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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 2011-2012

(Presented by the Chair)

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I. BACKGROUND

The OAS General Assembly, gathered in San Salvador, El Salvador, on June 8, 2011, issued resolution AG/RES. 2677 (XLI-O/11) “Draft Inter-American Convention against Racism and All Forms of Discrimination and Intolerance” in which it reaffirmed “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.”

It also acknowledged “the significant contributions made by Member States, OAS organs, agencies, and entities, other agencies of the United Nations, civil society organizations and other organizations, in regards to the on-going process of negotiations” and it made reference to the Report of Activities During the 2010-2011 Term, as presented by 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 (CAJP/GT/RDI-174/11 rev. 5).

In the same resolution the General Assembly instructed “the Permanent Council to extend the mandate of the Working Group of the Committee on Juridical and Political Affairs and to entrust it with the preparation of legally binding instruments with due consideration of a 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. For such purposes and in order to receive additional contributions, the Working Group will consider convening a special meeting, at an appropriate time during the 2011-2012 term, with the participation of government experts and representatives of Member States, specialized organizations of the Inter-American System and other regional systems, the United Nations specialized agencies and nongovernmental organizations.”

The General Assembly also instructed that “the preparation, negotiation, and approval of the final drafts of said legal instruments are done simultaneously and concurrently, so as to ensure a comprehensive and coherent treatment of the scourges of racism, discrimination, and intolerance in the Hemisphere” and that this process “continues to promote 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.”

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 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.

III. OFFICERS

At a meeting held on September 1, 2011, the Committee on Juridical and Political Affairs elected the Alternate Representative of Antigua and Barbuda to the OAS, Mrs. Joy-Dee Davis Lake, as Chair of the Working Group for the 2011-2012 period. Likewise, on October 17, 2011, the Working Group elected its own Vice Chairs, Ms. Sophia Castillero, Alternate Representative of Panama and Ms. Kendall Belisle, Alternate Representative of Belize.

IV. THE WORKING GROUP'S ACTIVITIES (2011-2012)

Pursuant to operative paragraphs 2, 3 and 4 of resolution AG/RES. 2677 (XLI-O/11), the General Assembly extended the mandate of the Working Group and entrusted it with the preparation of legally binding instruments with due consideration of a 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 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.

A. METHODOLOGY

In order to fulfill this mandate and to ensure a comprehensive and coherent treatment of discrimination and intolerance, and taking into account the fact that no Member State offered to present new drafts on which to base negotiations of the legally binding instruments referenced in AG/RES. 2677 (XLI-O/11), as well as the result of the meetings of the Chair of the Working Group with representatives of other organs of the OAS to explore the possibility of presenting such drafts, the Working Group decided to request the Department of International Law of the Secretariat for Legal Affairs to prepare two documents that were to be presented by the Chair for consideration of the Working Group as a basis for negotiations.

The Department of International Law was to prepare the documents according to the following guidelines provided by the Chair and the Working Group. The drafts were to be based on the document "Informational Document for Discussion and Negotiation 'Draft Inter-American Convention Against Racism and all Forms of Discrimination And Intolerance'" (CAJP/GT/RDI-148/10), presented last year to the Working Group by the Chair, which reflects the contents of the consolidated document (CAJP/GT/RDI-57/07 rev. 13), but at the same time simplifies it by not including alternative proposals and/or comments made previously under the different articles and that never reached consensus.

Additional guidelines for preparing the documents were to delete, in the preparation of the document "Draft Inter-American Convention against Racism, Racial Discrimination, and Related

Forms of Intolerance”, all references to all other forms of discrimination from the sources that went beyond racism and racial discrimination. The opposite approach was to be followed with regard to the “Draft Inter-American Convention against All Forms of Discrimination and Intolerance”, where all references to racism and racial discrimination were to be deleted from the sources in order to produce a document in conformity with its specific purpose.

It was also agreed, with regard to both documents, that no substantive changes, corrections or additions of any sort beyond what was specified in the previous paragraphs were to be introduced in the elaboration of the drafts. Such changes, if they were to happen, were to be left to the proposals eventually made by member States during the negotiation process.

It must also be clarified, with regard to the second instrument, the “Draft Inter-American Convention against All Forms of Discrimination and Intolerance”, that the Working Group considered avoiding, at least for the time being, labeling the document as a “protocol”, a “convention”, or any other legal-technical terms. Hence, the Working Group has used the word “instrument” and has decided to leave the precise labeling of this document to what will eventually result from the negotiation process.

On a different note, and with a view to simplifying the negotiation process, the Working Group also agreed that once both drafts were ready and negotiations begun, all alternative proposals and/or comments by delegations to any of the instruments under negotiation thereafter were to be included in two separate documents with proposals and comments corresponding to each of the instruments under negotiation and would only be included in the draft under negotiation if a consensus was reached on a specific language.

In order to negotiate both documents simultaneously, the Working Group agreed to negotiate one article at a time. As the Working Group approved one article, the delegations considered the other document and approved, if an agreement was reached, the corresponding article.

