



Statement by Mr. Nirupam Sen, Permanent Representative, at the Informal thematic consultations of the General Assembly on The Report of the Secretary-General Entitled "In Larger Freedom: Towards Development, Security and Human Rights for All" (A/59/2005) (On Cluster III Issues: Freedom to Live in Dignity) on April 20, 2005

Mr. Facilitator,

We thank both the Facilitators for convening these consultations and affording Member States an opportunity for an exchange of views on cluster III: "Freedom to live in dignity" of the March 21 report of the UN Secretary-General. We align ourselves with the statement made by Malaysia on behalf of NAM.

The Secretary-General has recalled in his report that in the Millennium Declaration, Member States had undertaken to spare no effort to promote democracy, strengthen the rule of law and respect for all internationally recognised human rights and fundamental freedoms. To advance a vision of larger freedom, the UN and its Member States must strengthen the normative framework developed over the last six decades. To accomplish this, the Secretary-General challenges the Member States and the UN to move from an era of legislation to an era of implementation.

This implementation can benefit from an enabling international environment but in the last resort has to be done nationally, by the struggle of ordinary people. In India, ever since Mahatma Gandhi and the freedom struggle basic values were implanted among ordinary people - secular democracy, pro-poor, egalitarian policies and the like. We have seen in election after election that any government that significantly diverged from these could not last long. The relationship between democracy and elections is a bit like that between scholarship and examinations: as somebody said "examinations are not an absolute test of scholarship but I am profoundly afraid of those who cannot pass these". We have found pluralism, not just ethnic, religious or cultural but also political, a source of strength and freely exercised choice an essential feature of rights: the Indian people in our federal

polity have freely chosen communist governments in West Bengal, BJP governments in Rajasthan and Congress governments both at the Centre and in many other States of the country. The Supreme Court's enforcement of Fundamental Rights has been reinforced by the work of the National Human Rights Commission. Though living in glass houses some may still throw stones: we can only continue to ignore the sound of breaking glass.

The indispensable unity of economic and social rights, including the right to development and of civil and political rights has been effectively expressed by the Nigerian writer Chinua Achebe in his "Anthills of the Savannah" (about the fictional country Kangan), one of the great literary works of our time: "it isn't even this second-class, hand-me-down capitalism, ludicrous and doomed...nor the destruction and banning of independent unions and cooperatives. It is the failure of our rulers to re-establish vital inner links with the poor and dispossessed of this country, with the bruised heart that throbs painfully at the core of the nation's being." Even dictatorships claim to advance human rights beyond the realm of ordinary politics. After the French Revolution, the socialist project proposed the completion of rights, not their abrogation: the middle class had abolished feudal social divisions based on birth but could not achieve real liberty, equality and fraternity for all. Democracy and human rights, therefore, are a universal core: precisely for this reason, as Habermas says, they "cannot be propagated by fire and sword." Ever since the French Revolution, human rights have remained highly politicised, a site of intense political struggle. To depoliticise is a chimera. Capacity-building is a different approach altogether; it is not depoliticisation.

Mr. Facilitator,

From all this it follows that human rights should be a sword of the poor, not a sword of empire, a staff in the hands of the weak, not "a jemy in the door of national sovereignty". To our mind, the single most important criterion of the fairness and effectiveness of a decision taken or a machinery devised is whether the first can be promoted and the second prevented. India has long been opposed to intrusive monitoring and finger pointing while dealing with specific human rights situations in individual countries. India remains convinced of the essential validity of an approach based on dialogue, consultation and cooperation leading to a genuine improvement in the enjoyment of human rights by the members of any society.

Mr. Facilitator,

On the use of force, we believe that Article 51 of the UN Charter is clear. The framers of the Charter never intended this article to cover any thing beyond its text. This view has the support of the decision and opinions of the principal judicial organ of the United Nations, the International Court of Justice. We believe that Charter gives full authority to the Security Council to

preserve international peace and security from threats, whether they are latent or patent. If the Council experiences certain difficulties in assessing the seriousness of threat, it is, in most cases, owing to the lack of political will of the members of the Security Council than lack of power.

We support the Secretary-General's proposal to set up a Rule of law Assistance Unit, not only for assisting national efforts in conflict and post-conflict societies, but where such assistance is requested for developing effective national legal and judicial institutions.

