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**REMARKS BY MR. NIRUPAM SEN, PERMANENT REPRESENTATIVE, ON
AGENDA ITEM 9 – REPORT OF THE SECURITY COUNCIL & AGENDA ITEM 122 –
EQUITABLE REPRESENTATION ON AND INCREASE IN THE MEMBERSHIP OF THE
SECURITY COUNCIL AND OTHER RELATED MATTERS – JOINT DEBATE IN THE
GENERAL ASSEMBLY ON NOVEMBER 13, 2007**

Mr. President,

I thank you for convening this joint debate on Agenda Item 9 – Report of the Security Council and Agenda Item 122 – Equitable Representation on and Increase in the Membership of the Security Council and Other Related Matters. Let me begin where the Chairman of the Non Aligned Movement concluded – by congratulating Burkina Faso, Costa Rica, Croatia, Libya and Viet Nam for being elected as non permanent members of the Security Council. Let me also thank the distinguished Permanent Representative of Indonesia for introducing the Report of the Security Council No. A/62/2.

The debate was convened on an auspicious day – Veterans Day. If we continue in this manner, we shall witness many veterans of UN Security Council reform in the years to come as in the years gone by. If words alone could reform the Security Council, then this torrent of words would long ago have comprehensively reformed it. We now must move from words to action.

During the introduction of the Security Council Report, we heard about thematic debates on natural resources and conflict and the setting up of special tribunals. In terms of the Charter, these are matters for the General Assembly and not the Security Council. In terms of Article 29, the Security Council can certainly set up subsidiary organs but it cannot give them legal powers, on the well established legal principle of Roman law *nemo dat quod non habet* – you cannot give what you do not have. The doctrine of implied powers and

subsequent practice are not applicable because the Security Council is concerned with immediate peace and security for which its powers are adequate and the general membership has never specifically approved the practice. The Charter has not been able to bind the Security Council. Non permanent members have not been able to prevent this.

Member states across groups both yesterday and this morning have criticized the Security Council on many issues. They have said that the report lacks analytical content. One of the representatives of the Uniting for Consensus said that there are no substantive elements and the same deficiencies year after year. But then he went on to say that the Council should be expanded only in the non permanent category when non permanent members have not been able to do anything about these deficiencies. In 2002 Singapore did excellent work and for a very short time the report was more analytical but this proved to be a flash in the pan, at best an Indian summer and then things went back to the good or bad old ways. Indeed this year's report also is a collection of facts in the style of Mr. Gradgrind in "Hard Times". Such a total concentration only on facts borders on fantasy. The same representative of Uniting for Consensus said that we should exclude elements that prejudge the final result and then promptly went on to prejudge it by stating that expansion should be limited to only non permanent members. Another member state said that the Council has become virtually inaccessible and most of its sessions are closed. This is a fact. It is also a violation of Articles 31 and 32 of the Charter. In terms of these articles, the Council has the discretion only to determine if the interests of a member state are affected but once this is obvious it has no discretion on not allowing the member state to participate in its proceedings. This is the clear legal meaning of the Charter. Non permanent members have not been able to ensure adherence to Charter provisions.

On Troop Contributing Countries (TCCs), Argentina and New Zealand did excellent work some years back but this also proved short lived. The Council is in breach of the spirit of its own Resolution 1353 because when TCCs are called for a meeting, the resolution concerned has already been finalized and the issues decided upon so that the meeting is proforma. Resolution 1353 in any case is only a partial and belated attempt to implement the Charter. Article 44 of the Charter is clear: TCCs have to be involved in decisions (not merely discussions) which can be interpreted to mean the right to vote. The Council demands obedience (Article 25) and levies troops which the TCCs provide without any real say in their political and military mandate. It will be recalled that this was an essential feature of the feudal and colonial systems and this enables the Council to 'feed where it has not furrowed and keep warm where it has not woven'. Non permanent members have not been able to maintain the Charter balance, ensure implementation of its articles and therefore it is hardly logical to think that

adding more non permanent or even renewable non permanent members can make any difference.

