

PERMANENT COUNCIL OF THE
ORGANIZATION OF AMERICAN STATES
COMMITTEE ON JURIDICAL AND POLITICAL AFFAIRS

OEA/Ser.G
CAJP/GT/RDI-162/11 rev. 5
31 March 2011
Original: Spanish

Working Group to Prepare a Draft Inter-American
Convention against Racism and All Forms of
Discrimination and Intolerance

REPORT OF THE CHAIR OF THE WORKING GROUP TO PREPARE A DRAFT
INTER-AMERICAN CONVENTION AGAINST RACISM AND ALL FORMS OF
DISCRIMINATION AND INTOLERANCE TO THE COMMITTEE ON JURIDICAL AND
POLITICAL AFFAIRS ON THE CURRENT STATUS OF THE NEGOTIATIONS

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I. BACKGROUND IN THE GENERAL ASSEMBLY

In 2005, the General Assembly, in resolution AG/RES. 2126 (XXXV-O/05), "Prevention of Racism and All Forms of Discrimination and Intolerance and Consideration of the Preparation of a Draft Inter-American Convention, instructed the Permanent Council to establish a working group to prepare a draft Inter-American Convention against Racism and All Forms of Discrimination and Intolerance and to continue to address, as a matter of priority, the subject of preventing, combating, and eradicating racism and all forms of discrimination and intolerance; and to convene a special meeting to examine and discuss the nature of a future Inter-American Convention against Racism and All Forms of Discrimination and Intolerance that aims to increase the level of protection afforded to human beings against acts of this type, with a view to reinforcing the international standards now in effect, and taking into account the forms and sources of racism, discrimination, and intolerance in the Hemisphere and those manifestations not addressed in existing instruments on the subject.

In response to this mandate, the Permanent Council's Committee on Juridical and Political Affairs established the Working Group at its meeting of August 31, 2005, with its activities beginning on September 23 of that year. The Working Group held several meetings during the 2005-2006 period, including the special meeting mentioned in the General Assembly resolution, which was held November 28-29 and whose preliminary conclusions are included in document CAJP/GT/RDI-16/05, "Report of the Rapporteur."

The purpose of this and other meetings of the Working Group was to receive input, with a view to preparing a Draft Convention, from the member states, from organs, agencies, and entities of the OAS, from the United Nations and regional organizations, and from representatives of indigenous peoples, business and labor groups, and civil society organizations.

On April 18, 2006, the Chair of the Working Group presented the "Preliminary Draft Inter-American Convention against Racism and All Forms of Discrimination and Intolerance," CP/CAJP-2357/06, based on the input received during the Working Group meetings from the member states, representatives of civil society, United Nations specialists, and organs, agencies, and entities of the OAS, as well as from other regional and international entities, in the interest that this would serve as a basis for the negotiations on a future Convention.

At its meeting in Santo Domingo, Dominican Republic, in June 2006, the OAS General Assembly, in resolution AG/RES. 2168 (XXXVI-O/06), "Combating Racism and All Forms of Discrimination and Intolerance and Consideration of the Draft Inter-American Convention against Racism and All Forms of Discrimination and Intolerance," instructed the Working Group to begin negotiations on the Draft Inter-American Convention against Racism and All Forms of Discrimination and Intolerance, taking into account the aforementioned Preliminary Draft, and requested that in the context of negotiating the Draft Convention, it continue promoting meetings to receive contributions from member states, from organs, agencies, and entities of the OAS, and from

the United Nations and regional organizations. It also requested that the Working Group continue to receive input from representatives of indigenous peoples, entrepreneurs and labor groups, and civil society organizations, bearing in mind the Guidelines for Participation by Civil Society Organizations in OAS Activities, contained in OAS Permanent Council resolution CP/RES. 759 (1217/99), dated December 15, 1999.

Since that time, the General Assembly has continued to ratify this mandate through the adoption of resolutions AG/RES. 2276 (XXXVII-O/07), AG/RES. 2367 (XXXVIII-O/08), and AG/RES. 2501 (XXXIX-O/09), entitled "Draft Inter-American Convention against Racism and All Forms of Discrimination and Intolerance," through which it has instructed the Working Group to continue negotiations on the Draft Convention, taking into account the progress set forth in the "Consolidated Document: Draft Inter-American Convention against Racism and All Forms of Discrimination and Intolerance" (CAJP/GT/RDI-57/07), which was being revised as the negotiations were developing.

