Government of Canada
Permanent Mission of Canada
to the United Nations and the
Conference on Disarmament

Gouvernement du Canada
Mission permanente du Canada
auprès des Nations Unies et de la
Conférence du désarmement

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July 13, 2007

To/ Destinataire	Secretariat of the Human Rights Council	Tel. Fax 022 917 01 11 9011
From/ De	John von Kaufmann Counsellor Permanent Mission of Canada to the United Nations Office in Geneva	Tel. 022 919-9225 Fax 022 919-9227

No of pages including this page / Nombre de pages y compris la présente: x

SUBJECT:

Dear Secretariat,

Please find attached the comments of Canada on the draft reports.

Kind regards,

John von Kaufmann

OHCHR REGISTRY
16 JUIL. 2007
Recipients : H.R. Council
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.....
.....

Canada

Government of Canada
Permanent Mission of Canada
to the United Nations and the
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No. YGTR0523

The Permanent Mission of Canada to the United Nations in Geneva presents its compliments to the Office of the High Commissioner for Human Rights, acting as Secretariat of the Human Rights Council, and has the honour to refer to the note of the Secretariat dated June 28, 2007 inviting comments on the draft report of the fifth session held from 11-18 June 2007 (A/HRC/5/L.10) and the draft report of the organizational meeting held from 19-22 June 2007 (A/HRC/OM/1/L.10) of the Human Rights Council by Monday 16 July 2007. Please find attached the comments of Canada on the above-mentioned draft reports.

The Permanent Mission of Canada also refers to the draft document A/HRC/5/L.11 posted on the website of the Secretariat, but which has not yet been circulated by the Secretariat with a request for comments. The Permanent Mission of Canada recalls that the deadline for States to submit comments on this last document (A/HRC/5/L.11) should be two weeks following a request for comments, and that by commenting on that document in this note, the Permanent Mission of Canada in no way walves its right to submit further comments within a period of two weeks from the date of a request for comments.

The Permanent Mission of Canada has the honour to request that the above-mentioned draft documents be corrected in accordance with the attached comments and requests a reply from the Secretariat in this regard.

The Permanent Mission of Canada avails itself of this opportunity to renew to the Office of the High Commissioner for Human Rights the assurances of its highest consideration.

Geneva, July 13, 2007

Mission permanente du Canada auprès de l'ONU
Permanent Mission of Canada to the UN
Genève - Geneva

Canada

Canada

I. Comments on the draft report of the fifth session held from 11-18 June 2007 (A/HRC/5/L.10):

Paragraph 60:

Paragraph 60 does not contain a full, complete, accurate, and factual description of the Human Rights Council President's final statement during the evening of June 18, 2007, which can be viewed on the UN Webcast available through the website of the Secretariat (www.ohchr.org) and as contained in the attached proces verbale of the President's statement, provided by the Secretariat. In order to provide an accurate summary of the President's statement, this paragraph should be revised to read (revisions in bold):

"60. At the 9th meeting, on 18 June 2007, the President of the Council **announced to the** Council that there was agreement on **a final text which was to be circulated which encompassed all of the institutional arrangements. The President also informed that Council that it was his understanding that there would also be an agreement in the same form on the draft code of conduct for Special Procedures Mandate-holders of the Human Rights Council and the other matters that were still pending."**

Paragraph 62:

This paragraph do not contain a full, complete, accurate, and factual description of the President's statement, events or decision of the Human Rights Council on June 18, 2007, as witnessed by participants, as recorded by the UN Webcast and the Secretariat's process verbale of the President's statement, and as reflected in the first UN press release issued June 18 at the conclusion of the meeting (attached). Paragraphs 7 and 63 of the draft report contain a more accurate description of the decision of the Council. Only one decision was taken on June 18, 2007: to defer action on all pending draft resolutions and decisions to the Organizational Meeting (including the President's text and code of conduct, which had yet to be circulated as official documents in draft resolution form). There was no second decision taken or second strike of the gavel, except to adjourn the meeting. The President's proposal that the Council accept the President's text was conditional on the basis of two understandings: 1) that it included the draft code of conduct and 2) that the Council could take action on them the next day. The Council agreed that that the President's text, including the draft code of conduct, could be tabled for action the next day. In order to accurately reflect the proposal of the President, and the decision of the Council as reflected in paragraphs 7 and 63 of the draft report, this paragraph should be revised to read (revisions in bold):

"62. At the same meeting, **the President also informed the Council that it was inappropriate to proceed with the exercise, and in fact impossible to do so because**

of the logistical difficulties, and proposed that the Council accept the President's institution-building text as a compromise on the understanding that it included the draft code of conduct and that the Council could take action on them the next day."

Paragraph 63 should be slightly revised (revisions in track-changes):

"63. At the same meeting, the Council decided, without a vote, to defer action on all pending draft resolutions and decisions, and on the draft report to its organizational meeting, scheduled to take place on 19 June 2007. For the text of the decision, see chapter I, section B, decision 5/101."

Deleted: also

Deleted: 102

An additional paragraph should be included:

"64. At the same meeting, the Council also decided, without a vote, to adjourn the meeting without permitting any speaker to take the floor."

