STATEMENT BY MR. NIRUPAM SEN, PERMANENT REPRESENTATIVE, AT THE MEETING OF THE OPEN-ENDED WORKING GROUP ON THE QUESTION OF EQUITABLE REPRESENTATION ON AND INCREASE IN THE MEMBERSHIP OF THE SECURITY COUNCIL AND OTHER MATTERS RELATED TO THE SECURITY COUNCIL AT THE 62ND SESSION OF THE UNITED NATIONS GENERAL ASSEMBLY ON SEPTEMBER 10, 2008

Mr. President,

Thank you for convening this meeting of the Open-Ended Working Group to further discuss its draft report for the 62nd GA.

We have stressed on various occasions, the need for an open, inclusive and transparent approach in a matter as important as that of reform of the Security Council. You have yourself voiced support for such an objective. Yet, in practice, these goals remain on paper. We are dismayed that, except for one open-ended meeting on September 8, 2008, the entire process of consultations on the draft report before us has been shrouded in secrecy and selective participation. To convey our disapproval of the closed-group format you have favoured, we did not attend the selective meeting that you organized yesterday. Any claim, therefore, that this text has been widely consulted, is not factually correct.

As regards the text in front of us we dispute the 'progress' made in this session because going round in circles is certainly movement, but equally certainly not progress but we can live with this world. We can go along with para 8 as reformulated. However, we continue to have serious concerns over PP 3 of the draft decision regarding the 7 principles. We reiterate that the reference to the 7 principles must be deleted from the draft decision.

All Member States have accepted the need to commence intergovernmental negotiations. The demand of the majority is clear – commence intergovernmental negotiations within a defined timeframe, in an informal GA plenary, without preconditions.

Unfortunately, sub-para (c) does not meet this simple requirement, though it disingenuously attempts to portray itself as commencing negotiations. Sub-para (c) does mention a timeline for commencement of negotiations in the GA. But it talks of

a majority 'well above the required majority'. This is *ultra vires* the Rules of Procedure of the GA, the UN Charter (Article 18) and even GA Resolution 53/30 adopted by consensus. It amounts to an imprecise, illegal, informal and back door amendment of the rules. So much for respect for law shown here. At the time when the Facilitators' Reports were being discussed, I recall making this point. I also recall saying that one cannot conflate the view of the P-5 PRs with what their legislatures will do at the time of ratification which is what Article 108 is all about. In any case, it is amusing that in the same breadth the draft decision cites Article 108 and violates Article 18 of the Charter and we are expected to adopt this absurdity by consensus.

In particular, there is no rationale for selectively quoting from various facilitators' reports to define a new provision for decision-making. The language in sub-para (c) has not been intergovernmentally agreed to, and incorporating it in a GA Decision would be tantamount to giving it a legal status that it does not possess. Such political language has no place in a GA decision. I am reminded of George Orwell's 'Politics and the English Language' which correctly defines political language as 'the defence of the indefensible', designed to make non-facts facts and 'give an appearance of solidity to pure wind'. Let me be clear – we cannot accept this formulation.

Sub-para (c) also mentions that the negotiations will "at the outset" address the framework and modalities of negotiations. To our mind, this stipulation is irrelevant. Once we have agreed that the negotiations will be in the informal GA plenary, the framework has been defined. The modalities are also clear – negotiations will be based on proposals of Member States. Putting this last sentence is mischievous – it only strengthens the hand of the minority that seeks to block commencement of negotiations by arguing that framework and modalities have not been agreed upon.

We note that you have further weakened the basis for negotiations by using the term "basic elements" in sub-para (d), at the behest of one country.

In the same vein, we <u>cannot</u> accept the negotiables as defined in the Annex II A/61/47, which is not an intergovernmentally negotiated Annex. We have earlier conveyed our objection to the selective listing of items as negotiables, and we certainly do not accept those identified in A/61/47. We would therefore request deletion of sub-para (d)(ii).

We can accept sub-para (d)(iii) as these are intergovernmentally accepted documents.

We have repeatedly conveyed our concerns on the placement of sub-paras (e) and (f), which implicitly attempt to define the OEWG as the venue for negotiations. These concerns remain valid. The distinguished Permanent Representative of Mauritius correctly called for clarity. We should clarify that negotiations would be in the informal plenary of the General Assembly.

Mr. President,

We have tried to show maximum flexibility. If, however, the amendments I have outlined (we shall circulate these ) are not taken on board, we would not be able to accept this draft report.

I thank you, Mr. President.

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