II. BACKGROUND IN THE SUMMIT PROCESS

The subject also has a history within the Summit of the Americas Process:^{1/}

In the 2001 Plan of Action of Quebec the member states undertook to "[s]upport efforts in the OAS to consider the need to develop an inter-American convention against racism and related forms of discrimination and intolerance."

Likewise, the 2005 Declaration of Mar del Plata states, "We reaffirm our strong commitment to confronting the scourge of racism, discrimination, and intolerance in our societies. These problems must be fought at all levels of government and the wider society. The Inter-American System also has a vital role to play in this process by, among other activities, analyzing the social, economic, and political obstacles faced by marginalized groups and identifying practical steps, including best practices, on how to combat racism and discrimination. To this end, we support the implementation of the OAS Resolution AG/RES. 2126 (XXXV O/05) that led to the establishment of a Working Group in charge of, inter alia, the preparation of a Draft Inter-American Convention Against Racism and all Forms of Discrimination and Intolerance, and lend encouragement to that Working Group to combat racism, discrimination, and intolerance through available means as a matter of the highest priority. We also recall our commitment to fully implement our obligations under the United Nations Convention on the Elimination of All Forms of Racial Discrimination."

Finally, in their 2009 Declaration of Commitment of Port of Spain, the Heads of Government and States stated: "We also reaffirm that all forms of discrimination inhibit the full participation of all persons in society and commit to taking continued steps to combat them. We will continue our efforts to conclude negotiations on the draft Inter-American Convention against Racism and All Forms of Discrimination and Intolerance."

1. There are several references to diverse forms and manifestations of "discrimination" in the various documents that come out of the Summits. Here we have collected only those paragraphs that expressly mention the Draft Inter-American Convention against Racism and All Forms of Discrimination and Intolerance.

III. MANDATE

Meeting in Lima, Peru, on June 8, 2010, the OAS General Assembly, in resolution AG/RES. 2606 (XL-O/10), "Draft Inter-American Convention against Racism and All Forms of Discrimination and Intolerance," reaffirmed "the will and the resolute commitment" to "continue making efforts to conclude negotiations on the Draft Inter-American Convention." At the same time, it instructs the Working Group to continue the negotiations, taking into account the progress set forth, in particular, in the "Consolidated Document: Draft Inter-American Convention against Racism and All Forms of Discrimination and Intolerance" (CAJP/GT/RDI-57/07 rev. 13).

Moreover, the General Assembly in the same resolution took note of the proposals made by the member states on this matter and instructed the Working Group "to consider, when adopting its Work Plan, methodology suggestions that may contribute to the negotiation process."

In addition, it asked the Working Group "to continue promoting contributions from member states; organs, agencies, and entities of the Organization of American States (OAS); the United Nations; and regional organizations; to urge those bodies to continue sending their written contributions to the Working Group for consideration; and, pursuant to the Guidelines for Participation by Civil Society Organizations in OAS Activities, contained in Permanent Council resolution CP/RES. 759 (1217/99), to request the Working Group to continue to receive contributions from groups in vulnerable situations and from interested civil society organizations." It also renewed the mandates to the Justice Studies Center of the Americas (JSCA) and the Inter-American Commission on Human Rights (IACHR), as set forth in paragraphs 5, 7, and 8 of resolution AG/RES. 2168 (XXXVI-O/06), and requested that the General Secretariat continue to provide support to the Working Group's activities, through the Executive Secretariat of the IACHR and the Department of International Law of the Secretariat for Legal Affairs. It should be noted that Antigua and Barbuda included the following footnote to this resolution: "Antigua and Barbuda is of the view that the mandate given in 2005 by the General Assembly to the Permanent Council in resolution AG/RES. 2126 (XXXV-0/05) and other subsequent resolutions to establish a Working Group to conclude a Draft Inter-American Convention on Racism and All Forms of Discrimination needs to be revised. Since the establishment of this Working Group, Member States have been unable to achieve consensus on the scope of this instrument. This has resulted in an impasse. While Antigua and Barbuda remains committed to the eradication of racism and all forms of discrimination and intolerance in the Americas, it no longer feels that a single instrument is practical. Therefore, Antigua and Barbuda is of the view that Member States should consider concluding an Inter-American Convention on Racism and one or more Optional Protocols on All Forms of Discrimination and Intolerance with the support of Belize, Canada, and Saint Kitts and Nevis."

