



**STATEMENT BY MR. NIRUPAM SEN, PERMANENT REPRESENTATIVE, ON
INFORMAL CONSULTATIONS OF THE PLENARY OF THE GENERAL
ASSEMBLY ON THE HUMAN RIGHTS COUNCIL ON OCTOBER 11, 2005**

Mr. President,

First of all allow me to express our gratitude to the Permanent Representative of Yemen for expressing his sympathy and solidarity with us on account of the earthquake. Let me also thank you for convening these discussions and on your excellent choice of the two co-Chairs, the Permanent Representatives of South Africa and Panama.

As you are aware, there are seven references to human rights in the Charter. Field Marshal Smuts of the then Apartheid regime of South Africa said that such a document should be "introduced by a Preamble setting forth, in language which should appeal to the heart as well as the mind of men, the purposes which the United Nations were setting themselves to achieve and the nobility of intention of the founders". This is a gem of the purest hypocrisy. The wheel has come full circle and it is a matter of poetic justice that the discussions today are being co-chaired by the Permanent Representative of free South Africa. This shows that we have or should have traveled from a geo-political, self-serving and instrumentalist approach to human rights to one that should be universal and non-selective. The Human Rights Council we are setting up should embody this.

Though we are open to further discussion, we are not persuaded that the Human Rights Council should be a standing body. After all, the High Commissioner for Human Rights works permanently and can intervene at any time. The special procedures of the Human Rights Commission tackle all subjects and are available throughout the year. The Human Rights Commission can sit in extraordinary session in case of emergency and since 1992 has convened five times in such extraordinary sessions. The status of the Human Rights Council should be that of a subsidiary body of the General Assembly.

The people of India in free elections have the right to freely choose governments across India ranging from right wing to communist. The recent Rural Employment Guarantee Act has operationalised the right to work. We have also regarded human rights as a shield for protecting ordinary people and not as a sword of intervention. As in the case of other delegations, national experience shapes our approach. Therefore, on the size, composition and membership of the proposed Human Rights Council, as stated earlier we believe in applying the principle of universality which means a larger Council of fifty members. A large Council based on equitable geographical representation is necessary not just on grounds of universality but also on grounds of functional necessity. In the first place, such a Council would be less amenable to manipulation by any power or groups of powers. In the second place, only through such numbers and such composition can we ensure that not just political and civil rights but social and economic rights including the right to development and the right to work are effectively articulated in the deliberations of this Council.

The mandate and functions of the proposed Council must take into account and effectively address the current situation. The distinguished Permanent Representative of Chile quoted William Roper, Sir Thomas More's son-in-law to the effect that he would "cut down every law in England to get after the devil". This has particular relevance to the current getting after the devil of terrorism. In the course of this civil and political rights are again under threat with diminution of habeas corpus and right not to be imprisoned without fair trial and the presumption of innocence till proved guilty. The Human Rights machinery today comprises the High Commissioner, Treaty bodies, sub-commissions, special procedures, committees, specialised agencies and the like. The Human Rights Council should ensure coherence in an institutional sense. But equally if not more important is coherence of issues. This is because workers' rights are addressed by ILO, right to education by UNESCO, right to asylum by UNHCR, children's rights by UNICEF, right to health and affordable medicines by WHO. In this sense, TRIPS is a violation of the right to health and affordable medicines. In this country, the President's Economic Advisory Council and the Science and Technology Council at that time had held that TRIPS was not necessary or even desirable for scientific research; it was designed simply to protect the commercial interests of pharmaceutical companies.

The triad of the French Revolution – liberty, equality and fraternity – are concerned with three orders of rights: civil and political rights; the role of the State in ensuring socio-economic equality and finally fraternity or solidarity internationally in promoting the right to economic and social development; the right to benefit from "the common heritage of mankind"; the right to a healthy and balanced environment; the right to humanitarian disaster relief. The UN and the UN Human Rights Council can play a crucial role in promoting international cooperation to make these rights a reality since they are based on cooperation between peoples and States.

Finally, on account of civil conflict in many parts of the world, there are massive violations of human rights by non-State actors. If the proposed Council only holds States accountable for rights violations, its work would be vitiated by one-sidedness. Its mandate and function should therefore provide for addressing rights violations by non-State actors.

At this stage, Mr. President, we would not like to comment further on the issues under discussion. Once the process of negotiations begins in right earnest, we shall offer more detailed comments.

Thank you, Mr. President.

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