INTRODUCTORY NOTES

The focus of this study is on 'external interventions' in the Sri Lankan conflict – those ostensibly intended to pressurise both the government of Sri Lanka as well as the LTTE to abandon violent confrontation and seek a negotiated settlement of the conflict. Such pressures on the government take several forms, applied with varying levels of intensity and insistence by the different countries with which Sri Lanka maintains close relations – advice and moral persuasion, economic aid being made conditional upon the resumption of 'peace negotiations', prohibitions on the sale of arms, providing lavish support to local NGOs that claim to be engaged in the 'peace effort', and, above all, threat of action as envisaged in the emerging doctrine of 'Responsibility to Protect' ('R2P') against alleged violations of human rights. To the LTTE, with its proclaimed adherence to the belief that terrorist violence is a legitimate instrumentality of 'liberation struggles', and ranking as it does among the most violent terrorist outfits in the world, the charge of human rights violations has remained largely inconsequential except where it is given concrete expression in sanctions and proscriptions. To the Sri Lanka government, being placed at par with the Tigers in accusations of human rights violation is, of course, a damning indictment and a humiliating diminution of status in the community of nations.

During the period covered by this study (2006-2007), the secessionist campaign of the LTTE suffered major setbacks, exacerbating its earlier losses caused by the Tsunami and the 'Karuna revolt'. The period has also been featured by an extraordinarily sharp upsurge of external "humanitarian intervention" in the Sri Lankan conflict, the intensity of which has had a remarkable correspondence with the tenor and tempo of LTTE failures. There are strong indications of this concomitance representing a causal connexion in the sense that the outcry against alleged human rights violations in Sri Lanka is, at least in part, the product of a well orchestrated attempt to rescue the LTTE from impending doom.

The study begins with a probe into the changing perceptions concerning human rights as postulated by the United Nations, attempting to contextualise such postulates both in the efforts of human rights activists to 'globalise' humanitarian ideals as well as in the

counterpoising desire on the part of most States to safeguard national sovereignty. In the next section external interventions which Sri Lanka has encountered in the recent past are placed under critical scrutiny. This is followed by a detailed 'case study' of a multi-pronged human rights intervention in an episode of the Sri Lankan conflict.

1. Human Rights: Precept and Practice

The proclamation of the 'Universal Declaration of Human Rights' by the UN General Assembly on 10 December 1948 represented a major landmark in the evolution of perceptions pertaining to individual rights and freedoms in the context of the prevailing conceptualisations of the 'sovereignty' of nation-states. The 'Covenants' on Economic, Social and Cultural Rights and on Civil and Political Rights, adopted by the UN General Assembly in 1966 (intended to take effect from early 1976), along with their 'Optional Protocols' – one empowering the 'UN Human Rights Committee' established by the covenants to entertain direct submissions from individuals on alleged human rights violations, and the other imposing restrictions on the death penalty – were among the other major instruments intended to elaborate and reinforce the principles enunciated by the 'Universal Declaration'. The adoption by a UN conference held in June 1993 of a set of resolutions named the 'Vienna Declaration and Programme of Action on Human Rights' represented a further advancement of the UN role in the promotion and protection of human rights. Apart from these basic agreements, there are many other UN resolutions, more specific in scope, that relate to human rights.

When the range of 'Rights' covered by the thirty Articles of the 'Universal Declaration' is placed under scrutiny against the backdrop of geopolitical conditions that prevailed in the early aftermath of the Second World War, it appears that the related stipulations represented a set of ideals formulated by the twenty-six initial signatories of the 'United Nations Charter' in 1945 which they believed the community of nations must strive to achieve. It was prescriptive in intent, and also contained an explicitly restrictive statement that "nothing in it shall authorise the UN to intervene in matters which are essentially within the domestic jurisdiction of any State", except upon a Security Council finding of a "threat to peace, breach of peace or act of aggression". Further, while only a few of its stipulations such as those on right to life or freedom from torture were absolute and categorical, the large majority appears to have been designed either with a measure of flexibility or with explicit or implicit qualifications and conditionalities. Perhaps the most clearly spelt out among such qualifications is found in Article 29 according to which:

> "(I)n the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare of a democratic society".

In Article 29 there is, thus, an implicit subordination of rights of individuals to what may be referred to as "collective rights" of the community – i.e. "the rights and freedoms of others" – albeit with an element of vagueness in the nature of the supremacy accorded to the latter, as indicated by phrases such as "just requirements" and "democratic society" which it contains.

