indigenous communities in the Philippines. Even though the government made efforts to have companies and indigenous communities reach consensus, people from native populations reported abusive behavior from enterprises. Such behavior included attempts to bribe leaders of native communities and lying about the scope and impact of the projects.



Africa

The case of the Xolobeni people is a very interesting case that we suggest delegates research about regardless of the country they will represent. The Xolobeni people are an indigenous community in South Africa that took their case against a mining company who threatened to kill their leaders and bribed them several times after they tried to achieve consensus with the Xolobenis and they didn't agree with the project after being consulted. Through joint efforts made by the Xolobeni and the help of NGOs and pro-bono lawyers, the South African government approved a law that gave native communities not only the right to be consulted about mining projects but also the fundamental right to say no and to have their decision respected. In 2018, the South African government determined that people who are directly affected by mining are the ones that should have the ultimate decision. You can watch the documentary called "Xolobeni - The Right to Say No" on Youtube to have a better perspective of the case.



QARMAS

- To what extent should governments give flexibility to companies about the usage of natural resources?
- How can governments prevent abusive behavior from companies towards native communities when both parties are trying to reach consensus?
- Should governments revise the criteria they use to accept FDI from companies? If so, which factors should a new criteria consider?
- How can the government facilitate a line of communication between indigenous communities and potential FDI projects to best fit their needs?
- What role should the UN and NGOs play when protecting the fundamental rights of indigenous communities?

POSITION PAPER REQUIREMENTS

Position Papers must have a header that includes the following information: delegation being represented, committee, topic area, delegate's full names, and school. The general format should be 1 page long, Times New Roman 11, single-spaced and every source needs to be cited in APA format. Each delegation must send its position paper to the committee's email addressed in the presentation letter before the due date. The possibility of being awardable is determined by meeting the deadline proposed which is November, 25.

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