IV. AUTHORITIES

In a meeting on September 2, 2010, the Committee on Juridical and Political Affairs elected the Alternate Representative of Costa Rica, Danilo González Ramírez, as Chair of the Working Group for the 2009-2010 period. Likewise, on September 27, 2010, it elected as Vice-Chair Mrs. Joy-Dee Davis, Alternate Representative of Antigua and Barbuda to the OAS.

V. NEGOTIATIONS AND CURRENT STATUS

Pursuant to operative paragraphs 1 and 2 of resolution AG/RES. 2606 (XL-O/10), "Draft Inter-American Convention against Racism and All Forms of Discrimination and Intolerance," the General Assembly, meeting in Lima, Peru, gave the Working Group the mandate to continue the negotiations, taking into account the progress set forth, in particular, in the "Consolidated Document: Draft Inter-American Convention against Racism and All Forms of Discrimination and Intolerance," and taking note of the proposals made by the member state on this matter.

In the course of the negotiations in 2010, the delegation of Antigua and Barbuda forwarded a note dated March 25, 2010 (CAJP/GT/RDI/INF.18/10), in which it presented the Working Group with a new proposal for methodology and in which it stated the following:

"The delegation of Antigua and Barbuda proposes that the Working Group to Prepare a Draft Inter American Convention against Racism and All Forms of Discrimination take the necessary steps to divide the current Draft into a **main Convention** focusing on racism/racial discrimination and an **additional Protocol** focusing on discrimination and all forms of intolerance....

"Antigua and Barbuda proposes that the main Convention focus on discrimination based on race, color, heritage, national or ethnic origin. The Protocol should focus on discrimination based on all the other issues contained in the current Draft. This proposal consisting of a Convention and a Protocol, would satisfy all delegations, in that:

1. It would encompass the major issues relating to racism, and with the Protocol, it would go a step beyond the current global instruments in addressing all other forms of discrimination and intolerance.
2. Consensus could be reached in the short run on a Convention focusing solely on Racism / Racial Discrimination. All delegations could sign immediately.
3. With respect to the Protocol on Discrimination and Intolerance, delegations that have expressed preference for a broad convention could sign immediately while those who have incongruous legal systems could sign on when it is legally feasible for them to do so.

"The complete set (Convention and Protocol) would achieve everything that the current Draft is attempting to address but incrementally."

Furthermore, in accordance with the mandate given to the Working Group in General Assembly resolution AG/RES. 2606 (XL-O/10), and in view of what is resolved in operative paragraph 3 and the mandate established in operative paragraph 4 of that resolution, in preparing the Work Plan for the current period the Chair of the Working Group offered the distinguished permanent missions the following suggestions for the negotiation process:

A. Methodology Implemented

At the Working Group's first meeting, held on September 27, 2010, the Chair presented document CAJP/GT/RDI-145/10, containing the proposed calendar of activities and working methodology, which was approved.

Pursuant to that document, and before continuing with the negotiation of a single instrument, a time limit of one calendar month from the Working Group's first meeting was established so that the delegations could comment on the various negotiation alternatives proposed by the countries regarding the content and scope of the Draft Convention, as well as the various methodology suggestions that had been offered by the member states during the preceding period, and could identify the course to follow in the negotiations based on the various alternatives available to date or any that might be put forward during that interval.

Once the time limit mentioned in the previous paragraph had been met, the Working Group would hold a working meeting to determine precisely how the discussions and the negotiation process should proceed. Subject to the member states' decision, the Chair will submit for the consideration of the Working Group a proposed methodology for continuing the negotiations commensurate with the decision adopted by the member states.

B. Consultations Held

The Chair of the Working Group sent a note to this effect on October 5, 2010, requesting that the distinguished delegations comment on the instrument's scope of application, for the purpose of clarifying the future course of the negotiations. Such comments were to be sent before November 1. Subsequently, the Chair sent a second communication on October 21, 2010, in which he suggested that the time limit for this consultation be extended until November 15, 2010. In this communication, the following documents were included to facilitate the process of consultation:

- Informational Document for Discussion and Negotiation of the Draft Inter-American Convention against Racism and All Forms of Discrimination and Intolerance (CAJP/GT/RDI-148/10 corr. 1)
- Proposal by the Permanent Mission of Antigua and Barbuda for the Working Group to Prepare a Draft Inter-American Convention against Racism and all forms of Discrimination and Intolerance (CAJP/GT/RDI/INF.18/10)

In view of these consultations and on instructions from the Chair, the Secretariat of the Working Group has collected the statements made by the delegations in the course of the deliberations on this matter. With regard to the various methodology proposals, the delegations of Argentina, Chile, Ecuador, El Salvador, Uruguay, and Venezuela indicated that they are still awaiting official instructions, but that they continue to favor a comprehensive negotiation in accordance with the mandates of the General Assembly and the decisions of the Summits of the Americas mentioned earlier in this report. The delegation of Nicaragua stated in writing its willingness to continue participating actively in the negotiations of the Working Group in which racism and all forms of discrimination and intolerance are comprehensively addressed.

