



***Some parts adapted from extempore remarks***

Remarks by Mr. Nirupam Sen, Permanent Representative, at the meeting of the Open Ended Working Group on 26 January 2009

At the outset, I wish to thank you, Mr. Chairman, for organizing this meeting.

At our last meeting on 19 January 2006, one UFC member termed GA Decision 62/557 as "contentious". This is indeed shocking – it only demonstrates that while the UFC uses the mantra of consensus, it does not respect decisions actually taken by consensus. "Good faith" appears to be limited to a slogan. Similarly, there seems to be no respect for the GA Rules of Procedure which enjoy consensus: the attempt is to impose rules that suit a minority. It is, therefore, strange to suggest that the only proposal is the Canadian proposal, as was done by some members of the UFC. There is a proposal that was adopted, that exists and that enjoys consensus – the established GA Rules of Procedure.

It is clear that this lack of respect for consensus decisions has been guiding UFC's efforts in presenting documents whose contents have been categorically rejected by the membership. Using terms like principles, procedures, modalities, objectives, etc. cannot hide the real attempt to resuscitate old and rejected ideas.

I had commented on the paper circulated by Canada and Malta at the last meeting. Our views have only been strengthened by a more detailed reading of the document. Let me reiterate – this document can only be seen as an attempt to reopen unanimous Decision 62/557. The document itself is based on an earlier paper presented by Argentina and Spain. In fact, it is interesting how the UFC attempts to show that various ideas have emerged during these OEWG meetings. However, the reality is that it is the UFC that is periodically re-circulating its rejected ideas, while the overwhelming majority wants intergovernmental negotiations to commence urgently.

I commented last time on the Canada/Malta Paper immediately after it was presented. It is astonishing that those who propose the principle of democracy, oppose voting. Do they not vote in their democracies? Again we have such gems like ensuring full ownership and ensuring the full accommodation of the interests of all regions. All GA Decisions have the ownership of the General Assembly members. The African Union is the only region that has articulated its interests as a region on Security Council reform. No other region has been able to do this. In this sense, one cannot accommodate what does not exist. The principle is therefore part tautology, part absurdity. "Negotiated solution" was rejected on 15 September 2008 not because anybody is against negotiations but because after prolonged negotiations that would widen to the maximum extent the area of agreement, a vote may become necessary. The final step may not be possible without this because of the wide gulf between two opposing viewpoints.

One of the Permanent Members said that the objective of the reform is better representation, specially of developing countries. We agree with the sentiment but disagree with expressing only a part of the objective. We cannot be selective. It is also not necessary to discuss the objective of the reform. It was adopted at the highest level by consensus in the World Summit Outcome Document of 2005 which says that the Council should be reformed "in order to make it more broadly represented, efficient and transparent and thus to further enhance its effectiveness and the legitimacy and implementation of decisions." One cannot also selectively use historical memory or forget the past. In December 1992, the General Assembly invited member states to present their views on reform. One hundred responded. The overwhelming majority wanted to make the Council more representative; increase the influence of the South and break the monopoly of Permanent Members. In the OEWG at that time, a majority was clearly in favour of increasing Permanent Members. One is therefore forced to conclude, is that the only reason for discussing the objective of the reform is to go on discussing the objective till, through sheer exhaustion, you make it concise with your objective.

Our view is shared by most other delegations – let me stress that the forty countries of the L.69 group have formally conveyed in writing to the PGA that they cannot accept the introduction of concepts in the papers submitted by the UFC as these amount to reopening Decision 62/557 under the guise of discussing framework and modalities. Thus, we do **not** agree with any of the proposals presented by the UFC. We hope that this would be clearly reflected in your presentation to the informal GA plenary.

Let me also clarify our position on how the work of the OEWG is to be concluded. The last part of para (c) of Decision 62/557 clearly mandates the Chair of the

OEWG to present the results of the consultations to an informal GA plenary before 1 February 2009. It does not talk about an OEWG report, as some of our UFC colleagues have emphasized. In any case, given the lack of consensus, there can be no report of the OEWG. Rather, you are mandated to convey to the informal GA plenary the results of the consultations. Presumably, this would be through an oral statement by you. We agree with one of the Permanent Members and other members that the presentation should be oral. The logical basis of this is that there is no agreement and therefore no justification for a written presentation. The result can be summed up easily. Some members of the UFC periodically re-circulated ideas rejected on 15 September and, not surprisingly these were again rejected. That is the sole net result of so many weeks of consultations. Most delegations feel that GA rules of procedure are sufficient to cover framework and modalities of the intergovernmental negotiations.

With the above action by you, Mr. Chairman, no further action of the OEWG is required. In any case, as we have been stressing for some time, commencement of intergovernmental negotiations is not dependent in any way to the work of the OEWG. Let me recall the term "so far" in para (d) of Decision 62/557, which makes it abundantly clear that the GA plenary would only take note of what the OEWG has done till September 15, 2008; it is not bound to take note of what the OEWG does subsequently. One of the members of the UFC asked why para (c) at all figures in Decision 62/557 if the OEWG is not supposed to agree on framework and modalities. The reason is clear: in terms of this Decision, the OEWG is free to come up with ideas; if these are useful, they would be taken on board; if not, not.

Some delegations have highlighted that negotiations will be held in "informal" plenary of the GA, rather than in "formal" plenary – as if to impute that the negotiations are not really formal or serious. This is yet another futile attempt to delay and complicate the process of UNSC reform. As we are all aware, all negotiations are held in the informal GA Plenary, and in fact on most occasions in "informal informals". This does not detract from the seriousness and importance of such negotiations. There are clear rules and procedures that guide these processes, and, most importantly, these negotiations continue to the UNGA negotiations. It is abundantly clear that negotiations on UNSC reform in informal plenary of the GA are under the authority of the UN General Assembly.

The UFC is therefore simply trying to obstruct and delay negotiations through these artificial distinctions between informal and formal plenary. One of the UFC members also said that in informal plenary there are no records and no voting, he should look up the repertory of practice the Conference on the Law of the Sea did maintain records for informal plenaries but carried a different number. The informal plenary also conducted a secret ballot regarding the seat of ITLOS and

International Seabed Authority which was then included in the final text of the convention.

During the discussion, I was often reminded of what the political philosopher Thomas Hobbes once said: "If the theorem of Pythagoras is against your interest, you would strenuously deny its truth". This is exactly what the UFC has been doing. It was amusing to hear one member of the UFC speak of others not understanding the question and therefore not knowing the answer in an examination. It is quite clear that if there is one examination that the UFC would fail, it would be an examination in geometry. There is little point in deluding oneself, trying to delude others, and by trying to delude others further delude oneself.

The time has now come to commence intergovernmental negotiations. Let us not shy away from this unanimous decision, or attempt to shackle the negotiations before they even start. As we have seen for the last so many years in the OEWG, further procedural discussions cannot move the process forward. The meetings of the OEWG during the 63<sup>rd</sup> session have clearly demonstrated the futility of further efforts in this body. We therefore urge you, Mr. Chairman, to fully implement Decision 62/557 and convene an informal GA plenary to commence intergovernmental negotiations.

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