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COMUNICACIONES DE LOS ESTADOS MIEMBROS

El texto adjunto* se distribuye a petición del Estado Miembro.

* Se reproduce en el anexo como se presentó, en el idioma original únicamente.

Annex

Note verbale dated 13 July 2007 from the Permanent Mission of the United States of America to the United Nations Office and Other International Organizations in Geneva addressed to the secretariat of the Human Rights Council

The Mission of the United States of America presents its compliments to the Secretariat to the Human Rights Council and has the honor to refer to document A/HRC/5/L. 10, "REPORT TO THE GENERAL ASSEMBLY OF THE FIFTH SESSION OF THE HUMAN RIGHTS COUNCIL," dated June 28, 2007, and document A/HRC/5/L. 11, "REPORT TO THE GENERAL ASSEMBLY OF THE FIFTH SESSION OF THE HUMAN RIGHTS COUNCIL," dated June 18, 2007, which are supposed to commemorate the events that transpired during the fifth regular session of the Human Rights Council, June 11-18, 2007.

A few minutes before midnight on June 18, the President of the Human Rights Council announced that an institution building text would be circulated and proposed that it be accepted as a compromise on the understanding that it includes the Code of Conduct and "that tomorrow the Council can take action on them." See U.N. video archive of the President's speech available at <http://www.un.org/webcast/unhrc/archive.asp?go=070618> and transcript of this speech as attached hereto as Tab A. A UN press release was issued confirming that this text would be circulated and that the President had invited the Council to take action on it on June 19.

(See June 18 press release entitled "President of the Human Rights Council Announces

Agreement on Final Text on All Institutional Arrangements for Council at:

[http://www.unog.ch/80256EDD006B9C2E/\(httpPages\)/CBD301FF98AF69B980256EE700376D367OpenDocument&expand=5.1&count=10000&unid=CBD301FF98AF69B980256EE700376D36&year=2007#1.5.1.1](http://www.unog.ch/80256EDD006B9C2E/(httpPages)/CBD301FF98AF69B980256EE700376D367OpenDocument&expand=5.1&count=10000&unid=CBD301FF98AF69B980256EE700376D36&year=2007#1.5.1.1))

On June 19, however, a member of the Human Rights Council was not allowed to call for a vote on the institution building package. A press release was issued stating that the package had already been adopted at midnight on June 18 despite the fact that the package had not even been circulated before the close of the session. (See June 19 press release entitled "Human Rights Council Concludes Fifth Session After Adopting Presidential Text on Institution Building of Council" at

[http://www.unog.ch/80256EDD00689C2E/\(httpPages\)/CBD301FF98AF69B980256EE700376D86?OpenDocument&expand=5.1&count=10000&unid=CBD301FF98AF69B980256EE700376D86&year=2007#1.5.1.1](http://www.unog.ch/80256EDD00689C2E/(httpPages)/CBD301FF98AF69B980256EE700376D86?OpenDocument&expand=5.1&count=10000&unid=CBD301FF98AF69B980256EE700376D86&year=2007#1.5.1.1))

The Government of the United States of America notes with concern that both reports to the General Assembly about the Fifth Session of the Human Rights Council contain a number of errors and misleading information. In order to ensure that the reports to the UN General Assembly contain a faithful and transparent account of the work and events of the fifth regular session of the Human Rights Council, the Government of the United States of America requests that the following corrections be made:

1. In report A/HRC/5/L.10, "REPORT TO THE GENERAL ASSEMBLY OF THE FIFTH SESSION OF THE HUMAN RIGHTS COUNCIL," dated June 28, 2007, section D, Consideration and action on draft proposals Institution building of the United Nations Human Rights Council, Code of conduct for Special Procedures Mandate-holders of the Human Rights Council,

- paragraph 60 must also reflect the President's statement that the Council would take action the following day on the President's institution-building text as well as the Code of Conduct. As corroboration of the accuracy of this request, please find attached a transcript of the President's statement during the 9th meeting on June 18, 2007, which is taken from the video archive of the President's speech available at <http://www.un.org/webcast/unhrc/archive.asp?go=070618>.
- paragraph 62 inaccurately reports that a decision was taken on A/HRC/5/L.2 and A/HRC/5/L.3/Rev. 3. As noted above, the President stated action would be taken on June 19 on these texts. Moreover, the Government of the United States respectfully notes that neither resolution had been tabled, or indeed circulated, either before or on June 18. The resolution texts were not available until the morning of June 19. It is, therefore, incorrect to state categorically that the Council took a decision on either text.
- paragraph 63 states erroneously that the Council "also 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." The Government of the United States requests the deletion in its entirety of this paragraph from the report. There was no mention or reference made to any of the draft resolutions or decisions pending before the Council during the brief session the night of June 18-19. The Government of the United States notes that the attached transcript of the President's statement as confirmation.