Throughout the Cold War era, even during the heyday of decolonisation in the 1950s and the '60s, the extent to which the rights of individuals as postulated by the 'Declaration' could legitimise anti-systemic or secessionist revolt ("liberation movements") within sovereign nation-states hardly ever figured at the forefront of issues discussed, debated and acted upon by the UN. Thus, the two 'Covenants' of 1966 were essentially elaborations of the 'Universal Declaration', albeit with an enhanced focus on international collaboration in efforts at promoting political, economic, social and cultural rights. From evolutionary perspectives on UN involvement in human rights, however, the 'Covenants' did represent certain advances. For instance, the pride of place they accorded to the right to self-determination as an inalienable "universal right" had an element of novelty although contextually it was mainly an expression of the impatience of the world body with the remaining enclaves of colonial dominance. The two Covenants also contained recommendations on what could be considered in retrospect as a prototype of a UN-controlled enforcement apparatus in the form of a 'Human Rights Committee' consisting of 18 members elected by their signatories.

Despite these advances, except in the case of a few 'flash-points' perceived by the Security Council as serious threats to peace – represented by its perfunctory involvement in the Kashmir dispute, its backing of US interests during the Korean War, its intervention in the Katanga uprising in the Republic of Congo, and its sanctions against *some* of the more virulently oppressive regimes such as those of Pol Pot in Cambodia, Idi Amin in Uganda and 'White' South Africa – the United Nations generally tended to refrain from direct involvement in situations of internal revolt especially those under pro-western autocratic regimes, even when they were featured by large-scale human rights violations.

It was only after the commencement of trends towards disintegration of the 'bi-polar' geopolitical power configuration in the late 1980s alongside the on-going globalisation of the neo-liberal paradigms of development that the human rights dimension of internal revolt in sovereign nation-states began to attract serious attention. Special impetus to the search for rationalisations and modalities of multilateral external intervention in conflicts within national entities was provided in the early 1990s with the commencement of secessionist conflagration in the multi-ethnic nation-state of Yugoslavia – the first major post-World War conflict in Europe with which mass violence including ethnicity-based genocide was associated. In the United Nations, the most significant outcome of this search was the 'Vienna Declaration' of 1993.

The Vienna Declaration, like the 'Universal Declaration' upon which its scope was supposedly based, pertained to an amazingly wide range of concerns – political, economic, social and cultural

– almost too numerous for specific mention. This lengthy documentation was, in fact, an attempt both to synthesise and update as comprehensively as possible the content of a large number of existing UN declarations and protocols as well as to acquire for the UN supra-national authority in matters concerning human rights. It is important to note, however, that several clauses of the 'Vienna Declaration' placed special importance for any intervention aimed at safeguarding human rights to conform to the relevant stipulations of both the 'Universal Declaration' as well as the Declaration on 'Friendly Relations between States'. One of the six 'basic principles' enunciated by the latter reads as follows:

- No State or group of States has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other State. Consequently, armed intervention and all other forms of interference or attempted threats against the personality of the State or against its political, economic and cultural elements are in violation of international law.
- No State may use or encourage the use of economic, political or any other type of measures to coerce another State in order to obtain from it the subordination of the exercise of its sovereign rights and to secure from it advantages of any kind. Also, no State shall organize, assist, foment, finance, incite or tolerate subversive, terrorist or armed activities directed towards the violent overthrow of the régime of another State, or interfere in civil strife in another State.
- The use of force to deprive peoples of their national identity constitutes a violation of their inalienable rights and of the principle of non-intervention.
- Every State has an inalienable right to choose its political, economic, social and cultural systems, without interference in any form by another State.

Perhaps the most far-reaching component of the Vienna Declaration was encapsulated in its recommendations to the UN Secretary General for an enhancement of the resources, powers and functions of the 'UN Centre for Human Rights', and the establishment of an office of 'High Commissioner for Human Rights'. These recommendations were endorsed by the UN General Assembly, and a 'High Commissioner' holding the rank of Under-Secretary General was appointed in December 1993. Thereafter, over almost four years, in the excessively bureaucratised UN setting, there was a curious situation of three institutional structures operating exclusively in the arena of human rights – (a) the **'UN Commission on Human Rights'** established by Resolution 5 (1) of the Economic and Social Council of the UN in 1946 and consisting (by the mid-1990s) of representatives of 53 member-States of the world body; (b) the **'UN Centre for Human Rights'**, elevated in its status and functions on the basis of the Vienna Declaration, and (c) the newly established office of the **'UN High Commissioner for Human Rights'.** Although the amalgamation of the 'Centre' with the office of the 'High Commissioner' in September 1997 to function thereafter under the overall charge of the 'High Commissioner' did