A member state said that the General Assembly is repeating the same criticisms year after year of the Council's working methods. There has been overwhelming criticism of the Council's working methods during this debate. In fact there has been criticism since at least 1949 beginning with the famous Resolution 267 (III) of 14 April 1949. This is a far more radical resolution than the S-5 resolution which only 'invites' the Council to improve its working methods, an invitation the Council has rejected repeatedly. Separating enlargement and working methods has not produced either one or the other. Non permanent members have not and cannot make any difference. Only members elected to the existing permanent category but held accountable through reviews can make a difference. Everything else has been tried for more than half a century and made no difference.

A leading light of the Uniting for Consensus criticized the Security Council for double standards, non analytical reports, closed door sessions, lack of coordination with GA and ECOSOC etc. His criticism was unfair. I may be accused of paradox. The reason I am saying this is that though he expressed his dissatisfaction, he is quite satisfied to continue with his dissatisfaction. He is quite satisfied to propose expansion in the non permanent category and thereby let the problems he has mentioned remain or even increase. He is content to make statements every year and be satisfied with the euphonious sound of this annual ritual including this debate rather than urgently get down to the concrete business of negotiations aimed at transforming the Security Council. The UFC talks of representation but not representation among the permanent members, of checks and balances but nothing to check or balance the permanent members. The leading light of the UFC spoke of democracy (but not of democratizing the permanent category). In any case he reminded me of the words of Lycurgus, the great law giver of the Spartans: he told somebody, "Do you first set up a democracy in your home". Democracy, like charity, should begin at home. However, let us consider the question of democracy. Another member of the UFC asked if democracy meant leaving the winner in perpetuity. He forgot to ask if democracy means leaving the untrammled power of a few untouched in perpetuity. Another representative of the UFC said that repeated elections ensure accountability. I would be the first to agree that this is a necessary condition. But it is emphatically not a sufficient condition. Are the non permanent members accountable and, if so, to whom? Even when regional groups have a clean slate, they often do not find them accountable. The NAM has not found its representatives in the Council accountable many times. Therefore separate action on accountability is needed. Elected permanent members held accountable for ensuring Charter balance and specific new working methods through a sustained review mechanism and even some

amendment to Chapter II to bring in the right of recall (an old democratic principle) can both make a radical difference and ensure accountability.

Some spoke of the need for the GA to inspire the Council. There is only one occasion when it did so and then also partially on working methods and this was through its Resolution 11 (1) of 24 January 1946 on the process and method of selecting the Secretary General. There is a whole chapter in John Bolton's "Surrender is not an Option" which shows how the selection was based on a national agenda, private agreements, promises, bypassing in real terms not just the non permanent members but even one or two permanent members. In short, the picture that John Bolton paints of the Council's selection process is the most dismal and dysfunctional imaginable. The crushing irony and paradox is that the strongest exponent of the Council's right to decide its own working methods and opponent of GA oversight and role has proved the necessity of GA oversight and role. He has validated the GA's earlier attempt to play a concrete role in the SG's selection process.

While the GA is adapting to ever lowering expectations, the Council remains dysfunctional. Earlier its reach exceeded its grasp; today its grasp exceeds its reach. Earlier the content was more than the phrase; today the phrase is more than the content. Earlier the substance was more than style; today the style is more than substance. Incidentally, John Bolton on page 255 of his book states that "I did not think that the UN Security Council is doing many of its jobs very well" and on page 344 he admits that the Council is 'massaging problems rather than resolving them'. This is not my phrase, it is his, that problems are being massaged rather than resolved.

