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

ACTIVITIES OF THE WORKING GROUP DURING THE PERIOD 2010-2011

(Report of the Chair,
presented to the Committee on Juridical and Political Affairs at the meeting of May 3, 2011)

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I. BACKGROUND

A) THE GENERAL ASSEMBLY AND REGIONAL CONFERENCES

Article 3(l) of the Charter of the Organization of American States (OAS) provides that the American States proclaim the fundamental rights of the individual without distinction as to race, nationality, creed, or sex. Article II of the American Declaration of the Rights and Duties of Man provides that all persons are equal before the law and have the rights and duties established in the Declaration, without distinction as to race, sex, language, creed or any other factor. Furthermore, Article 1 of the 1969 American Convention on Human Rights (Pact of San José, Costa Rica) prohibits discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.

In the 1990s, the OAS General Assembly addressed this issue in resolutions AG/RES. 1271 (XXIV-O/94) “Nondiscrimination and Tolerance,” AG/RES.1404 (XXVI-O/94) “Annual Report of the Inter-American Commission on Human Rights,” AG/RES.1478 (XXVII-O/97) “Observations and Recommendations on the Annual Report of the Inter-American Commission on Human Rights,” and AG/RES.1695 (XXIX-O/99) “World Conference against Racism, Racial Discrimination, Xenophobia, and Related Intolerance.”

Resolution AG/RES. 1712 (XXX-O/00), titled “Preparation of a Draft Inter-American Convention against Racism and All Forms of Discrimination and Intolerance,” adopted in 2000, was the first time the General Assembly made express reference to a draft inter-American convention on this subject. In that resolution, given the international legal framework then in existence and the fact that the World Conference against Racism, Racial Discrimination, Xenophobia, and Related Intolerance was being organized and would be held in Durban (South Africa), the General Assembly considered that it was “imperative that the international legal framework be expanded and that national legislation be reinforced with a view to eliminating all forms of discrimination still existing in the Hemisphere.” It therefore resolved to “entrust the Permanent Council with studying the need to prepare a draft inter-American convention to prevent, punish, and eradicate racism and all forms of discrimination and intolerance,” and authorized the Permanent Council to begin the corresponding consultation process.

In the “Declaration and Plan of Action” adopted in Santiago (Chile) in December 2000 on the occasion of the “Regional Conference of the Americas in preparation for the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance,” the participants called upon the States “to prepare, in the context of the Organization of American States, an Inter-American Convention against Racism, Racial Discrimination, Xenophobia and Related Intolerance to widen the scope of existing international instruments, by including provisions on the new manifestations of racism, racial discrimination, xenophobia and related intolerance and establishing follow-up mechanisms.”

On this basis, in resolution AG/RES. 1774 (XXXI-O/00), "Preparation of a Draft Inter-American Convention against Racism and All Forms of Discrimination and Intolerance," the General Assembly instructed the Permanent Council to continue its "consideration of the need for a draft inter-American convention to prevent, punish, and eradicate racism and all forms of discrimination and intolerance." To that end, it asked the Inter-American Juridical Committee to prepare a study, taking into account, *inter alia*, "the declarations and recommendations of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, to be held in South Africa in 2001; [and] those of the Regional Conference of the Americas in preparation for the aforementioned World Conference, held in Chile in 2000."

In resolution AG/RES.1905 (XXXII-O/02) "Prevention of Racism and All Forms of Discrimination and Intolerance and Consideration of the Preparation of an Inter-American Draft Convention," the General Assembly instructed the Permanent Council 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 initiate the study of possible strategies for promoting, through initiatives in the areas of education and justice administration, public awareness campaigns, tolerance, and full and effective equality for all persons in building pluralistic, inclusive societies, on the understanding that national programs and international cooperation should be encouraged. This resolution was based on the premise that racist and discriminatory practices are incompatible with the effective exercise of representative democracy and the rule of law. In this resolution, the General Assembly stated that it was profoundly concerned by and unequivocally condemned all forms of racism and racial discrimination, including related acts of racially motivated violence, xenophobia, and related intolerance, as well as propaganda activities and organizations which attempt to justify or promote racism, racial discrimination, xenophobia, and related intolerance in any form. It also reasserted that all states should resolutely condemn all acts of racism and bring to justice the perpetrators of crimes motivated by racism, and consider including in their legislation racist motivations as an aggravating factor for the purposes of sentencing.

The topic was also addressed in General Assembly resolutions adopted in 2003 and 2004: AG/RES. 1930 (XXXIII-O/03) "Prevention of Racism and All Forms of Discrimination and Intolerance and Consideration of the Preparation of a Draft Inter-American Convention", and AG/RES. 2038 (XXXIV-O/04) "Prevention of Racism and All Forms of Discrimination and Intolerance and Consideration of the Preparation of a Draft Inter-American Convention."

Starting in 2005, successive sessions of the General Assembly took up the matter of creating an OAS Working Group to Prepare a Draft Inter-American Convention against Racism and All Forms of Discrimination and Intolerance. In the "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" (CAJP/GT/RDI-162/11 rev. 5), which is attached as **ANNEX 1** to this Report on the Activities of the Working Group during the Period 2010-2011, the history of the Working Group was described as follows:

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 reparation 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.

In resolution AG/RES. 2606 (XL-O/10) "Draft Inter-American Convention against Racism and All Forms of Discrimination and Intolerance," the General Assembly reiterated the Working Group's mandate to continue its efforts to conclude negotiations on the Draft Inter-American Convention against Racism and All Forms of Discrimination and Intolerance," with certain variants, as described in Section II ("Current Mandate") and subsequent sections of this Report on the Working Group's Activities in the Period 2010-2011, which reflect the current status of the negotiations.