For their part, the delegations of The Bahamas, Belize, Bolivia, Brazil, Costa Rica, Jamaica, Haiti, Mexico, Panama, Peru, Saint Kitts and Nevis, Saint Vincent and the Grenadines, and Saint Lucia offered their support of Antigua and Barbuda's proposal, along with the comments and observations presented by the delegation of Mexico with regard to that proposal. Antigua and Barbuda has also joined with this group of delegations in expressing its interest in supporting the comments and observations presented by Mexico, while Jamaica mentioned that the latter are under

consideration by its authorities. Those comments and observations are summarized in the table in the following section of this report.

In addition, when this report was presented during the meeting of the Committee on Juridical and Political Affairs held on March 4, 2011, the delegation of Paraguay expressed that country's support for the Antigua and Barbuda proposal, taking into account the recommendations of Mexico.

C. Results of the Consultations in Writing

Comments and written statements have also been formally received to date from the following delegations, as presented and summarized in the following table:

	MEMBER STATE	CLASSIFICATION	EXACT COMMENTS
1	Antigua and Barbuda	CAJP/GT/RDI-150/10	<p>In keeping with your request, I wish to indicate that Antigua and Barbuda is still of the view that the Working Group should separate the current Draft Inter American Convention against Racism and All Forms of Discrimination and Intolerance into a Convention on Racism and one or more Optional Protocols on Discrimination and All Forms of Intolerance.</p> <p>Antigua and Barbuda believes that its proposal will not only break the impasse but will satisfy all delegations, because the full set (Convention and Protocols) would achieve everything that the current Draft is attempting to address.</p> <p>We maintain that the exhaustive list in relation to discrimination and intolerance is problematic for Antigua and Barbuda because of legal and logistical difficulty in implementation and because certain issues contained in this list have not been conclusively addressed in our Capital.</p>
2	Mexico	CAJP/GT/RDI-151/10	<p>The delegation of Mexico would prefer a Convention that addresses the issue of discrimination in broad terms. Mindful, however, of the difficulties that have arisen in trying to reach consensus in the negotiation process, Mexico believes the Antigua and Barbuda proposal, which entails preparing a convention focused on the issue of eliminating racial discrimination and one or several optional protocols covering discrimination in a broad sense, could be a compromise out of the impasse.</p> <p>The foregoing notwithstanding, Mexico believes that two instruments should be negotiated—one focused on racial discrimination and another to address discrimination in a broad sense. Finally, should the Antigua and Barbuda proposal prevail, Mexico needs procedural guarantees that both instruments will be</p>

			negotiated simultaneously and submitted for approval at the same time.
3	Belize	CAJP/GT/RDI-152/10	<p>I write to express Belize's support for the proposal put forth by the delegation of Antigua and Barbuda which recommends that the Working Group separate the current Draft Inter American Convention against Racism and All Forms of Discrimination and Intolerance into a main Convention on Racism and an additional Protocol on Discrimination and All Forms of Intolerance.</p> <p>We believe that this proposal would advance the negotiations process and lead to its successful conclusion.</p>
4	Panama	CAJP/GT/RDI-153/10	<p>[T]his Mission informs the Secretariat that, with respect to the negotiation process, we are in favor of the course of action proposed by the distinguished delegation of Mexico in the sense of supporting the proposal of Antigua and Barbuda, subject to the conditions mentioned by the delegation of Mexico, to wit:</p> <ol style="list-style-type: none"> 1. To continue the negotiation of a convention against racism and one or more optional protocols on all forms of discrimination and intolerance; 2. The convention and the protocols are a single element and both must be negotiated and adopted at the same time. Despite being separate documents, they should be negotiated and adopted jointly; 3. The protocols must be independent of the convention vis-à-vis their ratification and adoption, so that a state could be a party to the protocols but not necessarily to the convention.
5	Saint Kitts and Nevis	CAJP/GT/RDI-154/10	<p>I write to express Saint Kitts and Nevis' support for the proposal put forth by the delegation of Antigua and Barbuda which recommends that the Working Group separate the current Draft Inter American Convention against Racism and All Forms of Discrimination and Intolerance into a main Convention on Racism and an additional Protocol on Discrimination and All Forms of Intolerance.</p> <p>We believe that this proposal would advance the negotiations process and lead to its successful conclusion.</p>