Let me now turn to steps that can be taken now and let me begin with Resolution L69 on which many have spoken. Before that permit me to thank some permanent members and members from different regions who have supported expansion of permanent membership as well as the claims of the G-4 and India. The reason why the L69 Resolution was introduced is well known. In spite of repeated efforts, because of the opposition of a tiny minority of countries, it had not been possible to clearly state in the mandate given to the President of the Sixty Second Session of the GA to conduct concrete, result oriented inter-governmental negotiations on the basis of the progress achieved in the Sixty First Session and the positions and proposals of the Member States. L69 led to this unanimous mandate. As a member state (a former facilitator) said, we have reached the bridge and now we have to find the best way of crossing it. If we do not find this way, I am afraid the bridge will remain a 'bridge too far'. One of the permanent members made two important points and we agree with both of these - the first being that any reform that does not address the concerns of Africa will not get our endorsement. As the Bible puts it, the first shall be last and the last shall be first. It is about time that we gave this

practical shape in the UN. A continent that has borne so much of the burdens and sorrows of mankind should assume its place of dignity in the Security Council. The second point is the launching of intergovernmental negotiations and defining the basic framework and content so that we know what will be negotiated on. It is precisely with this in mind that we thought that we could assist the President on doing precisely this through a small text that we circulated to all the African countries (since some of them had said that they would like to be consulted before any action is contemplated) and to some other countries. Some member states have interpreted what Africa and Small States, including SIDS, want. It may be better, for a change, to listen to what they are saying. Many of their representatives, as well as states from other regions, have clearly said in this debate that the practical way is to determine through an objective and transparent method, the elements from all the positions and proposals before the UN, that command the largest support. These elements could also be grouped in alternative packages which could be tested through an objective and transparent method – many Small states and others have referred to questionnaires and straw polls. Another member state (a former facilitator) clearly said that we need a text on which to negotiate. He also spoke of a particular member state as having multiple identities. He did not mention one of these – which is that of an inquisitor.

A member state who took some colleagues from the African group to task reminded me of Col. Pickering's words in the Broadway musical "My Fair Lady": "I'd rather have a new edition/Of the Spanish Inquisition". He excoriated his colleagues for cosponsoring L69 which he said circumvented the Ezulwini Consensus. It is for the African Group to decide on how much proprietary right he has on Africa; we are more interested in how little proprietary right he has on logic. By speaking of expansion of existing permanent members, L69 leaves implicit all their rights and privileges. On the other hand, he spoke approvingly and without comment of the interim model that circumvents both permanence and the veto. He thereby circumvented his own circumvention. He went on to speak of the necessity of well above two-thirds support on which the Ezulwini Consensus is silent. He then spoke of reaching a common understanding between AU, G-4, UFC and S-5 but without touching the Ezulwini Consensus to which he is totally committed and without negotiations to which he is totally opposed. The only way to achieve this understanding would be through a miraculous and mystical communion of minds. As I have said many African states wanted prior consultation. This member state's position is that if we do not consult them before hand, it is bad; if we do consult them before hand, it is also bad. In short, the best thing is to do nothing. He also spoke of representation of civilizations. And we have high respect for all civilizations. His is an ancient civilization and one of its elements was the art of very long term embalming and that is why we have what we today call mummies. I hope he was not suggesting this civilizational art of embalming and mummifying the UN

Security Council reform. The mandate is clear – it is for negotiations and not further consultations.

The warmth of debate is a part of hospitality 'like the warmth of the fire'. Some friction is necessary for optimal forward movement. We know this from classical physics. The ship needs the friction of the water to move forward; the train would not run without the friction of the sliding of its wheels on the rails. But if friction is replaced by obstruction, the ship and the train would rust and rot instead of moving forward. The United Nations has been compared unfairly to the Tower of Babel because the diversity of languages and opinions is a source of strength and life giving. But if we misconstrue a clear mandate for negotiations as being for consultations then it would become a real Tower of Babel in the sense of language becoming babble. I can understand that negotiations may be a difficult prospect for some because they mean negotiating through multiple tensions but inaction is politically unacceptable and morally suspect. We have to urgently find a practical way that is objective and transparent of implementing a clear mandate.

All periods of change require an increased charge of energy and I am sure that the General Assembly would be able to provide such energy to comprehensively reform and transform the UN Security Council.

I thank you, Sir.

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