Chapter I, section B: Decision 5/101:

Documents A/HRC/5/L.2 and A/HRC/5/L.3/Rev.1 were not agreed upon or adopted by the Council on June 18, 2007. These documents were not even circulated until the next day, June 19, 2007. The decision taken by the Council should be accurately reflected, as set out in paragraphs 7 and 63 of the draft report (revisions in bold):

"At its 9th meeting, on 18 June 2007, the Human Rights Council decided, without a vote, **to defer action on all pending draft resolutions and decisions, and on the draft report to its organizational meeting, scheduled to take place on 19 June 2007."**

There was no second decision taken and any reference to a "decision 5/102" should be deleted. No such proposal was made by the President in his statement nor circulated in writing.

II. Comments on the draft report of the organizational meeting of the Human Rights Council held from 19-22 June 2007 (A/HRC/OM/1/L.10):

Paragraph 18:

Paragraph 18 does not contain a full, complete, accurate and factual description of the events that occurred on June 19, 2007, nor does it accurately reflect the decision of the Council taken on June 18, 2007 referred to in paragraphs 7 and 63 of the draft report of the fifth session. This paragraph should be revised to read (revisions in bold):

"18. On 19 June 2007, pursuant to Council decision 5/101 adopted at its 9th meeting, on 18 June, to refer to its organizational meeting, on 19 June, **action on all pending draft resolutions and decisions, and on the draft report of its fifth session, the Council had before it the draft resolution entitled "Institution building of the United Nations Human Rights Council", A/HRC/5/L.2, and the draft resolution entitled "Code of conduct for Special Procedures Mandate-holders of the Human Rights Council", A/HRC/5/L3/Rev.3, both circulated on 19 June. The President ruled that the Council needed to proceed with the necessary follow-up concerning the agreement on the package."**

Paragraph 19:

Paragraph 19 does not accurately reflect the point of order raised by Canada (please find attached). Paragraph 19 should be revised to read (revisions in bold):

"19. A point of order was raised by the representative of Canada, **challenging the President's interpretation that there had been agreement on or adoption of the package or that a decision had been taken on the draft resolutions at the 9th meeting, on 18 June, 2007, as the documents were not circulated until the following day, and the decision of the Council expressly stated that action would be taken on 19 June. By denying Canada the right to call for a vote on these drafts, the Council threatened to undermine not only its own rules of procedure, but more than sixty years of established practice at the UN."**

Paragraph 20:

Paragraph 20 does not accurately reflect the ruling of the President, which he repeated twice and which can be viewed on the UN Webcast (please find our transcript attached). We note that the procedure followed by the President was not strictly in accordance with Rule 113 of the Rules of Procedure of Committees of the General Assembly, which provides that the chair shall decide on a point of order, and that if his ruling is appealed, the appeal shall be put to the vote. The President put his ruling to a vote without waiting for an appeal. Paragraph 20 should be revised to read (revisions in bold):

"20. In response to the point of order raised by Canada, the President repeated his ruling that the Council needed to proceed with the necessary follow-up concerning the agreement on the package. The President put his ruling to the vote, in which it was upheld by 46 votes to 1 with no abstentions. The voting was as follows: ...".

Second paragraph 20 (should be renumbered as paragraph 21 and subsequent paragraphs should be renumbered):

This paragraph does not accurately reflect the facts. There was no vote on draft resolutions A/HRC/5/L.2 and A/HRC/5/L3/Rev.3. Delegations were invited to make general comments or explanations of position on the draft resolutions, but the Council did not take action on these drafts. This paragraph should be revised to read (revisions in bold):

"21. On 19 and 20 June 2007, the President invited delegations to make general comments or explanations of position on draft resolutions A/HRC/5/L.2 and A/HRC/5/L3/Rev.3 circulated on 19 June: Algeria ..."

Paragraph 23 (should be renumbered as paragraph 24) should be slightly revised (revisions in track-changes):

"24. On 20 June, the Council considered and took action on three of the draft proposals which had been deferred from the fifth session, pursuant to its decision 5/101 adopted at the 9th meeting, on 18 June."

Deleted: 102

In all places, including paragraphs 1, 18, 20, 21, 22, and all future references, references to resolutions "5/1" or "5/2" should be replaced by references to draft resolutions A/HRC/5/L.2 or A/HRC/5/L3/Rev.3 respectively.

III. Comments on draft document A/HRC/5/L.11 entitled: "Report to the General Assembly on the Fifth Session of the Human Rights Council":

In all places, references to resolutions "5/1" or "5/2" should be replaced by references to draft resolutions A/HRC/5/L.2 or A/HRC/5/L3/Rev.3 respectively.

B. Decisions

As per our comments above on Part I of A/HRC/5/L.10, this section should be revised as follows. The "s" on "Decisions" in the title of this section should be deleted.

Decision 5/101:

Documents A/HRC/5/L.2 and A/HRC/5/L.3/Rev.1 were not agreed upon or adopted by the Council on June 18, 2007. These documents were not even circulated until the next day, June 19, 2007. The decision taken by the Council should be accurately reflected, as set out in paragraphs 7 and 63 of the draft report (revisions in bold). The title of this decision should be deleted.

"At its 9th meeting, on 18 June 2007, the Human Rights Council decided, without a vote, **to defer action on all pending draft resolutions and decisions, and on the draft report to its organizational meeting, scheduled to take place on 19 June 2007."**

There was no second decision taken and any reference to a "decision 5/102" should be deleted. No such proposal was made by the President in his statement nor circulated in writing.

July 13, 2007