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Agenda item 1

ORGANIZATIONAL AND PROCEDURAL MATTERS

**Letter dated 24 April 2008 from the Ambassador and Permanent Representative
of Pakistan addressed to the President of the Human Rights Council**

I have the honour to enclose a paper** presented by Pakistan on 26 March 2008 on the mandate and modalities of work of the Consultative Group during the seventh session of the Human Rights Council. The paper has been endorsed by the Organization of the Islamic Conference.

It is requested that the enclosed paper be circulated as a document of the Council.

(Signed): Masood Khan
Ambassador and Permanent Representative

* Reissued for technical reasons.

** Reproduced in the annex, as received and in the language of submission only.

Annex

OIC POSITION PAPER ON THE ROLE AND MANDATE OF THE CONSULTATIVE GROUP OF THE HUMAN RIGHTS COUNCIL

Terms of reference

Paragraphs 47-51 of HRC Res. 5/1 of 18 June provide for the terms of reference for the Consultative Group.

The group consists of a representative from the five regional groups, who are to serve in their personal capacity (para. 49).

The operational terms of reference of the Consultative are not very clear. There are differences within the CG members about this matter. While some think that the Consultative Group should give firm recommendations, others think that it should only draw up a list on nominees. Because of the difference of opinion, the Consultative Group could not adopt recognized decision making process applicable to the Council and its subsidiary bodies. The CG is a properly constituted subsidiary mechanism of the Human Rights Council and therefore the Council Rules of Procedure should apply to the CG. The CG is a substantive, not a cosmetic, mechanism.

Relationship between the CG and the President

We need to remove the perceived and latent incongruence between the President and the CG. The CG is meant to help the Council and the President. A minimalist interpretation of the role of CG as five members compiling a list of nominees and then putting it up to President is not the intention of the Council. The CG is required to come up with a substantive outcome. The discussions in the CG itself are transparent as they are observed by all members and the secretariat. The process of consultation by the President should also remain transparent. During the President's consultations, additional criteria are used to disqualify some candidates or qualify new ones. These include, for instance, representation of one nationality or one region. The President in his briefings to the CG can give guidance beforehand on these points, so that he does not have to use his discretion on something that can be objectively compared and verified.

CG's relationship with the Council

The CG ceases to have any relationship with the Council after it has submitted its recommendations. There are all sorts of speculations about the working methods and the criteria adopted by the CG; but there is no space to hear the views of the CG members. This creates a communication gap. The product of the CG's work is before the Council but without an opportunity for the CG members to explain the rationale for their recommendations. Paragraph 50 of resolution 5/1 stipulates that the recommendations of the CG "shall be public and substantiated". It is therefore important that the CG should give a brief account of its proceedings as well as the methodology to prepare its recommendations.

Hierarchy

Some member states have criticized the CG for indicating its preference for a candidate and the level of support for each candidate. This is in fact a simple method showing varying degrees of support for candidates. The one put on the top is supported by all members; the second by two or three; the third by only one (just in case category) if the top two run into some difficulty.

Lobbying and political pressures

CG members and the President of the Council are lobbied extensively by candidates, countries, mandate holders and interest groups. This distorts the selection process. In fact, it starts a competition among the Permanent Missions of the countries of applicants to lobby hard with the President. This has also created an atmosphere of discord because the ones left out feel that preference has been given to the country whose nominee has been chosen, irrespective of the credentials of the candidates. We must take steps to contain the fall out of this incipient discord. If even after the intensive work done by the CG in scrutinizing the record of the applicants, the President has to spend more time to ascertain the will of the Council Members and Member States, it would be desirable to hold open elections. Behind the scenes consultations to feel the pulse of States for one candidate or the other puts enormous pressure on the office of the President and may still undermine credibility of the decision.

Vacancies

The Council has to give clarity to the Secretariat and to the CG about the vacancies for mandate holders. We are of the view that an approval for a three-year mandate does not imply its automatic renewal for the next three year term. From now on, all vacancies should be referred to the CG. In this regard, what we need is fair, not ingenious, interpretations because the Council is in the very productive phase of confidence building. What will be fixed behind the scenes will not have the requisite credibility.

Criteria

The CG uses the following criteria (a) expertise; (b) experience in the field of mandate; (c) independence; (d) impartiality; (e) personal integrity; and (f) objectivity. It also adds the considerations of gender balance and equitable geographical representation. If such a rigorous criteria is changed for political or technical reasons, the Council must hear a cogent and elaborate explanation.

Scope

The CG's scope of work includes selection and nomination of the Independent Experts and Special Representatives to be appointed by the Secretary-General. They should not be excluded from the purview of the Council, which should give its approval to the recommendations by the CG.