bring about a measure of procedural and operational clarity, there continued to remain much discordance between the 'Office of the High Commission' and the old 'UN Commission on Human Rights'. In fact, there emerged between these two institutions pronounced divergences of perception and approach. While several member States of the 'Commission on Human Rights' were being accused by the 'High Commissioner' of gross violations of human rights, the latter was frequently being charged by member States of the UN (including those of the Commission on Human Rights) of selectivity and bias in its pursuit of human rights violations.

The formal recognition and importance accorded by the Vienna Declaration to Non-Government Organisations (NGOs), at least from the viewpoint of specific focus, is yet another of its novelties. Paragraph 38 of the Declaration stated as follows:

> "The World Conference on Human Rights recognizes the important role of non-governmental organizations in the promotion of all human rights and in humanitarian activities at national, regional and international levels. The World Conference on Human Rights appreciates their contribution to increasing public awareness of human rights issues, to the conduct of education, training and research in this field, and to the promotion and protection of all human rights and fundamental freedoms. While recognizing that the primary responsibility for standard-setting lies with States, the conference also appreciates the contribution of non-governmental organizations to this process. In this respect, the World Conference on Human Rights emphasizes the importance of continued dialogue and cooperation between Governments and non-governmental organizations".

An interpretation of the contents of this paragraph of the Vienna Declaration should involve our taking into account several crucially relevant, but often ignored, facts concerning NGOs, one of which is that, trans-national NGOs based in the 'West' such as, say, 'Amnesty International', 'Human Rights Watch', 'International Commission of Jurists' or 'International Crisis Watch', sustained as they are by grants from western governments, and private sources such as corporate donors which represent the interests and perceptions of the 'West', and operating as they do with massive resources at their command, are the principal beneficiaries of the recognition accorded by the Declaration. Apart from all else, it is the NGOs of this type that were provided the means of arrogating for themselves elevated status, formal authority and a measure of protection from the repercussions of whatever blunders they piously commit in the name of human rights without any reciprocal accountability except to their donors. Again, when the NGO spectrum functioning within the confines of each country (especially in poorer countries like Sri Lanka) is placed under scrutiny, one could find, at the one end, thousands of indigenous grass-roots organisations, functionally relevant in their capacity to cater to genuine needs including those that pertain to human rights, which hardly ever receive formal recognition from any quarters, and at the other end of the spectrum, the NGOs that do attract attention and support

from outside which, typically, operate under the control of individuals drawn from elite levels of society who derive abundant personal benefits from the external support their organisations receive, and, despite pretences intended mainly to entice benefactors, have hardly any links with or relevance to the ordinary people at the lower strata of society. This category of organisation also stood to benefit from the elevated status accorded by the 'Vienna Declaration'. A further observation of contextual relevance is that a proliferation of this latter type of NGOs has occurred in many 'Third World' countries (especially in the so-called "soft states" like Sri Lanka and Bangladesh) since about the early 1980s, and that, these survive, flourish and enhance their privileged status primarily because they serve as acolytes of the international NGOs and private funding agencies.

There is, in addition, the highly contentious issue of whether the prohibitions imposed by the UN Declaration of 1970 on 'Principles of International Law concerning Friendly Relations and Cooperation Among States' on intervention by a "state or group of states" in the affairs of another state applies to supra-national organisations. It has been argued – as, indeed, it was in specific terms during the NATO bombing of Serbia – that organisations such as the NATO, being "supra-national", are not bound by this Declaration. Whether such a dialectic could be used for claiming a similar exemption for international NGOs (some among which have persisted in violating the prohibition on "the use of economic and political measures to coerce a State in order to obtain from it the subordination of the exercise of its sovereign rights") remains unresolved.

