

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

Record of the meeting of November 17, 2011

The Working Group met under the chairmanship of the Alternate Representative of Antigua and Barbuda to the OAS, Joy-Dee Davis, to consider the items included on the order of business, document CAJP/GT/RDI-182/11.

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

1. Presentation of the following documents:

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

The following message was delivered by the Chair of the Working Group in presenting the aforementioned documents:

Pursuant to item one of the order of business, I would like to briefly present the two draft documents that have been prepared with the help of the Department of International Law.

First, a brief explanation is in place, which basically sums up the elements included in the explanatory notes contained in each of the draft documents that have been distributed.

General Assembly Resolution AG/RES. 2677 (XLI-O/11), “Draft Inter-American Convention against Racism and All Forms of Discrimination and Intolerance”, instructed the Permanent Council to extend the mandate of this Working Group 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. All this was to be done in accordance with the work

plan and methodology adopted by the Working Group, 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," in order to continue the negotiations based on said instruments.

So the first thing to note is that both documents have been prepared in accordance with this mandate and guidelines.

Furthermore, in the last session of the Working Group it was agreed that the development of the drafts 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 followed 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 go beyond racism and racial discrimination. The opposite approach was 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 deleted from the sources.

It must also be recalled that Member States also suggested in the last session of the Working Group that, in the preparation of these drafts, efforts be made to ensure that they reflect 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), are included in this document 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".

Draft Document on Racism, Racial Discrimination, and Related Forms of Intolerance

I will now briefly make some additional clarifying comments with regard to both documents, beginning with the "Draft Inter-American Convention against Racism, Racial Discrimination and Related Forms of Intolerance."

For this instrument, the definition contained in the International Convention for the Elimination of All Forms of Discrimination and Intolerance (ICERD) was used, since it is considered an authoritative definition of racial discrimination under international law. Hence, this definition was adopted in article 1.1 and is used throughout the document. At the same time, references to any other grounds of discrimination that do not fall strictly within this definition as phrased under the ICERD were deleted. These grounds of discrimination have also been deleted wherever they appear throughout the rest of the document.

Where plain references to "discrimination" in general appeared in the text, the word "racial", was added in order to build a document consistent with its specific scope.

The definition of aggravated discrimination had to be slightly reformulated so as to maintain the scope of the document, but still leaving the possibility open for having a document that included multiple or aggravated forms of discrimination.

As regards “intolerance,” and in order to remain as faithful as possible to the “Consolidated Document” in its revised version 13, references to this term were kept throughout document, but with the added formula of “*related forms* of intolerance.” The intention here is to make clear that this document is concerned with intolerance as it relates only to racism and racial discrimination, in accordance with its scope. In doing this, we have followed the language used in international instruments such as the Durban Declaration and other instruments that address racism and racial discrimination.

With regard to the monitoring body, it was considered prudent, for the time being, that we begin negotiations by contemplating only the establishment of one Committee for the Prevention, Elimination, and Punishment of All Forms of Discrimination and Intolerance that would eventually be in charge of monitoring both binding instruments. Needless to say, this proposal is left open for further discussion in the course of the negotiation process.

Finally, due to the complex nature of the preamble, perhaps this was the hardest part to adjust. However, as has been the practice of the WG, the Chair considers it wise to discuss the preambular paragraphs at the end of the negotiation process. It is only at that stage when we will have a clearer picture as to the exact nature of the provisions of a future convention, and hence, it is only then when we will be better equipped to draft an adequate preamble that corresponds to its specific provisions. Nevertheless, the spirit has been to make clear in the preambular paragraphs the scope of this instrument, which is limited to racism, racial discrimination, and related forms of intolerance.

Draft of a Legally Binding “Instrument” Against all Forms of Discrimination and Intolerance

As to the second instrument, the “Draft Inter-American Convention against All Forms of Discrimination and Intolerance”, it must first be noted that the Chair has considered prudent at this point to avoid labeling the document as a “protocol”, a “convention”, or any other legal-technical terms. Hence, we have used the word “instrument” and have decided to leave the precise labeling of this document for the Working Group to decide during the negotiation process.