Mr. Facilitator,

We have studied carefully the Secretary-General's views on the issue of "responsibility to protect". This is an issue of utmost importance and needs to be addressed with necessary caution and responsibility. We do not believe that discussions on the question should be used as a cover for conferring any legitimacy on the so-called 'right of humanitarian intervention' or making it the ideology of some kind of "military humanism". It is necessary to discuss this question and analyse all the ramifications of the idea of responsibility to protect, its limitations, its attendant obligations and the proposed mechanism for exercising it. As mentioned in the context of use of force, we believe that in case of genocide and gross human rights violations, no amount of sophistry can substitute for the lack of political will among the major powers.

Mr. Facilitator,

The Secretary-General has made some bold and innovative proposals with regard to the promotion and protection of human rights. Several of the thoughts and ideas expressed support India's long-standing conviction that rule of law and democracy are essential ingredients for promoting and protecting human rights in any society. We believe that just as the rule of law should protect the vulnerable in a society, so also the rule of international law should protect weak and vulnerable States from the arbitrary exercise of power by the strong.

The Secretary-General proposes the 'mainstreaming' of human rights, i.e. the integration of human rights into decision-making and discussion throughout the work of the UN, which he believes has not been adequately reflected in key policy and resource decisions. In our view, mainstreaming development into human rights would be equally important, as it would provide a better means of improving human rights situations in Member States.

Our experience demonstrates that a democratic, pluralistic society with a secular polity, an autonomous judiciary, a vibrant civil society, an unfettered media, and independent human rights institutions, is an effective guarantee for the protection and promotion of human rights in a country. The Vienna

Declaration and Programme of Action (VDPA) also recognised that democracy, development and respect for human rights and fundamental freedoms are interdependent and mutually reinforcing values which provide the foundation for a genuinely holistic conception of human rights.

National capacity-building in the area of human rights in which the Office of the High Commissioner can play a supportive role through technical cooperation programmes, *inter alia*, covering assistance in acceding to international human rights instruments, amendment of national legislation and putting in place a framework of administrative regulations and machinery for the purpose and establishment of national human rights institutions in accordance with the Paris principles are important for the promotion and protection of human rights universally. The Secretary-General has, in several proposals, recognised the importance of strengthening national capacities, which we welcome.

We support the proposal for endowing the Office of the High Commissioner for Human Rights with additional resources from the regular budget in order to promote national capacity building and strengthening technical cooperation programmes towards this end.

The Secretary-General has proposed the creation of a 'Human Rights Council', though the absence of an accompanying blue-print has engendered more questions than solutions. As we have seen earlier, it is difficult to conceive the proposed Human Rights Council escaping the politicisation that seems inevitable in this enterprise. It is also not clear whether its contribution to law making and the nature of the proposed peer review would benefit from small size: in our time, pluralism and enlargement reinforce effectiveness through legitimacy and the size of the CHR and the universality of the Third Committee bring to bear certain checks and balances which are useful. We share the Secretary-General's view on the need for the Commission to move away from the present tradition of those primarily wishing to criticise others and those primarily wishing to escape and forestall such criticism. We have just received further details from the Secretary-General with regard to his proposal on the Human Rights Council, including the 'terms of reference', functions and competence. We shall study this further before expressing our considered views on the proposed Council. We, nevertheless, remain committed to engaging with delegations further on this.

We welcome the proposal made by the Secretary-General on the need for harmonised guidelines for reports to Treaty Bodies which, we believe, will lead to lessening the burden on States Parties, particularly developing countries among them, in this respect.

The Secretary-General advocates greater human rights field presence which would provide timely information to the United Nations for situations

requiring action. He advocates that the “Action 2” Programme needs to be strengthened with more resources and staff. We would suggest this be done at the specific request of Member States concerned, lest this be perceived as intrusiveness.

Mr. Facilitator,

We fully agree with the Secretary-General’s recommendations on the creation of a Democracy Fund and strengthening of the United Nation’s electoral support activities. In this context, we would like to propose strengthening of United Nations capacities to protect elected democracies from being overthrown by unconstitutional means and reversing such overthrow where it occurs. We may add that the first is also in the spirit of the Ezulwini consensus.

Thank you, Mr. Facilitator.

[BACK TO TABLE OF CONTENTS](#)