B. THE SUMMIT PROCESS

The roots of this subject can also be traced to the Summits of the Americas Process. As observed in the "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" (CAJP/GT/RDI-162/11 rev. 5), which is attached to this Report on the Activities of the Working Group during the Period 2010-2011(ANNEX 1):

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

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.

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."

II. CURRENT MANDATE

As the CAJP was duly informed in the "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" (CAJP/GT/RDI-162/11 rev. 5, which is attached to this Report on the Working Group's Activities as ANNEX 1):

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.

As the Chair of the Working Group informed the CAJP in the "Report on the Status of the Negotiations" (CAJP/GT/RDI-162/11 rev. 5, attached hereto as **ANNEX 1**), the Delegation of Antigua and Barbuda included the following footnote in that 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.*" According to the text of that resolution, the footnote introduced by Antigua and Barbuda had the support of Belize, Canada and Saint Kitts and Nevis.

III. OFFICERS

At a meeting held on September 2, 2010, the Committee on Juridical and Political Affairs elected the Alternate Representative of Costa Rica to the OAS, Mr. Danilo González Ramírez, as Chair of the Working Group for the 2010-2011 period. Likewise, on September 27, 2010, the Working Group elected its own Vice Chair, Ms. Joy-Dee Davis, Alternate Representative of Antigua and Barbuda to the OAS.

IV. THE WORKING GROUP'S ACTIVITIES (2010-2011)

Under operative paragraphs 2 and 3 of resolution AG/RES. 2606 (XL-O/10), the General Assembly instructed the Working Group to continue the negotiations, taking into account the progress set forth in document CAJP/GT/RDI-57/07 rev. 13, "Consolidated Document: Draft Inter-American Convention against Racism and All Forms of Discrimination and Intolerance," and to take note of the proposals made by the member states on this matter.

With a view to the General Assembly's instruction in operative paragraph 3 of that resolution and the mandate set forth in operative paragraph 4 of resolution AG/RES. 2606 (XL-O/10), the Chair of the Working Group to Prepare a Draft Inter-American Convention against Racism and All Forms of Discrimination and Intolerance suggested a number of methodological proposals to the distinguished permanent missions for purposes of the negotiation process, as described below:

A. METHODOLOGY IMPLEMENTED

As the Chair of the Working Group pointed out in his Report on the Current Status of the Negotiations (CAJP/GT/RDI-162/11 rev. 5), attached to this Activities Report as ANNEX 1, the method proposed and employed during this period of negotiations was as follows:

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.

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:

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.

It should be pointed out that once the necessary consultations had been conducted and the corresponding interval had passed, the working meeting that was to follow “to determine precisely how the discussions and the negotiation process should proceed” and the preparation of a new proposed methodology for the Working Group to continue the negotiations, as set forth in the Work Plan, never materialized because of the positions taken on the two proposed methodologies about which the member states were consulted and because the delegations could not come to a general agreement regarding the two proposals.

This situation essentially became an obstacle to reaching a consensus on the methodological approach to the negotiations and resulted in an impasse that brought those negotiations to a standstill. By agreement with the Working Group, the Chair prepared the “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” (CAJP/GT/RDI-162/11 rev. 5, attached to this Activities Report as ANNEX 1), and thereby brought the matter to the attention of the Committee on Juridical and Political Affairs (CAJP), as explained in the following sections of this Activities Report.

B. CONSULTATIONS WITH THE STATES

As explained in that “Report on the Current Status of the Negotiations” (CAJP/GT/RDI-162/11 rev. 5), attached to this Activities Report as ANNEX 1, the consultations with the member states concerning the proposed methodologies were protracted and extensive. The Chair of the Working Group began by sending a note dated October 5, 2010, inviting the distinguished delegations to comment on the instrument's scope of application, for the purpose of clarifying the future course of the negotiations. Those comments were to be sent before November 1, 2010.

- The Chair then 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, given the two methodological proposals presented within the Working Group to move forward with the negotiations, the following documents were included to facilitate the consultation process: 1) the “Information 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), which is the basic text of the draft version of a single international instrument so titled; and 2) 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), presented on March 25, 2010, containing a new proposed methodology “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.”

The details of the new proposal that Antigua and Barbuda presented were discussed at length in the “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” (CAJP/GT/RDI-162/11 rev. 5), attached to this Activities Report as ANNEX 1.

C. RESULTS OF THE CONSULTATIONS WITH THE MEMBER STATES

Pursuant to the mandate given to the Working Group in General Assembly resolution AG/RES. 2606 (XL-O/10) “*to consider, when adopting its Work Plan, methodology suggestions that may contribute to the negotiation process,*” and in keeping with that Work Plan as approved and its methodology proposal, since December 2010 the Working Group has focused on discussion and

negotiation of the two alternative approaches to the negotiations about which the member states were consulted.

Thus far in the consultation process, 23 member states have expressed their opinions, which break down as follows:

Overall, a total of 20 delegations expressed their support for the proposal presented by Antigua and Barbuda. Those delegations are from the following member states: Antigua and Barbuda, Argentina, The Bahamas, Belize, Bolivia, Brazil, Chile, Costa Rica, Guatemala, Haiti, Jamaica, Mexico, Panama, Paraguay, Peru, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Suriname, and Venezuela.^{2/}

During the consultations, written statements were received from 14 delegations; others made their positions known verbally during the course of the negotiations. This is discussed in greater detail in the “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” (CAJP/GT/RDI-162/11 rev. 5), attached to this Activities Report as ANNEX 1.