The establishment of the office of 'High Commissioner for Human Rights' with its procedural and functional relations designed in a way that would enable it to bypass the 'Commission on Human Rights', along with the recognition and status formally accorded by the Vienna Declaration to NGOs in human rights concerns, as explained above, provide grounds to speculate whether these measures were prompted by the discordance which prevailed between the exiting 'Commission' (consisting of representatives of 54 States including those with autocratic regimes having strained relations with the 'West', and increasingly assertive in its responses to charges of human rights violations against certain member States of the UN), and the 'Centre for Human Rights' (a body dominated by appointees with a proven record of commitment to the ideal that all human rights are universal and uniformly applicable to all situations). This speculation derives considerable strength from the post-Cold War records relating to UN intervention in internal conflicts that were deemed to involve unacceptable levels of human rights violations.

A statistical summary of Security Council resolutions that initiated interventions in intra-State political turbulences (Table 1) shows that, with the end of the Cold War in the late 1980s, the Security Council assumed a far more proactive role in relation to conflicts, especially those that had pronounced elements of rivalry between ethnic groups. This was largely a consequence of the Security Council being less encumbered than in earlier times by the exercise of veto powers

of its five permanent members. Thus, there was, from about the early 1990s, an almost sudden upsurge in the number of Security Council decisions to sponsor various types of mandated action aimed at resolving conflict and curbing rights violations.

Table 1 - UN Interventions in Internal Conflict

(based on the year in which the Security Council resolution was passed)

Intervention Type	Up to the end of 1989 (number of resolutions)					1990 to 1995 (number of resolutions)				
	Africa	Asia	Europe	Latin America	**Total**	Africa	Asia	Europe	Latin America	**Total**
1. Special envoys/ Fact-finding Missions	0	0	0	0	**0**	12	8	3	7	**30**
2. Peacekeeping Operations/ Use of force	3	4	1	2	**10**	7	3	8	10	**28**
3. Economic sanctions/ Arms embargoes	2	0	0	0	**2**	4	0	8	3	**15**
4. Judicial measures	0	0	0	0	**0**	1	0	12	0	**13**

Based on Chantal de Jonge Oudraat, 'The United Nations and Internal Conflict', in Michael E Brown ed. (1996) *The International Dimensions of Internal Conflict*, MIT Press: 489-536

However, the problem, especially from the viewpoint of those at the forefront of promotion of such intervention (which included several international NGOs operating on the basis of the premise that national sovereignty is an anachronic concept), was that the actual implementation of such decisions encountered intense dispute and dissention not only within the 'Commission on Human Rights' but also among the general membership of the UN. It soon became evident that this had two adverse consequences – the inability of the Security Council to muster adequate resources and other forms of support for implementing its resolutions (except the dispatch of 'Special Envoys' or 'Fact-finding Missions', to trouble spots) and, even more importantly, the frequent failure of such interventions to achieve their objectives due in part to deficiencies in the understanding of the bewildering complexity of most conflicts and, in part, to the lack of cohesiveness that featured the modalities of intervention. In conflagrations fuelled mainly by the lingering effects of super-power rivalry – for example, those of El Salvador, Nicaragua, Mozambique and Namibia – the UN did contribute to the diffusion of tensions, although the basic cause for the reduction of violence was the dissipation of Cold War impulses**. But the more general experience in the early 1990s was that UN interventions resulted in intensifying and/or prolonging conflict, worsening human rights violations, and engendering resentment among member States regarding the duplicity of the major western powers,**

notably the United States, in promoting, avoiding or undermining intervention, depending on the 'self-interest' dimension in the different conflict situations. These negative features were vividly displayed in Burundi, Rwanda, Liberia, Somalia, Cambodia, Iraq (Gulf War) and, to a large extent, Serbia & Montenegro, Bosnia and Croatia.

The amalgamation of the 'UN Centre for Human Rights' with the office of the 'UN High Commissioner for Human Rights' in 1997 represented an elevation of status, functional capacity and authority of the latter. It also made interaction between the UN General Secretary and the 'High Commissioner' less encumbered by procedures involving the 'UN Commission on Human Rights' and thus enhanced the influence of the 'High Commissioner' on deliberations of the UN Security Council. In assessing the desirability of this change, the fact that the latter body, despite its admittedly controversial record of performance, was far more representative of the United Nations Organisation than the office of the 'High Commission' should not be overlooked.

On 15 March 2006 the UN General Assembly adopted a resolution (60/251) to replace the existing 'UN Commission on Human Rights' with a new **'Human Rights Council'**. According to its preamble, the General Assembly recognised the need to preserve and build on its achievements of the 'Commission' and to redress its shortcomings. The preamble also contains the interesting statement that the setting up of the 'Council' represented (among other things) the recognition of "the importance of ensuring universality, objectivity, and non-selectivity in the consideration of human rights issues, and the elimination of double standards and politicization". This was, of course, a tacit admission that there had been "double standards" all along.

