

15.02.07
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3. Admissibility Criteria

- We are, again, unclear at the drafting approach for sections 3 and 4. Section 3 is entitled "admissibility" but every item under it is about *in-admissibility*.

We think at bottom this is a drafting issue, but one where the drafting is essential.

We would note other drafting issues:

- The first proposal of the Facilitator ("A complaint shall be inadmissible when its object is not consistent with any applicable instrument in the field of human rights.") is simply not understandable as drafted. Perhaps the Facilitator could explain to us what he intended by this provision.

- We call on the Facilitator to work with delegations informally before preparing his next text to avoid these kinds of drafting issues.

4. Number of Working Groups and Confidentiality

- The first proposal of the Facilitator is not clear, and touches on a problem with point 6 – the powers of the second working group.
- While we are prepared to accept the existing confidentiality arrangements for consideration of these complaints in plenary, we would ask the Facilitator to explain his first proposal.

5. First Working Group: Composition, Mandate & Powers

We continue to maintain our position that there should only be one working group, with enhanced screening powers given to the secretariat. We also would prefer shorter terms for the working group members.

We are unclear what it means in the fourth proposal of the Facilitator to have all decisions "motivated." If, however, the word should be "explained," we think this is unworkable except to the extent that there is a checklist of standard reasons.

US (2007) spec of terms of or... could use guidelines, etc. (primary source documents)

Can never understand better?

Maybe should walk up to Charter

if it's important Is it necessary? Can it be deleted?

We do not understand... the reason some... are unacceptable... must... the members

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- We must keep in mind the reasonable limits of our resources.

6. *Second Working Group: Composition, Mandate & Powers*

- We are quite worried that despite many strong statements from delegations across regional groupings that the second working group must maintain its ability to reject claims that do not meet the basic admissibility criteria, the current draft fails to make this clear.
- The draft seemed to suggest there may be such a role in section 4, but in this section there is ^{power} a passing reference to it in the third proposal of the Facilitator. It is essential that this power must be explicitly noted. The ability of the second Working Group to maintain the integrity of the procedure is critical. *never for principal role is to recommend measures to the Council*

7. *Frequency at which the Council Shall Consider Situations*

- Here the paper introduces what could mistakenly be read as a new standard of admissibility – that of “situations of human rights and fundamental freedoms brought to its attention by the second WG”. In fact, we must be clear throughout that it is only situations involving a “consistent pattern of gross and reliably attested violations....”

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Language describing procedure here will be important for future draft.

8. *Duration of the Process*

- This section appears ^{to be unclear} ~~to be internally inconsistent~~. In the first paragraph of “elements of convergence” the paper seems to suggest that the working groups will meet before every session of the Council. But in the first proposal of the facilitator on “elements needing further discussion” it suggests the working groups would meet once or twice a year.

- The U.S. delegation believes the working groups should meet once or twice a year at a regularly determined time.

There are sensible mechanisms that can be conceived to make the process more efficient.

I think this is clearer

- ~~The paper suggests that the procedure must be “victim-oriented” – we are not clear how it could not be and whether adding this kind of language suggests the procedure would be something else if it were not included? We do not understand the rationale for this.~~

9. *Involvement of the Complainant and the State Concerned*

- We support notice and transparency, ^{by all parties} and believe it should only be in the rarest of cases that the complainant's identity need to be kept confidential. We think this should not be automatically granted, but should be subject to the requirement that the complainant demonstrate a compelling reason to keep his or her or its identity confidential. The draft should be modified accordingly to make this clear.
- We also would ~~want to edit this section~~ to ensure that there is no ambiguity that this procedure is not intended to provoke several rounds of submissions like in a court or arbitral tribunal. We are not looking for a complaint to be followed by an answer, a reply, and ultimately a rebuttal. *Perhaps this could be made clearer in the light.*

10. *Possible Measures to be Taken by the Council Upon Proposals Made by the Second WG*

- We are not in agreement with the suggestion of the title of this section that the Council would be limited to taking only those measures suggested by the second Working Group. The Council must maintain its ability to act as it sees fit and appropriate.

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