6	Brazil	CAJP/GT/RDI-155/10	Brazil supports the proposal of Antigua and Barbuda, which provides for the negotiation of a convention against racism and racial discrimination, as well as of one or more additional protocols on other forms of discrimination. The Brazilian Government considers it necessary for the protocols to be negotiated in parallel and for one of the protocols to address discrimination on the basis of sexual orientation and gender expression.
7	The Bahamas	CAJP/GT/RDI-156/10	In this regard, I am to advise that the Government of The Bahamas supports the proposal made by the Permanent Mission of Antigua and Barbuda and the view that the Convention focus on discrimination based on colour, heritage, national or ethnic origin and that the proposal for the Protocol focus on discrimination based on all other issues contained in the current Draft.
8	Suriname	CAJP/GT/RDI-157/10	In this regard I wish to communicate that based upon instructions received from the competent authorities in Paramaribo on November 15, 2010, the Republic of Suriname is in full support of the proposal by the Permanent Mission of Antigua and Barbuda for the Working Group to Prepare a Draft Inter-American Convention Against Racism and All Forms of Discrimination and Intolerance (CAJP/GT/RDI/INF.18/10), as amended by Mexico.
9	Saint Vincent and the Grenadines	CAJP/GT/RDI-158/10	<p>The delegation of Saint Vincent and the Grenadines wishes to put on record our support for the proposal put forth by the delegation of Antigua and Barbuda, that is, that the Working Group separate the current Draft Inter-American Convention against Racism and All Forms of Discrimination and Intolerance into a main Convention on Racism and an additional but optional Protocol on Discrimination and All Forms of Intolerance.</p> <p>The delegation of Saint Vincent and the Grenadines believes that it may be difficult to reach consensus on the overall Convention, thus the optional protocols will allow Member States to sign on to elements of the Convention which accord with the law of their land. It is the view of our delegation that this proposal is practical based upon the history of this issue within the hemisphere. We are furthermore convinced that despite the challenges inherent in negotiating such a Convention, Member States of the OAS must</p>

			nevertheless make the utmost effort to preserve and advance the gains made in tackling racism.
10	Costa Rica	CAJP/GT/RDI-161/11	<p>On this matter, this delegation would like to state that, following an intense process of reflection and in the spirit of helping to advance the process of negotiation, Costa Rica supports the idea of a Convention along the lines proposed by Antigua and Barbuda, along with an additional optional protocol that would allow inclusion of the various forms of discrimination and intolerance.</p> <p>While underscoring the utmost importance of continuing to address the problems related to discrimination and intolerance through a special instrument, Costa Rica recognizes the special relevance that the issue of racism and combating racism holds for the countries of the hemisphere, and it is pleased in particular to demonstrate its willingness to work with the CARICOM countries to prepare pertinent international legal instruments that tackle these common issues through a broad and participatory process that includes all the member states and civil society.</p> <p>To this end, the Mission of Costa Rica also supports the comments presented by the delegation of Mexico, in the sense that both the Convention and the protocol or protocols should be negotiated and approved at the same time.</p>
11	Saint Lucia	CAJP/GT/RDI-164/11	<p>Saint Lucia supports the proposal made by Antigua and Barbuda to separate the current Draft Inter-American Convention against Racism and All Forms of Discrimination and Intolerance into a Convention on Racism and one or more Optional Protocols on Discrimination and All Forms of Intolerance.</p> <p>While we applaud the exhaustive list in relation to discrimination and intolerance, Saint Lucia will have both legal and logistical difficulties in implementation of the Convention in its current form.</p> <p>I should be grateful if our position were taken into consideration as the Working Group begins a new round of negotiations.</p>

