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Note verbale dated 31 March 2010 from the Permanent Representative of India to the President of the Human Rights Council

With reference to President's statement PRST/13/1 pertaining to the reports of the Advisory Committee, although the delegation of India decided, after consultations with you, to join the consensus on the above-mentioned statement despite serious reservations on some aspects of it, I would like to convey my Government's displeasure at the continuing disregard of Human Rights Council resolution 5/1 by the Committee.

As you are no doubt aware, in paragraphs 75 to 77 of its resolution 5/1, the Council explicitly states that the Advisory Committee should provide its expertise only upon the request of the Council. There is absolutely no scope for the Committee to undertake an initiative *suo motu* on any matter within the mandate of the Council. The only latitude that is permitted to the Committee is that, within the framework of a reference already made to it by the Council, the Committee may propose further research proposals, that is, such research proposals should be considered additional to the reference already made.

In this regard, my delegation would like to express its serious reservations at the manner in which the Advisory Committee continues to make recommendations on topics of study that have not been mandated by the Council. For instance, at its first session, the Committee adopted 13 recommendations, of which at least four - 1/6, 1/10, 1/12 and 1/13 - were not in compliance with resolution 5/1 in so far as they were not made in response to a specific request by the Council. Similarly, at its second session, the Committee adopted seven recommendations, of which one (recommendation 2/4) was not in compliance with resolution 5/1; at its third session, the Committee made six recommendations, of which two (3/5 and 3/6) were not in compliance with resolution 5/1; and at its fourth session, the Committee made six recommendations, of which recommendation 4/4 was not in compliance with the provisions of the resolution.

Furthermore, I would also like to point out that, in paragraph 77 of its resolution 5/1, the Council explicitly states that the Advisory Committee shall not adopt resolutions or decisions. Nonetheless, it is clear from the proceedings of the past four sessions of the Committee that it continues to adopt recommendations that are, except in name, nothing but resolutions or decisions in nature.

My delegation attaches great importance to the work of the Advisory Committee as a think tank of the Council working under the Council's direction and guidance. It is in this spirit that India joined consensus on President's statements PRST 10/1 and PRST 13/1, both of which appear to have been motivated by, inter alia, the need to get around the problem of recommendations made by the Committee that were not in consonance with resolution 5/1. Both statements use identical phrasing, namely that the recommendations of the Committee that have not been mandated by the Council (gender mainstreaming in the case of PRST 10/1 and the human rights of older persons in PRST 13/1) "may be addressed in the context of the work of the Council at its future sessions". Both are predicated on the understanding that such "procedure does not set any precedent for the future reports of the Advisory Committee, which will be dealt with in accordance with Council resolution 5/1", although its reappearance in PRST 13/1 would seem to negate the assertion made in PRST 10/1.

In the light of the above, India would like to place on record its view that any recommendation or study by the Advisory Committee that has not been made upon a specific request by the Council, or that predates a specific request by the Council, is in violation of Council resolution 5/1 and, therefore, cannot be considered by the Council. India hopes that the Advisory Committee will not repeat the mistakes of the Subcommission that finally led to its dissolution. While India would be happy to meet with you or the Committee for consultations on this matter, as necessary, it requests you to convey its views to the Committee. At the same time, India reserves its position with regard to any similar infringement of resolution 5/1 by the Committee in future.

In view of the considerations outlined above, the delegation of India would like to disassociate itself from President's statement PRST 13/1 on the reports of the Advisory Committee, adopted on 26 March 2010 by the Council at its thirteenth session.

I should be grateful if you would kindly have the present letter circulated as a document of the thirteenth session.

(signed) **A. Gopinathan**