B. MEETINGS OF THE WORKING GROUP DURING THE PERIOD 2011-2012

The Working Group held 11 regular meetings: October 17, November 17 and December 13, 2011, and January 17, February 1 and 9, March 8, 19 and 29 and April 10 and 27, 2012 and one informal meeting on April 2, 2012.

At the meeting of **October 17, 2011**, the Working Group elected its two Vice-Chairs and the Chair introduced document CAJP/GT/RDI-177/11, which contained the Group’s proposed calendar of activities and working methodology, which was approved.

At this meeting the Working Group agreed to entrust the Department of International Law to prepare the two draft documents already mentioned in the previous part of this report.

At the meeting held **on November 17, 2011**, the Chair presented the two draft documents that had been prepared with the help of the Department of International Law following the specific guidelines provided by the Chair and the Working Group, namely:

- Draft Inter-American Convention against Racism, Racial Discrimination, and Related Forms of Intolerance (CAJP/GT/RDI-179/11)
- Draft of A Legally-Binding “Instrument” against All Forms of Discrimination and Intolerance (CAJP/GT/RDI-180/11)

The Chair explained that the preparation of the drafts was based on the document “Informational Document for Discussion and Negotiation ‘Draft Inter-American Convention against Racism and all Forms of Discrimination and Intolerance’” (CAJP/GT/RDI-148/10), following the guidelines already mentioned in this report.

She also highlighted that in the preparation of these drafts, efforts were made to ensure that they reflected the advances reached in the past in the negotiation process. Hence, these advances, as up to the “Consolidated Document” (CAJP/GT/RDI-57/07 rev. 13), were included in both new documents by retaining the different symbols, format, and marks (brackets, parenthesis, bold texts, etc.), that explain the status of the negotiation under the last version of the “Consolidated Document”. All this information was included in the introductory explanatory note of the new drafts for clarification purposes.

After the presentation of the documents by the Chair, the delegations expressed their satisfaction with the documents prepared following the guidelines that had been provided and agreed that they were useful as starting points for the negotiation process under the mandate established in AG/RES. 2677 (XLI-O/11).

Finally, the Chair reminded all delegations that, according to the “Work Plan for the 2011-2012 Term” (CAJP/GT/RDI-177/11 rev. 1), and with a view to simplifying the negotiation process, once negotiations begun, all alternative proposals and/or comments by delegations to any of the instruments under negotiation thereafter be included in two separate documents, with proposals and comments corresponding to each of the instruments under negotiation, and will only be included in the draft under negotiation if a consensus is reached on a specific language.

The Working Group considered the following documents, and its revised versions, at its meetings held on **December 13, 2011, and January 17, February 1 and 9, March 8, 19 and 29 and April 10 and 27, 2012:**

- Draft Inter-American Convention against Racism, Racial Discrimination, and Related Forms of Intolerance (CAJP/GT/RDI-179/12 rev. 7)
- Table Incorporating the Proposals of Member States on the “Draft Inter-American Convention against Racism, Racial Discrimination, and Related Forms of Intolerance” (CAJP/GT/RDI-190/12 rev. 6)
- Draft of a Legally Binding “Instrument” Against all Forms of Discrimination and Intolerance (CAJP/GT/RDI-180/11 rev. 5)
- Table Incorporating the Proposals of Member States on the “Draft of a Legally Binding ‘Instrument’ Against all Forms of Discrimination and Intolerance” (CAJP/GT/RDI-188/12 rev. 4)

The results of these negotiations are as follows:

The following paragraphs were approved in the “Draft Inter-American Convention against Racism, Racial Discrimination, and Related Forms of Intolerance” (CAJP/GT/RDI-179/12 rev. 7): Article 1.1, 1.2, 1.3 and 1.5 of Chapter I and Article 2 of Chapter II

The pending articles of this document (Articles 1.4 and 1.6 of Chapter I; Article 3 of Chapter II; Articles 4, of Chapter III and Articles 5, 6, 7 and 10 of Chapter IV) were incorporated into the “Table Incorporating the proposals of Member States on the “Draft Inter-American Convention against Racism, Racial Discrimination, and Related Forms of Intolerance” (CAJP/GT/RDI-190/12 rev. 6).

The following paragraphs were approved in the “Draft of a Legally Binding “Instrument” Against all Forms of Discrimination and Intolerance (CAJP/GT/RDI-180/11 rev. 5): The first part of Article 1.1, 1.2, 1.3 and 1.4 of Chapter I, and Article 2 of Chapter II.

The pending articles of this document (Articles 1.5 of Chapter I; Article 3 of Chapter II; Articles 4 of Chapter III and Articles 5, 6, 7 and 10 of Chapter IV) were incorporated into the “Table Incorporating the proposals of Member States on the “Draft Inter-American Convention against Racism, Racial Discrimination, and Related Forms of Intolerance” (CAJP/GT/RDI-190/12 rev. 4).

The Working Group also considered the draft resolution presented by the Chair at its meetings held on **March 29, April 10 and 27, 2012**.

Finally, at the **April 27, 2012** 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 March 29, 2012, the Chair of the Working Group presented the draft resolution titled “Draft Inter-American Convention against Racism and All Forms of Discrimination and Intolerance”. This resolution was discussed at the meetings held on April 10 and 27 and was then transmitted to the CAJP for its consideration.