As for the rest of the document, my comments here will be shorter, for the simple reason that everything that was said with regard to the previous document applies here in an inverse manner. In other words, we have deleted from this document all references to racism and racial discrimination, while leaving all the other grounds of discrimination that were included in the Consolidated Document in its revised version 13.

The same comments also apply here with regard to the monitoring Committee and other specific provisions, such as the one referring to aggravated discrimination, and more generally, the preambular paragraphs.

The preliminary nature of the documents and reception of contributions

The Chair would like to emphasize that the best way to conceive these two documents that we are presenting today is as mere starting points for a negotiation process that builds, to the extent possible, on the “Consolidated Document” in its latest version (rev. 13), but that at the same time presents new challenges. In preparing these drafts, we have not sought to improve the texts nor to correct any imperfections or errors that the “Consolidated Document” may or may not have contained, but to reflect the provisions of this document as faithfully as possible while dividing it into two instruments. However, the Chair would like to point out that there is probably much room for improvement that we hope will be able to take place during the negotiation process.

Furthermore, we have also avoided the inclusion of new elements in these drafts that were not already contained in the “Consolidated Document” (revised version 13). We believe that any new additions, revisions, corrections or contributions can be made to each of the drafts from now on in the course of negotiations in order to have the best documents possible.

It is therefore of the utmost importance that Member States submit their comments and contributions to these drafts that are being presented today. 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. Likewise, and pursuant to the Guidelines for Participation by Civil Society Organizations in OAS Activities, contained in Permanent Council resolution CP/RES. 759 (1217/99), it is important that we continue to receive contributions from groups in vulnerable situations and from interested civil society organizations.

Finally, as a reminder, I would like to point out that the “Work Plan for the 2011-2012 Term” (CAJP/GT/RDI-177/11 rev. 1), established that, with a view to simplifying the negotiation process, once both drafts are ready and negotiations begin, 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.

I now open the floor for any comments on these documents.

For their part, the delegations:

- Thanked the Chair and the Secretariat for preparing, distributing, and presenting the two documents, which, they noted, had been referred to the foreign ministries of the member states for the appropriate study by the competent national authorities.
- Said they hoped to submit to the Chair, as soon as possible, their comments on both documents.
- Noted that both documents provided a very good basis for the negotiations they hoped to start soon.

- Expressed concern over the scheduling of meetings of the working group in the next few weeks as well as over the deadline established for member states to submit their comments on the two documents, taking into account the numerous activities already embarked on in the framework of other subsidiary bodies of the Permanent Council, for December this year.
- Asked for the organs, agencies, and entities of the OAS, as well as civil society organizations to be invited to submit their input.
- Thanked the Chair of the Inter-American Commission on Human Rights, Dr. Dinah Shelton, as well as the Principal Specialist with the Executive Secretariat of the IACHR, Dr. Víctor Madrigal, for attending the meeting.
- Underscored how important it was for the Commission to support the Group's work, especially during the negotiations phase.

For her part, the Chair of the IACHR:

- Underscored the importance of this process.
- Stated that each IACHR commissioner/member had responsibility for one of the rapporteurships, each of which addresses concerns of different target groups of interest.
- Said that she would be circulating the documents presented to each commissioner/member, based on which she hoped that they would be able to come up with a consolidated reply among themselves.
- Proposed that the IACHR identify in inter-American jurisprudence important elements that were also being identified in the proposed documents.

As a final comment, the delegations:

- Requested the Working Group to use the information on jurisprudence that it has received in recent years—and other input received on issues that it considers—and further requested that based on the foregoing a list of reference documents most relevant to the Group's current work be distributed to the delegations along with links to the respective documents so the delegations can access them.
- Suggested that if the Commission decides to prepare a compilation of jurisprudence references, a similar request be made of the Inter-American Court of Human Rights.

2. Other business

For this agenda item, the Chair:

- Reminded delegations that the next meeting of this Working Group has been scheduled for Friday, December 2 at 10 a.m.
- Reminded delegations to submit their comments in writing as requested in the notice sent on November 9, 2011 where member states were asked to send their comments on or before the next meeting of this Working Group scheduled for December 2, 2011.

There being no further matter to discuss, the meeting was adjourned.