For its part, the delegation of Nicaragua, on the other hand, disagreed with Antigua and Barbuda’s proposal, and stated that it believed it was inadvisable “*to change the mandates approved by the Heads of State and Government at the Summits of the Americas and by the Ministers of Foreign Affairs at General Assembly sessions of the Organization of American States, in which the Working Group was instructed to continue working on preparation of the Draft Inter-American Convention against Racism and All Forms of Discrimination and Intolerance.*”

At the meeting of April 27, the following delegations expressed their positions:

The delegation of Chile stated that, considering the current scenario, and in an effort to build consensus, Chile agreed to proceed with Mexico’s proposal of twin drafting processes, with procedural guarantees for the negotiation and adoption of the two instruments.

The delegation of Argentina said that, although it did not attach greater importance to one form of discrimination or another, and it would have preferred one comprehensive Convention, it also understood that for the countries of the Caribbean the matter of racism was at the heart of their concerns regarding discrimination; and considering, *inter alia*, that this was the International Year for People of African Descent, it had decided to support the position of Antigua and Barbuda and would support the draft resolution that would be submitted to the appropriate bodies.

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2. In expressing its support for and backing of the proposal presented by Antigua and Barbuda, the delegation of Mexico also stated the following (document CAJP/GT/RDI-151/10): “*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 negotiated simultaneously and submitted for approval at the same time.*” The delegations that voiced support for Antigua and Barbuda’s proposal also endorsed Mexico’s comments and observations (Antigua and Barbuda was part of this group). Jamaica said that its authorities have Mexico’s comments and observations under consideration.

The delegation of the Bolivarian Republic of Venezuela said that, although it had been favoring a unified document that would include all the elements, it was willing to join in the consensus and support the proposals that were being put forward, in the understanding that the aim was an instrument which the countries would find inclusive.

The delegation of Uruguay said that its usual position was to favor a comprehensive Convention covering all forms of racism and discrimination and intolerance, in order to protect persons with all forms and degrees of disabilities that may arise, in keeping with the commitments undertaken by the member states at the General Assembly and the Summits of the Americas. Considering, however, that was an extremely important national and international issue, the delegation accepts the Antigua and Barbuda proposal, along the lines suggested by the delegation of Mexico, in order to achieve consensus and as a sign of flexibility.

The delegation of El Salvador said that although it was still awaiting official instructions, it continued to be in favor of a single instrument, in keeping with the mandates from the General Assembly and the decisions of the Summits of the Americas, mentioned earlier in this report. Similarly, the delegation of Ecuador has stated its position by noting that while it has not expressed its position in writing during the consultation process, in accordance with instructions from Quito it will continue to support the idea of negotiations based on a single convention text.

At the meeting of the Committee on Juridical and Political Affairs of May 3, 2011, the delegation of Suriname added its support to the proposal of Antigua and Barbuda.

Accordingly, at the conclusion of the consultation process, a total of 21 delegations would appear to support the proposal of Antigua and Barbuda. Only three delegations have come out in favor of continuing the negotiations on the basis of a single text of the Convention.

Finally, at the meeting held on December 1, 2010, the Chair informed the Working Group that a communication had been received from the Delegation of Canada^{3/} in which it advised the Chair that it was formally withdrawing from the negotiation of the Draft Inter-American Convention against Racism and All Forms of Discrimination and Intolerance. It also explained the reasons why it had decided to withdraw.

It is clear, then, that throughout the 2010-2011 period, the negotiation process continued to labor under the difficulties of reaching a consensus that resolves, once and for all, the consultations submitted to the states concerning methodology, given the differing approaches that had surfaced within the Working Group. Now that the consultation process is over, the lack of consensus has in recent months created an impasse in the Group's work.

D. BRINGING THE MATTER TO THE ATTENTION OF THE PERMANENT COUNCIL AND THE COMMITTEE ON JURIDICAL AND POLITICAL AFFAIRS

The consultation process, the situation in the Working Group, and the current status of the negotiations related to the Draft Inter-American Convention against Racism and All Forms of

3. CAJP/GT/RDI/INF 21/10

Discrimination and Intolerance are issues that have all been brought to the attention of the Permanent Council and the Committee on Juridical and Political Affairs in recent months.

On the occasion of the special meeting of the Permanent Council to commemorate the “International Year for People of African Descent,” held on March 15, 2011 in compliance with the mandate in General Assembly resolution AG/RES 2550 (XL-O/10) “Recognition of the International Year for People of African Descent,” the Chair of the Working Group (CP/INF. 6215/11) spoke about the current status of the negotiations related to a Draft Inter-American Convention against Racism and All Forms of Discrimination and Intolerance, the responsibilities entrusted to the Working Group, and the commitments undertaken by the member states as expressed in the documents from the Summits of the Americas and the resolutions adopted by the OAS General Assembly. He underscored the fact that “the political support of states to the process is critical to guide and channel international efforts within the Americas and, in the context of the OAS, to fight racism and racial discrimination, as well as all other forms of discrimination and intolerance.” The Chair closed by observing that “commemoration of the International Year for People of African Descent seems to be an ideal occasion for us to renew our commitment to this cause and support for an ongoing collective effort open to the participation of all states and civil society, that seeks to continue its broad-based, participatory approach, and that requires a prompt decision.” The address that the Chair of the Working Group delivered before the Permanent Council on that occasion is attached to this Activities Report as ANNEX 2.

The Committee on Juridical and Political Affairs has taken up this matter on two occasions.

The first time was on March 4, 2010, when the Chair of the Working Group presented to the CAJP the “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” (CAJP/GT/RDI-162/11 rev. 5), attached to this Activities Report as ANNEX 1. There it was explained that, “[B]ased 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.” Accordingly, the Chair recommended that “[g]iven 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.”

Attached to the Report of the Chair of the Working Group was 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,” which the Working Group requested at the

suggestion of the Delegation of Ecuador. That Legal Opinion, which was attached to the Report of the Chair on the Current Status of the Negotiations, is also included in this Report on Activities during the Period 2010-2011 as **ANNEX 1.A** (document CAJP/GT/RDI-169/11).

