



**Statement by Mr. Ajai Malhotra,
Ambassador/Deputy Permanent Representative of India, on
the Human Rights Council, at the Informal Plenary meeting
of the UN General Assembly, New York on 24 January 2006**

Mr. Chairman,

I would like to once again commend Ambassador Kumalo and you for the excellent draft before us. As requested by you, I will restrict myself solely to commenting on the text in the draft document [Rev.2 version] of 19 December 2005 that is not in bold type or within brackets.

As regards the preambular paragraphs, there are some minor changes that I would have liked to suggest. However, at this advanced stage of our consideration of this draft there is not much point in unnecessarily quibbling over words. Accordingly, my delegation would be willing to accept the preambular part as it is. After all, it is only exhortatory in nature.

Turning to Operative Para 1, our position has been that there is no need for a reference to a review of the status of the Human Rights Council by the General Assembly within five years. We would thus have certainly preferred if the second sentence of OP1 be deleted. Nevertheless, if it is to be retained, we believe that we must be open-minded about the proposed assessment that will take place in five years. It should be carried out without pre-judging its outcome. In the circumstances, we accept that your draft, Rev.2, covers the middle ground and is thus fairly well balanced. Accordingly, we will support OP1 being retained as it is and would suggest to you not to change its text.

We have no comments to offer on Operative Paragraphs 2, 3 and 4. As regards Operative Para 5 (b), we would prefer retention of the reference to global thematic review, even though several delegations have objected to it. Nevertheless, we would not insist on our position.

As regards Operative Para 5 (e), we support the concept of universal periodic review and would like to enhance the cooperative nature of the universal periodic review mechanism. We would also support the amendment proposed by USA that such an assessment be "based on objective and reliable information". We would also like to join delegations like Argentina and Singapore in supporting the deletion of the last sentence of Operative Para 5 (e). It would be for the Human Rights Council to take the appropriate decisions on how to proceed after a review has been conducted. Accordingly, it is for that body to work out subsequent modalities. Let us not circumscribe the choice before the Council to the presentation of a Chairman's summary,

As regards Operative Para 5 (f), we would agree with the African Group, CARRICOM and others who have sought its deletion. Our reasons are, however, somewhat different. We are of the view that Operative Para 2 covers promotion of human rights, while Operative Para 3 addresses prevention of human rights violation. Thus, the idea contained in Operative Para 5(f) is already incorporated in Operative Para 3. Moreover, the wording of Operative Para 5 (f) is unclear. After all, why are we being asked to contribute "towards" prevention of human rights prevention, rather than to contribute "to" their prevention? Perhaps the reason is because prevention of human rights violations are a responsibility that essentially devolves on Governments and is to be carried out by them within national jurisdiction. There is little, if anything, that can be done multilaterally and thus not much merit in retaining a text that is unclear. Therefore, we would favour OP 5(f) being dropped.

Turning to the proposal by USA to include a reference in OP 5(f) relating to responding to emergencies. We have no problem with the suggestion and perhaps a separate sub paragraph might address it, if there is a majority view in its favour.

As regards Operative Para 5 (k), the term "United Nations system" at its end is rather ambiguous. Operative Para 1 makes it clear that the Human Rights Council will be a subsidiary organ of the UNGA. Therefore, the link between the Human Rights Council and the UNGA has to be umbilical, like between a mother and her child. All other linkages, including with the UN Security Council, should not follow an automatic route, but be via the UNGA. Accordingly, we would like to propose that the words "to the UNGA, and through the UNGA to the rest of" be inserted before the words "the United Nations system" at the end of OP5(k).

Mr. Chairman, the electoral system of the new Human Rights Council must better ensure that states that are elected to it are there to protect and promote human rights, rather than be there in order to shield themselves from criticism or scrutiny. Therefore, we accept that the text we are drafting should somehow take into account the human rights record of states while electing them. But this should not be done via incorporating wording as contained in Operative Para 8 and Operative Para 9. After all, as regards OP 8, being guided by the highest standards of human rights is something that should be relevant for all UNGA members, rather than merely being restricted to members that are being elected to the Human Rights Council.

As regards Operative Para 9, if Human Rights Council membership will be for three years, as is presently envisaged in OP 10, then during the three year term every country would presumably be looked at through the prism of the universal periodic review mechanism. If so, it would be irrelevant whether a country is a member or is not a member of the Human Rights Council. If a country's turn for periodic review comes after three years, then we need to revisit the entire proposal as we will be looking at violations in a somewhat historical context rather than a contemporary one. For these reasons, we believe that both OP 8 and OP 9 are not necessary. Nevertheless, we can live with both of them if it helps us reach a consensus or makes the entire text more palatable for some delegation or delegations.

Turning to Operative Para 11, I would like to raise a point not made by any other delegation, but which I believe is of relevance. This pertains to the phrases "not fewer" and "no less than" contained in the second and third lines of OP 11. It would be useful to have some degree of certainty about the duration and timings of meetings of the proposed Council. This would be best achieved by a cap on the maximum number of meetings and their duration. Doing so would

provide clarity and certainty, including from the budgetary angle. We have no problem as regards the meeting lasting for six weeks, eight weeks or ten weeks. However, we would certainly like to know in advance precisely how long each session will last and how many times we will meet annually, rather than stating that we would meet not fewer than four times per year. This would also help us know how many times delegates from our capitals would have to visit Geneva and would allow us to plan travel and make appropriate budgetary allocations. We would suggest for your consideration that the phrases "not fewer" and "no less than" contained in OP 11 be deleted.

As regards the convening of special meetings of the Human Rights Council, our preference is that these takes place at the request of a member of the Council with the support of half its membership. Nevertheless, we are willing to accept that it take place with the support of one third of the Council membership. However, we would prefer that the words "or its Chair with the agreement of the Bureau, or the Secretary-General" at the end of Operative Para 11 be dropped. The Human Rights Council is intended to be an inter-governmental body and decisions to convene it in a special session should correctly be taken by and amongst Governments that are its members.

As regards Operative Para 12, we would tend to agree with Norway that till such time as the Human Rights Council agrees on new procedures, the present procedures should apply and be carried forward. This pertains to participation in the Council by Non-Governmental Organisations and others.

Thank you Mr. Chairman.

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