12	Haiti	CAJP/GT/RDI-167/11	<p>There is no doubt that the Draft Inter-American Convention against Racism and All Forms of Discrimination and Intolerance rouses great interest among the member states of the Organization, particularly because of the immensely broad interpretation of the concept of discrimination. That said, it is essential to reach consensus in spite of the currently differing opinions. Although Haiti shares the concerns of other delegations, it believes that emphasis should be placed on the racial orientation of the Convention. In addition, this delegation would also be prepared to work on a draft convention against racism and one or more draft protocols against discrimination and all forms of intolerance. The above would enable a member state to sign the former, the latter, or both.</p>
13	Nicaragua	CAJP/GT/RDI-168/11	<p>The Government of Nicaragua ascribes particular importance to the prevention, combating, and elimination of racism and all forms of discrimination and intolerance. Accordingly, we do not believe that it would be advisable to change the mandates adopted by the heads of state and government at the Summits of the Americas and by the ministers of foreign affairs in the framework of the OAS General Assembly, which instructed the Working Group to continue working on the preparation of the Draft Inter-American Convention against Racism and All Forms of Discrimination and Intolerance.</p> <p>In order to move the negotiations forward, a procedural road map needs to be drawn up with which to free them from their current stagnation and find points of accord on the scope of this convention.</p> <p>This delegation wishes to underscore that there is broad consensus among the states that the benefits that would accrue from this convention are greater protection for the citizens of the Hemisphere against racist acts and manifestations of discrimination and intolerance, as well as contributing to the progressive development of international human rights law by recognizing manifestations of racism and intolerance not envisaged in international instruments in force.</p> <p>The delegation of Nicaragua is willing to continue to participate actively in the negotiations of the Working Group to prepare this draft inter-American convention in which racism and all forms of discrimination and intolerance are comprehensively addressed.</p>

In addition, at the **December 1, 2010**, meeting, the Chair of the Working Group informed the Working Group that he had received a note from the delegation of Canada (CAJP/GT/RDI/INF.21/10) formally notifying the Chair of its formal withdrawal from the negotiations on the Draft Convention and indicating the reasons for taking that step.

D. Decisions of the Working Group

At the **January 25, 2011**, meeting, the Chair of the Working Group spoke to the delegations about the difficulties in reaching a consensus within the Group with regard to the issue of how the instrument or instruments to be negotiated should be defined. He indicated that consultations on the matter were submitted to the states, these consultations were repeated, and the time limit for consultation had been extended. He called to mind, as well, that the current scenario made it evident that there were some differences in the views of the delegations regarding the scope and content of the instrument or instruments to be negotiated and the methodology to follow for that process, and he reminded the delegations that those differing approaches to the mission entrusted to the Group had been surfacing within the Working Group for approximately one year. He also recalled that, in the course of the negotiations in the preceding period, the matter had to be submitted to the Committee on Juridical and Political Affairs and then to the Permanent Council, where it was finally addressed and agreed to in the terms laid out in AG/RES. 2606 (XL-O/10), "Draft Inter-American Convention against Racism and All Forms of Discrimination and Intolerance." The delegations' commitment, reinforced during the negotiations on this resolution, and reflected in the language agreed upon, to strive for a debate of the methodology underpinning the negotiations and the content and scope of the instrument(s) was reaffirmed, prior to a resumption of negotiations of the "Consolidated Text: Draft Inter-American Convention against Racism and All Forms of Discrimination and Intolerance" (CAJP/GT/RDI-57/07 rev. 13).

The Chair indicated to the Working Group that the commitment to give due consideration to the various proposals had been fulfilled, pursuant to the compromise language agreed to by the delegations in the negotiations on resolution AG/RES. 2606 (XL-O/10), with the issue still not having been resolved. As a result, the Chair submitted to the Group's consideration the possibility of taking the matter to the CAJP for the purpose of raising the issue, sounding out the possibilities for consensus in the Committee, and trying to break the impasse in terms of the Group's efforts to define the nature of a future convention, a matter on which the future work of the Working Group depends. Along these lines, it was agreed to submit the matter to the Committee on Juridical and Political Affairs upon the report of the Chair to that effect.

Based on the positions laid out and at the urging of the Chair, the Working Group has deemed that, although some broad areas of agreement exist among several delegations, there is not yet a position within the Working Group that would make it possible to reach a definitive consensus that would allow the negotiations on a single Draft Convention to continue, in view of the two sets of opinions that persist with regard to the methodological approach and the scope and content of the draft.

Additionally, and quite apart from the inherent difficulties in defining the nature of the instrument or instruments to be prepared, it should be noted that the methodology proposed and approved by the Working Group has also referred directly to the question of a quorum, in the following terms: "Bearing in mind the challenges that this Working Group has faced in the past in terms of a quorum for meeting and for adopting decisions, as mandated by the General Assembly, the

distinguished delegations considered the possibility that the Committee on Juridical and Political Affairs (CAJP) establish a reasonable quorum that would aid the negotiation process and enable the discussions to proceed, in the event that were necessary. That quorum would be governed by Article 44.b of the Rules of Procedure of the Permanent Council, in keeping with past practice in the Organization."