Once taken up within the CAJP, the matter was decided as recorded in the verbatim transcript that the Chair of the Working Group requested of the formula that the Chair of the CAJP proposed on that occasion (verbatim transcript of the formula proposed by the Chair of the CAJP under item 5 in the summary of the meeting held on March 4, 2011, document CP/CAJP/SA.501/11 rev.1) and which as follows:

I would like to conclude with the following remarks: I think some aspects of this issue have been made quite clear in this discussion.

First: *The mandate contained in resolution 2606 from the Lima Assembly is a mandate in force and only the Assembly can change a mandate that it issues. I believe that is quite plain. Dr. Negro has just explained it very clearly: it is a mandate in force and that issue is not in discussion.*

Second: *I believe that this discussion has revealed very clearly that no further progress in the negotiation process can be made in the Working Group during this period. That much is also abundantly clear.*

Third: *The delegations agree that the most advisable course of action in order to keep moving forward is to make, or propose to the Assembly, an amendment to the mandate, an adjustment to the mandate, or—whatever one might wish to call it—an update of the mandate to avoid using any negative term.*

Fourth: *The only discrepancy that I have heard concerns whether that should be done in the Working Group or in another context. I would like, therefore, to ask the room if it would agree, given that the individuals, the delegates that have followed this issue are already in the Working Group, that we instruct the Working Group to discuss it and propose such an update, amendment of the mandate with a view to its subsequent referral to this Committee, from here to the Permanent Council, and thence to the General Assembly.*

The matter was again presented to the Working Group for consideration on April 5, 2011, particularly the proposal presented by the Chair in the form of a preliminary draft resolution on the “Revision of the Mandate of the Working Group to Prepare a Draft Inter-American Convention against Racism and All Forms of Discrimination and Intolerance” (document CAJP/GT/RDI-171/11 corr. 1). However, the Working Group never took up the Chair’s proposal because the order of business for that day was not approved owing to the various interpretations that the delegations had of the content and scope of the CAJP’s earlier decision. This matter will be discussed at greater length in Section V of this Activities Report.

Therefore, the matter was again brought to the CAJP’s attention that very day, April 5, 2011. Given the difficulty of reaching an agreement on the matter in the context of the Working Group and at the suggestion of the Chair of the CAJP, the decision was to ask the Working Group to convene so that its Chair might present the Report on the Activities of the Working Group in the Period 2010-

2011, and allow those delegations that want to present a draft resolution on subject to do so to the body that they deem most appropriate.

E. MEETINGS OF THE WORKING GROUP DURING THE PERIOD 2010-2011

The Working Group held 6 regular meetings: September 27, 2010, December 1, 2010, January 25, 2011, February 22, 2011, and April 5 and 27, 2011.

At the meeting of **September 27, 2010**, the Chair introduced document CAJP/GT/RDI-145/10 rev. 1, which contained the Group's proposed calendar of activities and working methodology, which was approved.

At the meeting held on **December 1, 2010**, the Group continued to discuss the methodology proposals of the member states in relation to the Draft Inter-American Convention against Racism and All Forms of Discrimination and Intolerance, which were the result of the consultations conducted by the Chair. At this meeting, the Chair reported that a document had been circulated titled "Comparative chart between the International Convention on the Elimination of All Forms of Racial Discrimination (1965) and the informational document for discussion and negotiation "Draft Inter-American Convention against Racism and All Forms of Discrimination and Intolerance," contained in document CAJP/GT/RDI/INF.20/10, which was prepared by the Department of International Law at the Chair's request.

At the meeting of **January 25, 2011**, 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 on 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 positions still being held 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," published as CAJP/GT/RDI-169/11, is attached to this report (Appendix II).

Therefore, owing to the difficulties that the Working Group has encountered in arriving at a definitive agreement as to the methodology to be followed within the Group, and after hearing from the delegations and after considering the various suggestions and positions expressed during the course of the negotiations, the Chair of the Working Group to Prepare a Draft Inter-American Convention against Racism and All Forms of Discrimination and Intolerance, pursuant to its mandate and with the Working Group's approval, put this matter to the Committee on Juridical and Political Affairs for consideration. The final version of this report was circulated as document CAJP/GT/RDI-162/11 rev. 5, and was presented to the CAJP on March 4, 2011.

At this meeting, the Chair also spoke about the activities being coordinated as part of the International Year for People of African Descent, in furtherance of resolution AG/RES. 2550 (XL-O/10) "Recognition of the International Year for People of African Descent" and informed the Group that the commemorative events will include a special meeting of the Permanent Council on March 15, 2011. The Group suggested that a note be sent to the Chair of the Permanent Council requesting that the presentation by the Chair of the Working Group be included on the agenda so as to give greater visibility to the process.

At the meeting of **April 5, 2011**, the Working Group was unable to reach agreement on the request that the CAJP made to the Working Group at the former's meeting of March 4. Therefore, at that April 5 meeting, clarification of the matter was requested from the Chair of the CAJP.

Finally, at the **April 27, 2011** meeting, the Chair of the Working Group placed this report before the delegations, who made suggestions and remarks on the document.

V. DRAFT RESOLUTION TO THE GENERAL ASSEMBLY

On April 5, 2011, the Chair of the Working Group presented the draft resolution titled "Draft resolution Revision of the Mandate of the Working group to prepare a Draft Inter-American Convention against Racism and All Forms of Discrimination and Intolerance, which the Group never managed to discuss since the order of business for that meeting was never approved. That draft resolution (CAJP/GT/RDI-171/11 corr. 1) is attached to this Activities Report as **ANNEX 3**.

