

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

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.