Furthermore, in the course of the negotiations, at the meeting of **February 22, 2011**, Ecuador, with the backing of several delegations, requested that a legal brief be prepared that provides a technical weighting of the resolutions issued by the Summits of the Americas and General Assembly in recent years which have referred to the negotiation of the draft inter-American convention and established the Working Group's mandates. In that regard, the Working Group decided to forward that request to the Department of International Law in its capacity as the advisory body and technical secretariat. The "Legal Opinion of the Department of International Law Regarding the Value of General Assembly Resolutions and of Documents Arising out of the Summits of the Americas" has been appended to this report of the Chair (Appendix 1).

Therefore, having heard the delegations and taken into consideration the various suggestions and points of view put forward in the course of the negotiations, it falls to the Chair of the Working Group to Prepare a Draft Inter-American Convention against Racism and All Forms of Discrimination and Intolerance, pursuant to his mandate and with the approval of the Working Group, to submit the matter to the Committee on Juridical and Political Affairs, with the recommendations specified below.

VI. RECOMMENDATIONS

1. Given the difficulties it has encountered in reaching a definitive agreement on the methodology it would use, the Working Group has decided to submit that issue for the consideration of the CAJP, in order for the Working Group to be able to carry on with the job it has been assigned. In this regard, it has been deemed that it is the Committee that this Working Group answers to that can, first of all, offer precise guidance as to the course the negotiations should follow, based on the mandate contained in resolution AG/RES. 2606 (XL-O/10), which instructs the Working Group to continue the negotiations, taking into account the progress set forth in the "Consolidated Document: Draft Inter-American Convention against Racism and All Forms of Discrimination and Intolerance" (CAJP/GT/RDI-57/07 rev. 13). At the same time, the Working Group takes note of the proposals made by the member states on the matter, which have been reflected in the preceding paragraphs and table.

2. Apart from the issue of defining the direction to take in the negotiation process, the Chair of the Working Group, based on the Work Plan approved, the decisions adopted in the Working Group, and the prevailing situation at different times, has found it necessary to put forward for the consideration of the Committee on Juridical and Political Affairs the difficulties encountered on several occasions in relation to the statutory quorum for the Working Group to meet and adopt decisions. According to the Work Plan adopted and the opinions of a number of countries, it has been deemed advisable to refer the matter to the Committee on Juridical and Political Affairs in order to discuss and determine an appropriate course of action. Based on the negotiations of the Working Group and the Work Plan, the possibility and advisability have been addressed of modifying the quorum of the Working Group in order to genuinely ensure the continuity of the negotiations, taking

into account the history of attendance and participation within this Group and the withdrawal of delegations from the process as reported previously. For the purposes of the discussions in the CAJP, it is suggested that said determination take into account in particular Article 44.b of the Permanent Council's Rules of Procedure and existing precedents within the Organization, among other factors.

Danilo González R.
Alternate Representative of Costa Rica to the OAS
Chair of the Working Group to Prepare a Draft Inter-American Convention
against Racism and All Forms of Discrimination and Intolerance

APPENDIX 1

PERMANENT COUNCIL OF THE
ORGANIZATION OF AMERICAN STATES

COMMITTEE ON JURIDICAL AND POLITICAL AFFAIRS

OEA/Ser.G
CAJP/GT/RDI-169/11
28 February 2011
Original: Spanish

Working Group to Prepare a Draft Inter-American
Convention against Racism and All Forms of
Discrimination and Intolerance

LEGAL OPINION OF THE DEPARTMENT OF INTERNATIONAL LAW REGARDING THE
VALUE OF GENERAL ASSEMBLY RESOLUTIONS AND OF DOCUMENTS ARISING OUT
OF THE SUMMITS OF THE AMERICAS

On February 23, 2010, the Chair of the Working Group to Prepare a Draft Inter-American Convention against Racism and All Forms of Discrimination and Intolerance wrote to the Department of International Law regarding a request made at the meeting of the Working Group on February 22 concerning the drafting of a legal opinion that would “provide a technical assessment of the value of the resolutions adopted at the Summits of the Americas and by the General Assembly in recent years that referred to the process of negotiating the [aforementioned] draft Convention” and that “at the same time established the Working Group’s mandates.”