VI. THE CHAIR'S COMMENTS AND CONCLUSIONS

For the record, the Chair of the Working Group would like to share some thoughts about his experience presiding over the Working Group during this period:

Over the course of the 2010-2011 period, various proposals have been presented within the Working Group on how best to approach the General Assembly's mandate to the Working Group. These proposals have been factors in determining whether the negotiation process can move forward, thus moving beyond the essentially methodological or procedural issues that have been raised in the last year.

Broadly speaking, two different methodological approaches are being proposed: one favors continuing the negotiation process based on the text of a single draft Inter-American Convention against Racism and All Forms of Discrimination and Intolerance, as originally proposed back in 2005; the other more recent proposal suggests that the negotiation process proceed, but with a view to separating the Draft Convention, both substantively and procedurally, into at least two different instruments to be negotiated and approved simultaneously and concurrently: one an inter-American convention against racism, and one or more optional protocols on all other forms of discrimination and intolerance.

Although in recent months the consultation process has revealed that the majority of the member states have come out in favor of the second of the two options, the Working Group has been unable to come to a general agreement that lays the groundwork for continuing the negotiations using this second proposed approach, which surfaced within the last year.

It is important to point out that the disagreement among the delegations essentially concerns the methodological approach to the negotiations, but not the member states' commitment to continue to seek solutions to the scourges of racism, discrimination and other forms of intolerance. Even those delegations that, during the course of the negotiations, expressed reservations about drafting inter-American legal instruments to address the problem of racism, discrimination and intolerance and

have formally withdrawn from negotiations or advised that they would not be participating in the process, have nonetheless expressed their willingness and readiness to strive for an approach that makes possible implementation of existing treaties on the subject, as one way of combating these injustices.

Given the persistent obstacles standing in the way of a consensus within the Working Group, the matter was placed before the Permanent Council during the special meeting held on March 15, 2011, to commemorate the “International Year for People of African Descent”; on two other occasions, the matter also was referred formally to the Committee on Juridical and Political Affairs for discussion and a decision.

That notwithstanding and despite the framework of a consensus that has started to take shape in recent months, the issue has not yet been resolved.

The difficulties in arriving at an agreement have materialized and become evident in the Working Group’s inability to begin discussion of the draft resolution on the “Revision of the Mandate of the Working Group to prepare a Draft Inter-American Convention against Racism and All Forms of Discrimination and Intolerance” (document CAJP/GT/RDI-171/11 corr. 1), presented to the Working Group for its consideration.

Some delegations had procedural and substantive objections to the draft resolution presented to the Working Group for consideration. Therefore, informal consultations were held among the permanent representatives of certain member states to sort out any procedural objections and, based on the decision of the CAJP at its April 5, 2011 meeting, a recommendation was made to the interested delegations that the respective draft resolution be presented to the Permanent Council, given the difficulties that had arisen in other forums when this matter was discussed.

The Working Group Chair wishes to note that the question of redefining or updating the Group’s mandate such that the General Assembly would authorize it to continue negotiations on the basis of two or more international instruments has been the topic of intense informal negotiations. At least one of the delegations has voiced procedural objections to the Working Group, and to other, informal bodies, requesting that the matter first be addressed outside the Permanent Council framework. This has made it difficult to consider the draft resolution for presentation to the General Assembly at its forty-first regular session. The Chair, therefore, has committed to submitting this report to the Committee on Juridical and Political Affairs with the express and special recommendation, endorsed by the delegations, that the Committee transmit the matter directly to the Permanent Council, so that the corresponding draft resolution may be considered by the Council during its preparatory work for the forty-first regular session of the General Assembly.

In conclusion, the Chair of the Working Group believes that while no definitive agreement on the matter has as yet been reached, as the consultations with the states have progressed the groundwork necessary for a majority agreement is gradually being laid; although it may perhaps be optimistic, this might be the avenue by which we finally reach a consensus formula in favor of the proposal presented by the Delegation of Antigua and Barbuda, once the matter is considered and decided within the appropriate OAS bodies.

As the Chair said on the occasion of the special meeting the Permanent Council held on March 15, 2011, to commemorate the International Year for People of African Descent, it seemed the

ideal occasion for the member states to renew their commitment to combating racism and all forms of discrimination and intolerance and their support for an ongoing collective effort open to the participation of all states and civil society, that seeks to continue its broad-based, participatory approach and that requires a prompt decision.

VII. WORDS OF APPRECIATION

The Chair of the Working Group is very grateful to the distinguished delegations of the member states for their constant and ongoing participation in the meetings the Working Group held during this period, for their willingness to answer the consultations, for their contributions to an open, frank and constructive dialogue, for their relentless determination to agree upon matters during the negotiations, and for their repeated manifestations of support expressed to the Chair throughout this period. The Chair would like to extend special thanks to the Vice Chair of the Working Group, Ms. Joy-Dee Davis, Alternate Representative of Antigua and Barbuda, and congratulate her for her dedication and the invaluable contributions she made to the activities of the Working Group.

Also, speaking on behalf of the Working Group and on a personal basis, the Chair is grateful for the constant support and advisory assistance received throughout the year from the Department of International Law, particularly from Dr. Diego Moreno and from its Director, Dr. Dante Negro, and other staff members of that Department. The Chair is also grateful for the support and presence, throughout this process, of the Executive Secretariat of the Inter-American Commission on Human Rights (IACHR), particularly Mr. Leonardo Hidaka, Mr. Santiago Cantón, Executive Secretary of the Commission, and Commissioner María Silvia Guillén in her capacity as Rapporteur on the Rights of Afro-Descendants and against Racial Discrimination.

The Chair of the Working Group would also like to thank the various civil society organizations for the contributions and support they offered throughout this process.

