



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 on 12th September 2008

Mr. President,

I thank you for this meeting. You said that some members have been inspired by your words to inscribe for the debate today. I have been similarly inspired but since I have already inscribed, I would be perfectly happy to inscribe again and speak a second time. You also quoted a passage on the nature of the English language concluding that it is made the wrong way when it says that "one's nose runs and one's feet smell". However, logically, a second conclusion could be that the person is made the wrong way. This is applicable to the language of the OEWG report: it is not the language but the report that is made the wrong way. You had also referred to Resolution 48/26 which set up the OEWG saying "consider all issues". Actually the Resolution says "consider all aspects" which makes clear that the OEWG is to discuss the theoretical and conceptual dimensions of reform and not anything relating to the substance of reform. To us, therefore, there is clarity, not ambiguity. You spoke of constructive ambiguity. Even if there is ambiguity here (we do not think so), it is destructive ambiguity. The Resolution is not written in stone and with the experience of fifteen years, we should be able to introduce clarity.

I shall try to be as brief as possible and focus only on the Recommendations of the Draft Report. Burning problems in the real world are increasing and the UN's irrelevance to addressing these is in step with this. For the last fifteen years the OEWG has been fiddling. We are resolved that this state of affairs should end. We are disappointed that your advisors, Mr. President, have underestimated the seriousness of our purpose and the firmness of our resolve and misunderstood completely the problem as this text demonstrates. As we have repeatedly said, the problem is not one of drafting or finessing differing positions but of a fundamental conceptual gap. The resolution setting up the OEWG spoke only of considering aspects relating to Security Council reform. The reason why no progress has been made especially in this session is because the consultative role of the GA was deliberately confounded with its negotiating role. The consultative role can continue to be exercised through the OEWG but the negotiating role has to be through the informal plenary of the General Assembly. While the one can benefit from the other in a general sense, there can be no formal or specific linkage between the two roles. Such a linkage remains in this text. Had there been no such linkage, we could even accept stronger formulations on general agreement and seven principles since these would be applicable only to the OEWG. Unfortunately, such a specific linkage is established twice, in paragraphs (c) and (f) respectively.

You spoke of symbiosis rather than dichotomy between para (c) and (d). Actually there is dichotomy and (c) as it now stands, would certainly delay and potentially destroy (d). Sub-para (c) appears to indicate that framework, modalities and negotiables of negotiations have to be determined by the OEWG. This goes beyond decision 61/561 and gives a new and additional mandate to the OEWG that is unacceptable. Once negotiations start in the informal plenary of the GA, there is no further need to define framework/modalities in any case. If there are any procedural issues to be defined, this can be done as part of the negotiating process, as is the case for all other intergovernmental negotiations. as regards negotiables, these will be determined based on Member States proposals during the negotiating process. Further, once we have para (f) on the future work of the OEWG, why should there be another similar para (c).

This makes this report unacceptable unless the following changes are carried out:

We cannot accept a partial reference extracted from Resolution 53/30 mentioning only "importance of reaching general agreement" while omitting to refer to the operative para of that resolution which states that no resolution or decision would be adopted without the affirmative votes of at least two-thirds of the members. Moreover, we cannot take note of the seven principles which were not negotiated. We hence call for a deletion of preambular paragraphs 2 and 3.

Through "framework, modalities and negotiables of intergovernmental negotiations" a specific linkage as mentioned earlier is established and therefore we call for a deletion of paragraph (c).

Paragraph (d) is acceptable but we can neither privilege the 61st and 62nd session nor postpone the negotiations to beyond the main part of the 63rd session and therefore we call for replacing "in particular" by "including", replacing "but not later than March 2009" by "before the close of the main part of the 63rd UNGA session (third week of December 2008)" and deleting the entire concluding lines beginning with the phrase "seeking a solution".

We think that there are other key issues such as increasing the representation of developing countries, and ensuring the access of landlocked, island and small states which deserve specific mention and therefore we call for a deletion of e (ii). Similarly there are other documents that are of importance and therefore we also call for a deletion of e(iii). In para (f), there is a second attempt at a linkage and therefore we call for a deletion of the phrase "to this end" and the words "the progress achieved from the", since the only progress achieved in the last session represented by unanimous decision 61/561 which has not been implemented.

Our definition of general agreement in practice is certainly strange. At the last meeting of the OEWG, well above two thirds of those who spoke supported our positions. General agreement means: ignore and set aside the views of two thirds of those who speak and concentrate and reflect the views of the one third. Incidentally this applies also to the implicit and explicit mentions of the report of the Task Force

which when it was discussed was rejected both by representatives of L69, G-4 and UFC (the then PR of Pakistan at the end specifically stated that it has been "rejected by both sides"). General agreement presumably signifies interpreting this to mean that everybody accepts the report.

Let me finally turn to consensus. Two of our distinguished colleagues at the last two meetings claimed that PBC and HRC were set up by consensus and general agreement. This is factually incorrect. The point is that they were set up by vote. The authoritative treatise on the rules of procedure at the UN and at intergovernmental conferences by Robbie Sabel (Cambridge University Press, 2006 edition) clearly says that the UN model rules propose that consensus or general agreement or otherwise without a vote are synonymous terms. A resolution of the ECOSOC in 1974 cited by him define consensus as "general agreement without vote". Feltham another authority writes that "consensus is based on an assumption by the presiding officer of what is sufficiently self evident"..... "to which a minority of representatives object but would rather not be seen to object through the publicity of a vote". Another authority Szasz who is cited defines consensus as "taking a decision only when no participant opposes it so strongly as to insist on blocking it". Clearly therefore PBC and HRC were not set up by a consensus. In the same sense there is no consensus on the report today in any of the meanings of the terms because we and many of our colleagues formally object to the report, we oppose strongly enough to block it and we are prepared even for the publicity of a vote. We are determined that this charade of fifteen years, of movement without purpose, of the fruitless and the trivial, masquerading pathetically under the name of progress should come to an end. I am circulating a copy of our amendments.

I thank you, Sir.

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