The Working Group changed the title of the draft resolution to: “Draft Legally Binding Inter-American Instruments against Racism and Racial Discrimination and against all Forms of Discrimination and Intolerance”, which was agreed ad referendum the delegation of Argentina at its meeting held on April 27 2012.

The draft resolution (CAJP/GT/RDI-196/12 rev. 2) is attached to this Activities Report as **ANNEX 1**.

VI. THE CHAIR’S COMMENTS AND CONCLUSIONS

It is of the utmost importance that Member States continue to submit their comments and contributions to these drafts that are being considered by this working group. Furthermore, pursuant

to operative paragraph 4 of General Assembly Resolution AG/RES. 2677 (XLI-O/11) “Draft Inter-American Convention Against Racism and All Forms Of Discrimination and Intolerance,” it is important that we continue to promote contributions from 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; and to urge these bodies to continue sending their written contributions to the Working Group for consideration.

Also, critical to the conclusion of these Instruments is the attendance of all Member States at the meetings of the Working Group. The Working Group expressed concern of the level of participation in the meetings, which would eventually affect the negotiation outcome of said instruments. Of the 11 regular meetings that the Working Group held, 8 meeting had the required quorum to take decisions. Therefore, going forward, I would like to make a new appeal to Member States to make their best possible effort to support this process with their presence at meetings.

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 and for their contributions to an open, frank and constructive dialogue.

The Chair would like to extend special thanks to the Vice Chairs of the Working Group, Ms. Sophia Castillero, Alternate Representative of Panama, and Ms Kendall Belisle, Alternate Representative of Belize, and congratulate her for their dedication and the invaluable contributions they made to the activities of the Working Group.

Finally, this Working Group would not have functioned so seamlessly without such an exceptionally good support staff. I would therefore like to place on record my overwhelming gratitude to Committee Secretary, Ms Carolina Santa Maria, and to Mr. Diego Moreno of the Department of International Law for their outstanding commitment to this process. I am also grateful to Mr. Roberto Rojas of the Department of International Law and to Leonardo Hidaka and the Inter American Commission on Human Rights for their support.

In closing colleagues, it was an honor for me to have chaired this Working Group over the past few months. I look forward to the eventual participation of all Member States of the OAS in this process as we seek to conclude binding Instruments that will address the scourges of racism, racial discrimination and all forms of discrimination and intolerance in our hemisphere.

Joy-Dee Davis Lake
Alternate Representative of Antigua and Barbuda 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

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

DRAFT RESOLUTION

DRAFT LEGALLY BINDING INTER-AMERICAN INSTRUMENTS AGAINST RACISM
AND RACIAL DISCRIMINATION AND AGAINST ALL FORMS OF
DISCRIMINATION AND INTOLERANCE^{1/}

(Presented by the Chair of the Working Group and
approved at the meeting of April 27, 2012)

THE GENERAL ASSEMBLY,

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

RECALLING the content of resolution AG/RES. 2677 (XLI-O/11), “Draft Inter-American
Convention against Racism and All Forms of Discrimination and Intolerance,” and all previous
resolutions on the subject;

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 (OAS) 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

^{1/} The title of this draft resolution was approved, ad referendum of the delegation of Argentina, at the meeting of April 27, 2012.

and inalienable 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 Universal Declaration of Human Rights, the Inter-American Democratic Charter, the International Convention on the Elimination of All Forms of Racial Discrimination, and the Universal Declaration on the Human Genome and Human Rights;

OBSERVING WITH CONCERN that even today a considerable number of human beings in our Hemisphere are still victims of longstanding and contemporary manifestations of racism, discrimination, and intolerance;

ACKNOWLEDGING the significant contributions made by member states, OAS organs, agencies, and entities, other agencies of the United Nations, civil society organizations, and other organizations, in regard to the ongoing process of negotiations;

TAKING NOTE of the report “The Situation of People of African Descent in the Americas,” adopted by the Inter-American Commission on Human Rights on December 5, 2011; and

HAVING PARTICULAR REGARD to the report on activities during the 2011-2012 period, presented by 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 (CAJP/GT/RDI-202/12 rev. 1),

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 Permanent Council to extend the mandate of the Working Group of the Committee on Juridical and Political Affairs and to entrust it with the preparation of legally

binding instruments, in accordance with the work plan and working procedures that may be adopted and taking into account the progress set forth in the documents “Draft Inter-American Convention against Racism, Racial Discrimination, and Related Forms of Intolerance” (CAJP/GT/RDI-179/11 rev. 7) as well as “Draft of a Legally Binding ‘Instrument’ against All Forms of Discrimination and Intolerance” (CAJP/GT/RDI-180/11 rev. 5) and to continue the negotiations based on said instruments.

3. To instruct that the preparation, negotiation, and approval of the final drafts of said legal instruments be 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 instruct that this process continue to promote 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; and 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) 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-third regular session on the implementation of this resolution. Execution of the activities envisaged in this resolution will be subject to the availability of financial resources in the program-budget of the Organization and other resources.