Finally, the Chair of the Working Group would like to extend a special word of thanks to the Secretariat of the Permanent Council, particularly the Secretary of the Working Group, Ms. Carolina Santa María, for their unconditional support and constant advisory services.

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

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

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

ANNEX 1

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

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

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

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:^{4/}

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."

4. 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-O/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

ANNEX 1.A

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.

ANNEX 2

OEA/Ser.G
CP/INF.6215/11
16 March 2011
Original: Spanish

**ADDRESS BY THE CHAIR OF THE WORKING GROUP TO PREPARE A DRAFT
INTER-AMERICAN CONVENTION AGAINST RACISM AND ALL FORMS OF
DISCRIMINATION AND INTOLERANCE, MINISTER DANILO GONZÁLEZ R.,
ALTERNATE REPRESENTATIVE OF COSTA RICA**

during the special meeting of the OAS Permanent Council to celebrate the “International Year of
People of African Descent,” held on March 15, 2011

**ADDRESS BY THE CHAIR OF THE WORKING GROUP TO PREPARE A DRAFT
INTER-AMERICAN CONVENTION AGAINST RACISM AND ALL FORMS OF
DISCRIMINATION AND INTOLERANCE, MINISTER DANILO GONZÁLEZ R.,
ALTERNATE REPRESENTATIVE OF COSTA RICA**

during the special meeting of the OAS Permanent Council to celebrate the “International Year of People of African Descent,” held on March 15, 2011

Your Excellency, Ambassador Carmen Lomellin, Permanent Representative of the United States of American and Chair of the Permanent Council,

Your Excellency José Miguel Insulza, Secretary General of the OAS,

Illustrious Commissioner María Silvia Guillén, Rapporteur on the Rights of Afro-Descendants and Against Racial Discrimination,

Your excellencies, ambassadors and permanent representatives of member states,

Your excellencies, ambassadors and permanent representatives of OAS permanent observer states,

Distinguished representatives of civil society organizations,

Distinguished special guests:

I would like to begin by thanking the Chair of the Permanent Council for this auspicious opportunity to speak, as Chair of the Working Group, on the current status of negotiations related to the Draft Inter-American Convention against Racism and All Forms of Discrimination and Intolerance.

The decision to create a working group within the OAS to draw up a draft Inter-American Convention against Racism and All Forms of Discrimination and Intolerance was adopted by member states at the 2005 General Assembly in Fort Lauderdale.

This decision unquestionably reflected the serious commitment of the OAS to work to eradicate racism and all forms of discrimination and intolerance, based on the conviction that they negate universal values, and the inalienable and inviolable rights of human beings, and are in conflict with the purposes, principles, and guarantees established in the Charter of the Organization of American States, the American Declaration of the Rights and Duties of Man, the American Convention on Human Rights, the Universal Declaration on Human Rights, the Inter-American Democratic Charter, and the International Convention on the Elimination of All Forms of Racial Discrimination.

This is a commitment that is still valid today in the Organization and in the countries of this Hemisphere, but it needs to be reinvigorated.

At the 2005 Summit of the Americas and in the Declaration of Mar del Plata, our heads of state and government referred to the commitment of our nations to deal with the scourge of racism,

discrimination, and intolerance at all levels of government and in society in general, while at the same time they reiterated their determination to comply fully with the obligations assumed under the United Nations Convention on the Elimination of All Forms of Racial Discrimination. They also recognized that the inter-American system has a vital role to play in this process, involving examination of social, economic, and political obstacles faced by marginalized groups and identification of practical steps, including best practices on how to combat racism and discrimination; for these purposes, they specifically supported the creation of a working group with responsibility for preparing a draft Inter-American Convention against Racism and All Forms of Discrimination and Intolerance, among other tasks. They also encouraged the work of this working group to combat racism, discrimination, and intolerance by all available means, and called it “a matter of the highest priority.” This commitment was reiterated in 2009 at the most recent Summit of the Americas, in the Declaration of Port-of-Spain, which stated that our countries will continue efforts to conclude negotiations on the draft Inter-American Convention against Racism and All Forms of Discrimination and Intolerance.

The creation in 2005 of a working group to prepare a draft inter-American convention was clearly a decision that harked back to the 2000 Santiago Declaration and Plan of Action, adopted by the countries of the Hemisphere at the Regional Conference of the Americas, held in that city in preparation for the 2001 Durban World Conference against Racism, Racial Discrimination, Xenophobia, and Related Intolerance, and that was greatly spurred on by the interest and the strong impetus that the countries of the Americas and the OAS contributed to the Durban process. It was not in vain that at the Quebec Summit of the Americas in 2001, the heads of state and government of the Americas pledged in their plan of action to support efforts within the OAS to “consider the need to prepare an inter-American convention against racism and all forms of discrimination and intolerance.”

The creation of a working group to prepare a draft inter-American convention in 2005 was also preceded by specific recognition in Santiago in 2000 (at the Regional Preparatory Conference) that “racism, racial discrimination, xenophobia, and intolerance still persist in the Americas, despite the efforts made by the countries of the region, and that they continue to cause suffering, disadvantages, and violence, as well as other serious human rights violations, and must be countered using all available means, as a matter of the highest priority,” in addition to various General Assembly resolutions produced since that year that pointed to the same problems.

At the same time, the creation of a working group to prepare a draft inter-American convention in 2005 was a decision made in a context marked by the achievements of the World Conference in Durban, as well as the challenges still remaining after it, and by other important decisions made in the OAS, such as the decision by the Inter-American Commission on Human Rights that same year, during its 122nd session in February and March, to establish an Office of Special Rapporteur on the Rights of Afro-Descendants and against Racial Discrimination. A prominent citizen of Antigua and Barbuda, and a Commissioner and the President of the IACHR at the time, Sir Clare Kamau Roberts, was appointed to be the first Rapporteur, a post now held by an illustrious citizen of El Salvador, Commissioner María Silvia Guillén, who is honoring us today with her participation in this special meeting of the Permanent Council.