2. Report A/HRC/5/L.11, "REPORT TO THE GENERAL ASSEMBLY OF THE FIFTH SESSION OF THE HUMAN RIGHTS COUNCIL," dated June 18, 2007, section I, A Resolutions, incorporates into the report the text of a resolution numbered 5/1, titled "Institution-building of the United Nations Human Rights Council," the Government of the United States notes that while the two preambular paragraphs and operative paragraph one were contained in A/HRC/5/L. 2, circulated on June 19, 2007, no action was taken on that document. It is incorrect, therefore, to include it as an adopted text in the fifth session report to the General Assembly.

-- further, operative paragraph two, which states,

"Decides to submit the following draft resolution to the General Assembly for its adoption as a matter of priority in order to facilitate the timely implementation of the text contained thereafter;

The General Assembly,

Taking note of Human Rights Council resolution 5/1 of 18 June 2007,

1. Welcomes the text entitled "United Nations Human Rights Council; Institution-Building", as contained in the annex to the present resolution, including its appendix(ces)."

was not available to UN member state delegations or other observers on June 18, nor was any decision taken on this text.

3. Report A/HRC/5/L.11, "REPORT TO THE GENERAL ASSEMBLY OF THE FIFTH SESSION OF THE HUMAN RIGHTS COUNCIL," dated June 18, 2007, section I,

A Resolutions, incorporates into the report the text of a resolution numbered 5/2, titled "Code of Conduct for Special Procedures Mandate-holders of the Human Rights Council." The Government of the United States notes that while draft resolution A/HRC/5/L.3 contained the text now included in report A/HRC/5/L.11, page 45, no action was ever taken on L.3. When the President referred to the Code of Conduct, he said "...I would like to propose that you accept this text as a compromise on the understanding that it includes also the Code of Conduct and that tomorrow the Council can take action on them...." President de Alba's statement makes clear that action would be taken on the following day. In addition, his remarks also indicate that the Code of Conduct was to be considered part of the institution-building package. He made no reference to a separate resolution or separate action for the Code of Conduct.

4. Report A/HRC/5/L.11, "REPORT TO THE GENERAL ASSEMBLY OF THE FIFTH SESSION OF THE HUMAN RIGHTS COUNCIL," dated June 18, 2007, section I, B. Decisions, incorporates into the report the text of a decision 5/101, titled "Institution-building of the United Nations Human Rights Council and draft code of conduct for special procedures mandate-holders of the Human Rights Council" and the text of a decision 5/102, titled "Postponement of consideration of all pending draft resolutions and decisions, and of the draft report." The Government of the United States notes that no action was taken on either decision during the Council's 9th meeting. Furthermore, it questions the reason for alleging that the Council in effect acted twice to adopt the institution-building package. Decision 5/101 mirrors the action supposedly taken in resolution 5/1 and resolution 5/2. Had

either the decision or resolutions been adopted in accordance with the rules and procedures of the Committees of the General Assembly, which governed Council procedures during the fifth session, there would have been no need for the other to be adopted.

-- Decision 5/102 "Postponement of the consideration of all pending draft resolutions and decisions, and of the draft report" was not adopted during the Council's 9th meeting. As noted previously, in the paragraph addressing A/HRC/5/L. 10, section D, paragraph 63, the Government of the United States notes that there no mention or reference made to any of the draft resolutions or decisions, or the fifth session report before 9th session of the Council was gaveled down.

The Permanent Mission of the United States of America avails itself of this opportunity to renew to the Secretariat of the Human Rights Council the assurances of its highest consideration.

The Mission of the United States of America presents its compliments to the Secretariat to the Human Rights Council and has the honor to refer to document A/HRC/OM/L.10, "REPORT TO THE GENERAL ASSEMBLY ON THE ORGANIZATIONAL MEETING OF THE HUMAN RIGHTS COUNCIL," dated 28 June 2007, and document A/HRC/OM/L.11, "REPORT TO THE GENERAL ASSEMBLY ON THE ORGANIZATIONAL MEETING OF THE HUMAN RIGHTS COUNCIL," dated 22 June 2007. The Government of the United States of America notes with concern that both reports continue to misrepresent the events of the ninth meeting of the Human Rights Council's fifth regular session and, consequently, the report of the organizational meeting contains information of a selective or erroneous nature. A few minutes before midnight on June 18, the President of the Human Rights Council announced that an institution building text would be circulated and proposed that it be accepted as a compromise on the understanding that it includes the Code of Conduct and "that tomorrow the Council can take action on them." See U.N. video archive of the President's speech available at <http://www.un.org/webcast/unhrc/archive.asp?go=070618>. A UN press release was issued confirming that this text would be circulated and that the President had invited the Council to take action on it on June 19. (See June 18 press release entitled "President of the Human Rights Council Announces Agreement on Final Text on All Institutional Arrangements for Council at:

[http://www.unog.ch/80256EDD006B9C2E/\(httpPages\)/CBD301FF98AF69B980256EE700376D86?OpenDocument&expand=5.1&count=10000&unid=CBD301FF98AF69B980256EE700376D86&year=2007#1.5.1.](http://www.unog.ch/80256EDD006B9C2E/(httpPages)/CBD301FF98AF69B980256EE700376D86?OpenDocument&expand=5.1&count=10000&unid=CBD301FF98AF69B980256EE700376D86&year=2007#1.5.1.)

In order to ensure that the reports to the UN General Assembly contain a faithful and transparent account of the work and events of the organizational meeting of 19-22 June 2007, the Government of the United States of America requests that the following corrections be made:

1. In report A/HRC/OM/L.10, "REPORT TO THE GENERAL ASSEMBLY ON THE ORGANIZATIONAL MEETING OF THE HUMAN RIGHTS COUNCIL," dated 28 June 2007, section II. A. 1, the United States of America holds that "rule 8 of its rules of procedure" is not yet in force, because the Human Rights Council did not adopt "resolution 5/1 of 18 June 2007" as is evident from available transcripts and "webcast" recordings of the 18 June 2007 proceedings available at <http://www.un.org/webcast/unhrc/archive.asp?go=070618>. Therefore, the dependent clause of Paragraph 1 should be deleted and instead the sentence in its entirety should read "The Human Rights Council held the organizational meeting of the second cycle at the United Nations Office at Geneva from 19 to 22 June 2007."
- Paragraph 18 states that "decision 5/101" was "adopted at its 9th meeting, on 18 June." What transpired is additionally – and misleadingly – described as an "agreement." Decision 5/101 was not adopted at the ninth meeting of the Human Rights Council's fifth regular session. It was clearly stated by the President that

action would take place the following day; that is June 19. The Government of the United States requests that paragraph 18 be amended to correctly reflect the events that transpired on June 18 and 19. Paragraph 18 should be replaced with "On 19 June 2007, the Council initiated follow-up on issues related to institution-building."

- Paragraph 19 does not accurately report the intervention by the representative of Canada. In his intervention, the representative of Canada challenged the President's assertion that there had been agreement or adoption of the institution-building package. The United States Government requests that paragraph 19 be amended to read: "A point of order was raised by the representative of Canada, challenging the President's assertion that the package had been adopted. The representative of Canada requested the right of a member to call a vote on a draft resolution before the Council."
- Paragraph 21 inaccurately describes "resolutions 5/1 and 5/2" as being "adopted at the 9th meeting, on 18 June,..." Paragraph 21 should be reformulated to: "On 19 and 20 June 2007, the following representatives of States members of the Council gave interventions on institution-building matters:"
- Paragraph 24 incorrectly states that draft proposals were "deferred from the fifth session, pursuant to its decision 5/102 adopted at the 9th meeting, on 18 June." As stated previously above and in our attached note verbale related to the report of the fifth session, it is clear from the record that no decisions were adopted during the 9th meeting of the Council. A factual presentation of the events of June 19

should state only that: “On 20 June, the Council considered and took action on six draft proposals that were to be considered at the fifth regular session of the Human Rights Council.”

- In paragraphs 27-30, there is no mention of Israel’s repeated attempts to speak as a concerned country on the “Report of the United Nations High Commissioner for Human Rights on the follow-up to the report of the Commission of Inquiry on Lebanon” or the Human Rights Council President’s subsequent refusal to give Israel the floor as a concerned country. Israel’s requests to speak as a concerned state and the President’s denial of the request must be incorporated into this section to accurately reflect what transpired.
- Paragraph 35 does not reflect Canada’s decision to disassociate from consensus with the Human Rights Council’s decision on “Human rights situation in the Occupied Palestinian Territory: follow-up to Human Rights Council resolutions S-1/1 and S-3/1.” This fact must be incorporated into this section.
