

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

Summary of the meeting of December 1, 2010

The following delegations participated in the meeting: Antigua and Barbuda; Argentina; Bahamas; Belize; Bolivia; Brazil; Colombia; Costa Rica; Dominican Republic; Ecuador; El Salvador; Guatemala; Mexico; Panama; Peru; Saint Vincent and the Grenadines; Trinidad and Tobago; Uruguay; and the Bolivarian Republic of Venezuela.

1. Consideration of the methodologies put forward by the member states concerning the Draft Inter-American Convention against Racism and All Forms of Discrimination and Intolerance

Upon calling the meeting to order, the Chair of the Working Group announced that he had received a letter from the delegation of Canada the previous day stating that it was formally withdrawing from the negotiations on the Draft Declaration. Said letter was published as document CAJP/GT/RDI/INF.21/10.

Moreover, the Chair reminded those in attendance that on October 5, 2010, a note had been sent to the distinguished delegations requesting them to make their positions known regarding the scope of application of said instrument, with a view to charting the future course of such negotiations. These comments were to have been returned before November 1.

Subsequently, the Chair had sent a second letter to the delegations dated October 21, 2010, in which it suggested extending the deadline for the consultation until November 15, 2010. With a view to facilitating the consultation process, included with that letter were the following documents:

- 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); and
- Proposal of the Permanent Mission of Antigua and Barbuda to 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 of the date of the present summary, comments had been received from the following delegations and circulated at the meeting:

1. Antigua and Barbuda (CAJP/GT/RDI-150/10);
2. Mexico (CAJP/GT/RDI-151/10);
3. Belize (CAJP/GT/RDI-152/10);
4. Panama (CAJP/GT/RDI-153/10);
5. Saint Kitts and Nevis (CAJP/GT/RDI-154/10); and
6. Brazil (CAJP/GT/RDI-155/10).

In addition, the Chair noted that a comparative analysis of the “International Convention on the Elimination of All Forms of Racial Discrimination (1965)” and the informational document for discussion and negotiation of the “Draft Inter-American Convention against Racism and All Forms of Discrimination and Intolerance” had been circulated (document CAJP/GT/RDI/INF.20/10). That document had been prepared by the Department of International Law, at the request of the Chair.

The delegation of Peru expressed its preference to continue negotiating an inclusive draft. Realistically, however, it noted that consideration ought to be given to the possibility of negotiating a protocol against all forms of discrimination and intolerance, as well as a convention against racism. Accordingly, it supported separating the text into both a convention and a protocol, which would use the approved language.

The delegation of Mexico reiterated that its position was the alternative proposed by Antigua and Barbuda, but included the condition that the documents be negotiated and adopted at the same time. The delegations that expressed support for the proposal of Antigua and Barbuda agreed with the condition put forward by Mexico.

Furthermore, the Chair suggested that consideration be given to modifying the meeting quorum as a preventive measure so as to ensure the continuity of work, mindful of the history of participation of the Working Group and the fact that two delegations had withdrawn from the process. Such a change would be based on Article 44.b of the Permanent Council Rules of Procedure. This question would be taken up in the first instance by the CAJP.

The delegations of Argentina, Brazil, Bolivia, Costa Rica, Ecuador, El Salvador, Panama, Peru, and Venezuela voiced their support for the proposal to modify the meeting quorum of the Working Group.

With respect to the proposed methodologies, the delegations of Argentina, Costa Rica, Ecuador, El Salvador, Uruguay, and Venezuela noted that they were still awaiting official instructions, but continued to support comprehensive negotiations.

The delegations of The Bahamas, Belize, Bolivia, Brazil, Mexico, Panama, Peru, Saint Kitts and Nevis, and Saint Vincent and the Grenadines offered their support for the proposal of Antigua and Barbuda, along with the condition put forward by Mexico.

The delegation of Colombia underscored that the resolution gives the Working Group a mandate to find a methodology for the course of the negotiations.

The delegation of Brazil voiced its support for an expansive convention, and expressed its concern that one of the protocols address discrimination based on sexual orientation and gender expression.

The delegation of Ecuador requested clarification as to the differences between the terms “optional protocol” and “additional protocol.”

The delegation of Venezuela voiced the following concerns with respect to modifying the nature of the Convention: “How are we going to go about negotiating the protocol simultaneously? How can we begin the process of negotiating a protocol when we have yet to reach agreement on the Convention? If we opt to change the instruments, would that mean that the document would have to be modified? Would we have to begin the process all over again? What about the proposals put forward by Canada?”

The delegation of Bahamas offered its support to the proposal put forward by Antigua and Barbuda. Said proposal was published as document CAJP/GT/RDI-156/10.

On the basis of the United Nations Treaty Reference Guide, Mr. Diego Moreno of the Department of International Law offered the following clarification as to the definitions of both types of protocols in response to the question posed by Ecuador:

“An optional protocol to a treaty is an instrument that establishes additional rights and obligations to a treaty. It is usually adopted on the same day, but is of independent character and subject to independent ratification. Such protocols enable certain parties of the treaty to establish among themselves a framework of obligations, which reach further than the general treaty and to which not all parties of the general treaty consent, creating a ‘two-tier system’

A protocol as a supplementary treaty is an instrument which contains supplementary provisions to a previous treaty....”

He also noted that an “additional protocol” might have some legal effects that are similar to that of an “optional protocol.” Lastly, he pointed out that in the framework of human rights treaties concluded within the inter-American system exists the example of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights “Protocol of San Salvador.”

The Chair of the Working Group concluded by noting that no firm position had yet been formed that would facilitate arriving at a consensus, and invited those delegations that had not yet made their positions known to take advantage of the interval until the next meeting to arrive at a decision in that regard. Finally, the Chair indicated that the next meeting had been scheduled for January 25, 2011.

2. Other business

The Chair announced that the day of the meeting marked the sixty-second anniversary of Costa Rica's decision to abolish its military.