The mandate initially given to the working group by the 2005 General Assembly in Fort Lauderdale was to pursue efforts to prevent, combat, and eradicate racism and all forms of

discrimination and intolerance as a priority matter of the OAS. On this basis, the Group was instructed to convene a special meeting for reflection and analysis.

As a result of this work, in April 2006 the Working Group, under the able chairmanship of Brazil, presented the preliminary draft Inter-American Convention against Racism and All Forms of Discrimination and Intolerance to be used as a basis for negotiation of a future Convention, after receiving contributions from member states, civil society, United Nations specialists, and the organs, agencies, and entities of the inter-American system, as well as other regional and international entities.

Subsequently, the Santo Domingo General Assembly in June 2006 authorized the Working Group to begin negotiations on the basis of the document presented, and so the preliminary draft became the draft Inter-American Convention against Racism and All Forms of Discrimination and Intolerance. It further instructed it to continue receiving inputs from member states and OAS organs, agencies, and entities, as well as from the United Nations and regional organizations, indigenous peoples, business and labor groups, and civil society organizations.

Since then, the General Assembly has renewed that mandate: in Panama in 2007, in Medellin in 2008, and in San Pedro Sula in 2009. It also did so in Lima in 2010, although with certain differences, which are what the Group is negotiating at present, and which have to do with the scope of the Convention and the methodology to be used. Thus this is the conceptual framework that has generally guided the work of the Group, which has produced a Consolidated Document reflecting, in its various revised versions, the progress in the negotiations and the contributions made on the basis of the original document presented as a preliminary draft in 2006.

As Chair of the Working Group to Prepare a Draft Convention against Racism and All Forms of Discrimination and Intolerance, I must recognize humbly yet realistically that the progress made in the negotiations has been modest, despite the commitment voiced by our heads of state and government at Summits of the Americas in their various declarations and documents, and the commitments expressed in the OAS General Assembly in the different resolutions that have contained a specific mandate for a single convention since the formal beginning of negotiations in 2006.

The turning point in the process occurred during negotiations leading up to the 2010 General Assembly in Lima, after a proposal by the distinguished delegation of Antigua and Barbuda, supported by a large number of countries, to the effect that the original mandate of the Working Group to prepare and negotiate a single international instrument be changed to refer to preparation and negotiation of an inter-American convention against racism and racial discrimination, and that, concurrently and simultaneously, work proceed on one or more optional protocols, with the same legal value as the convention, pertaining to all forms of discrimination and intolerance.

It is important to emphasize that even though all of the countries of the Hemisphere without exception have expressed their commitment and firm resolve to combat racism and all forms of discrimination and intolerance, and their conviction that these scourges deny universal values and the inalienable and inviolable rights of human beings, discussions on the problem in the OAS have led to divergent views on whether to have a single international instrument that is legally binding, or two or more instruments. These different approaches among delegations have made it impossible for the Working Group to negotiate on the basis of the Consolidated Document, which is based on a single international instrument derived from the 2006 preliminary draft.

Costa Rica has enthusiastically taken on the challenge of presiding over the work of the Group to Prepare a Draft Inter-American Convention against Racism and All Forms of Discrimination and Intolerance, with the conviction that it is possible for our countries to reach an understanding on the methodological aspects of the process that are still unresolved. All of our countries agree on the substance of the matter and on the need for a solution to be found in the context of the OAS to confront racism and all forms of discrimination and intolerance.

The process of reflection called for by the different methodologies proposed and the consultations conducted by member states have allowed the Chair of the Working Group to identify in the course of this year a majority view in favor of the proposal of Antigua and Barbuda, which has been further developed and perfected through amendments introduced during deliberations, according to which an inter-American convention against racism and racial discrimination would be negotiated, along with one or more optional protocols that would have the same legal value as the convention, and would pertain to all forms of discrimination and intolerance, based on an understanding that these instruments would be negotiated and approved simultaneously and concurrently.

From consultations with states, it is possible to conclude that so far a total of 15 countries have specifically or formally spoken in favor of this possibility, and others have also done so informally. At present, a total of seven countries favor negotiations on a single international instrument, and six of them have indicated that they are awaiting a final decision from their respective capitals, while one country has specifically expressed a preference for a single convention text.

In view of the difficulty of finding points of agreement among the delegations in the Working Group, the matter was referred to the Committee on Juridical and Political Affairs, under the Chairmanship of Ambassador Hugo de Zela, Permanent Representative of Peru, for its consideration. Consequently I, as Chair, presented a report on the current status of the negotiations to that Committee, which on March 4, 2011 decided to authorize the Working Group to prepare and negotiate a draft resolution, to be submitted to the upcoming General Assembly in San Salvador, that will update and revise the corresponding mandate to bring it into line with the new circumstances that have arisen in the past year.

The Working Group will therefore be tackling this task in the coming weeks. Negotiation of a draft resolution to revise the original mandates handed down in Fort Lauderdale in 2005 and in Santo Domingo in 2006, which authorized the working group to prepare and negotiate an international instrument, appears to be a reasonable and plausible way to proceed, in view of the vicissitudes the Group has faced in previous years, so that it can finally complete its work on appropriate international instruments to eradicate racism and racial discrimination, as well as any other kind of discrimination and intolerance, so that these instruments together will provide for comprehensive treatment of these scourges in the Americas.

This Chair's intention—supported by an agreement adopted within the Working Group and by the CARICOM countries—in procuring space for its participation in this commemorative event of the International Year of People of African Descent, is in response to the interest expressed and the need felt to advise the distinguished delegations present of this defining moment in the work of this Group.