The Department of International Law understands that the question refers in a general manner to the legal value of both the resolutions of the OAS General Assembly and the documents arising out of the Summits (which are basically declarations and action plans, not resolutions) as international instruments, and not to their contents, inasmuch as competence for interpreting the scope of the specific mandates contained in said instruments pertains to the Organs and bodies that adopted them, and not to any unit of the General Secretariat, not even the Department of International Law itself.

As regards the Summits of Heads of State and Government and the documents they give rise to (declarations and action plans), while we should bear in mind that said meetings do not constitute Organs of the Organization such as those established under Article 53 of the OAS Charter and are, moreover, directed at a wider universe of entities of the inter-American system than just the Organization, they do carry fundamental political weight for the activity of the institutions of the inter-American system because of the high rank of the participants in those meetings. For that reason it has been argued that the commitments and political mandates arising out of the Summits are converted into legal commitments and mandates within the Organization when its General Assembly endorses them by adopting the corresponding resolution. Thus, at the last Summit held in Port of Spain in 2009, paragraph 85 of the Declaration, which establishes the commitment of the Heads of State and Government to continue their “efforts to conclude negotiations on the draft Inter-American Convention Against Racism and All Forms of Discrimination and Intolerance,” is matched by operative paragraph 1 of resolution AG/RES. 2606, which, in the same words, reaffirms “the will and the resolute commitment of the member states to continue making efforts to conclude negotiations on

the Draft Inter-American Convention against Racism and All Forms of Discrimination and Intolerance.”

At its current stage of development, international organization law acknowledges the existence of organs competent to issue general regulations, almost always with internal effect within those organizations. Thus the treaties establishing them envisage the possibility of some organs created by them being able to regulate the acts of other organs within the wider structure. Implicitly or explicitly, all international organizations are endowed with the decision-making powers they need to achieve the objectives established in their charter and to guarantee continuity of their operations. According to these jurists, the right to adopt mandatory acts is extended and firmer when it is a matter of ensuring that the organization functions properly, that it is internally functional and its procedures effective, in scenarios in which the goal is effective participation of the organization in international relations. Thanks to those regulations, the organization can achieve its purposes and objectives, even though they do not constitute external decisions from which obligations may be derived that are legally binding upon the member states.

Under Article 53 of the OAS Charter, the General Assembly is an Organ of the Organization and, what is more, according to Article 54, its supreme organ. The General Assembly issues its decisions through resolutions. The practice has been to regard General Assembly resolutions as expressions of a decision of a political nature that do not, in and of themselves, generate international responsibility for the member states: for instance, when member states are urged to consider the ratification of or accession to certain international treaties.

Nevertheless, there are different kinds of resolution. They may take the form of a recommendation, an invitation, or an exhortation to pursue a certain form of conduct, and they are addressed to very different actors. Some are directed at the member states themselves, in which case the above assertion (that they are not legally binding) applies, but others address other organs, agencies, or entities of the Organization, including different areas of the General Secretariat, or even other international organizations.

The resolutions addressing specific areas of the General Secretariat do have to be regarded as mandates to be complied with, given the standing that the General Assembly possesses as the supreme organ of the OAS. One such resolution, for example, is AG/RES. 2590 (XL-O/10), which urges the General Secretariat to continue holding workshops on topics of interest in the field of international law. That is a mandate that said Department has to abide by.

The same is true when the resolution's mandate is directed at another Organ of the Organization, given, as we have already mentioned, the status of the General Assembly as the supreme organ and by virtue of Article 54 a. and b. of the OAS Charter, which establishes as one of the General Assembly's functions the power to determine the structure and functions of the Organs of the Organization and to establish measures for coordinating the activities of the organs, agencies, and entities of the Organization among themselves. That is the case with resolution AG/RES. 2606 (XL-O/10), which instructs the Working Group to continue negotiations on the Draft Inter-American Convention against Racism and All Forms of Discrimination and Intolerance, taking into consideration a number of factors contained in the same resolution. That is a mandate for which the Working Group will be accountable to the General Assembly, via the appropriate channels (the Committee on Juridical and Political Affairs and, subsequently, the Permanent Council) and a mandate that may only be modified by said Organ, that is to say, the General Assembly itself. This

applies to all General Assembly resolutions, so that, in this Department's view, the query regarding "General Assembly resolutions of recent years" has already been answered above.