During these times of definition and redefinition, the political support of states to the process is critical to guide and channel international efforts within the Americas and, in the context of the

OAS, to fight racism and racial discrimination, as well as all other forms of discrimination and intolerance.

Madam Chair,

Allow me to conclude by saying that commemoration of the International Year of People of African Descent seems to be an ideal occasion for us to renew our commitment to this cause and support for an ongoing collective effort open to the participation of all states and civil society, that seeks to continue its broad-based, participatory approach, and that requires a prompt decision.

Thank you very much.

ANNEX 3

PERMANENT COUNCIL OF THE
ORGANIZATION OF AMERICAN STATES

COMMITTEE ON JURIDICAL AND POLITICAL AFFAIRS

OEA/Ser.G
CAJP/GT/RDI-171/11 corr. 1
31 March 2011
Original: Spanish

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

DRAFT RESOLUTION

REVISION OF THE MANDATE OF THE WORKING GROUP TO PREPARE A
DRAFT INTER-AMERICAN CONVENTION AGAINST RACISM AND
ALL FORMS OF DISCRIMINATION AND INTOLERANCE

(Presented by the Chair)

THE GENERAL ASSEMBLY,

HAVING SEEN the Annual Report of the Permanent Council to the General Assembly;

RECALLING the content of resolutions AG/RES. 1712 (XXX-O/00) and AG/RES. 1774 (XXXI-O/01), "Preparation of a Draft Inter-American Convention against Racism and All Forms of Discrimination and Intolerance"; AG/RES. 1905 (XXXII-O/02), AG/RES. 1930 (XXXIII-O/03), AG/RES. 2038 (XXXIV-O/04), and 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"; 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"; AG/RES. 2276 (XXXVII-O/07), "Draft Inter-American Convention against Racism and All Forms of Discrimination and Intolerance"; AG/RES. 2367 (XXXVIII-O/08), "Draft Inter-American Convention against Racism and All Forms of Discrimination and Intolerance"; and AG/RES. 2501 (XXXIX-O/09), "Draft Inter-American Convention against Racism and All Forms of Discrimination and Intolerance," **and AG/RES. 2606 (XI-O/10) "Draft Inter-American Convention against Racism and All Forms of Discrimination and Intolerance;"**

REAFFIRMING the principles of equality and nondiscrimination and recognizing that human diversity is a cherished asset for the advancement and welfare of humanity at large;

FIRMLY REITERATING the most resolute commitment of the Organization of American States to the eradication of racism and of all forms of discrimination and intolerance and their conviction that such discriminatory attitudes are a negation of such universal values as the inalienable and infrangible rights of the human person and the purposes, principles, and guarantees enshrined in the Charter of the Organization of American States, the American Declaration of the Rights and Duties of Man, the American Convention on Human Rights, the Democratic Charter of the Americas, the Universal Declaration of Human Rights, the Inter-American Democratic Charter, the International Convention on the Elimination of All Forms of Racial Discrimination, AG/RES. 2126 (XXXV-O/05), and the Universal Declaration on the Human Genome and Human Rights;

TAKING NOTE of the commemoration in 2010 of the International Year for People of African Descent in accordance with United Nations General Assembly resolution A/RES/64/169 "International Year for People of African Descent;" as well as of the mandate of the OAS General Assembly contained in resolution AG/RES. 2550 (XL-O/10), "Recognition of the International Year for People of African Descent" and, in keeping with the latter, the holding on March 15, 2011, of the Special Meeting of the Permanent Council of the Organization to celebrate the International Year for People of African Descent; and of other associated activities in the framework of the OAS;

OBSERVING with concern that there are still countless human beings in our Hemisphere who are still victims of longstanding and contemporary manifestations of racism, discrimination, and intolerance;

HAVING PARTICULAR REGARD TO the 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 (CAJP/GT/RDI-162/11 rev. 5) and the different positions adopted by member states in that Working Group during the more recent periods of negotiation; and

CONSIDERING the decision adopted by the Committee on Juridical and Political Affairs (CAJP) on March 4, 2011, by which it resolved to entrust the Working Group to Prepare a Draft Inter-American Convention Against Racism and all Forms of Discrimination and Intolerance with the task of preparing a draft resolution to be submitted at the forty-first regular session of the General Assembly to the effect that it revise its current mandate so that it might respond to the new circumstances that have arisen within the Group,

RESOLVES:

1. To reaffirm the will and **the most** resolute commitment of the member states to continue making efforts **in the preparation and negotiation of such legally binding instruments as may be necessary to address the scourges of racism, racial discrimination, and all other forms of discrimination and intolerance.**

2. To instruct the Working Group to **prepare a draft convention against racism and racial discrimination, as well as an optional protocol or protocols that would, in addition, address all other forms of discrimination and intolerance, in accordance with the work plan and methodology that is adopted,** taking into account, **where possible,** the progress set forth in document CAJP/GT/RDI-57/07 rev. 13, “Consolidated Document: Draft Inter-American Convention against Racism and All Forms of Discrimination and Intolerance,” **and to continue the negotiations based on said instruments.**

3. To instruct said Working Group to ensure that the preparation, negotiation, and approval of the final drafts of said legal instruments is done simultaneously and concurrently, so as to ensure a comprehensive and coherent treatment of the scourges of racism, discrimination, and intolerance in the Hemisphere.

4. To request the Working Group to continue promoting contributions from member states; organs, agencies, and entities of the Organization of American States (OAS), **taking into account the Inter-American Institute of Human Rights;** 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.

5. To renew 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).

6. To request the General Secretariat to 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.

7. To request the Permanent Council to report to the General Assembly at its forty-**second** regular session on the implementation of this resolution. Execution of its activities shall be subject to the financial resources available in the program-budget of the Organization and other resources.