Since this institutional change was undoubtedly an attempt to alleviate the adverse effects of the discordances between the 'Commission' and the 'High Commissioner' and to resolve at least some of the grievances on both sides of the divide, the main differences between the two institutions deserve to be placed under scrutiny.

First, the new 'Council', intended to have a 5-year trial period at the end of which its performance was to be reviewed by the UN General Assembly, is not significantly different from the 'Commission' in respect of composition. While the 'Commission' at the time of its final session in 2006 consisted of elected representatives of 54 States, the 'Council' was designed to consist of representatives of 47 member-States elected directly and individually by secret ballots by the majority of the members of the General Assembly (Section 7).

Since the disbanded 'Commission on Human Rights' was required to meet only in annual sessions (with supplementary sessions as and when necessary), the stipulation in Paragraph 10 of the Resolution 60/251 that the "Council shall meet regularly throughout the year and schedule not fewer than three sessions per year, including a main session, for a total duration of no less than ten weeks, and shall be able to hold special sessions when needed at the request of a Member of the Council with the support of one-third of the membership of the Council", could be regarded as a significant departure from past practice. At least theoretically this would facilitate

more regular involvement of the Council in human rights concerns including that of acting as watchdog of the functions of the 'High Commissioner for Human Rights'.

In respect of the broad delineation of functions, no major change appears to have been envisaged by the replacement of the 'Commission' with the 'Council'. Section 5 mandated that the 'Council' should assume the role and responsibilities of the (outgoing) 'Commission on Human Rights' relating to the work of the 'Office of the High Commissioner for Human Rights'. What this probably meant was no more than an expectation on the part of the General Assembly that there would be better coordination of work between the 'Council' and the 'High Commissioner' than there had been between the latter and the 'Commission'.

What several commentators have seen as a far more tangible change is the provision contained in the resolution for universal periodic review of the "fulfilment by each State of its human rights obligations and commitments in a manner which ensures universality of coverage and equal treatment with respect to all Member States". This was, of course, a prescription for a departure from the earlier practice (followed by both the 'Commission on Human Rights' as well as the 'High Commissioner for Human Rights') of *ad hoc* selection of national entities and/or conflict situations on which to focus. Resolution 60/251 directs the 'Council' to "develop the modalities and necessary time allocation of the universal periodic review mechanism within one year after the holding of its first session". But, strangely, nowhere does the Resolution state that the procedure of 'universal periodic review' should be followed by the 'High Commissioner for Human Rights' – strange, because it was the selective intervention by the 'High Commissioner' that was at the core of the grievance of many member States regarding the UN practices relating to monitoring of human rights violations and coercing States to preserve and promote the UN-prescribed human rights.

2. 'Responsibility to Protect': A Critique

The proliferation of UN-sanctioned interventions in 'internal conflicts' since the late 1980s (indicated by our earlier tabulation), though facilitated largely by the concurrent easing of super-power rivalry, was also an outcome of a distinct trend of increasing global concern on protection and promotion of human rights in the context of the contemporary tide of revulsion against genocidal atrocities in conflict situations such as those of Somalia, Rwanda, Srebrenica and Kosovo. These interventions however generated much controversy, not so much from perspectives of their moral propriety, but on grounds of both the failure of such initiatives to fulfil the expectations with which they were launched, as well as the extent to which the interventions violated the principle of State sovereignty enshrined in the UN Charter and other instruments pertaining to international relations.

Those at the vanguard of human rights concerns, however, remained undaunted by such failures and the criticisms. Indeed, some of its main spokesmen of 'external intervention', while

refuting their critics with seemingly plausible quasi-legal rhetoric, attributed the failures either to operational obstacles within the relevant institutions or to the lack of resolve on the part of the States that possessed the capacity to sponsor effective intervention. They asserted further that, at least in the conflict venues of Bosnia, Rwanda, Kosovo, Liberia and Sierra Leone, the atrocities perpetrated on civilian populations would have persisted, if not aggravated, had it not been for the multi-national interventions undertaken, albeit without (or with only tardy/perfunctory) backing of the UN Security Council. More significantly, it has also been argued that the Security Council Resolutions 827 of 1993 (for Yugoslavia) and 955 of 1994 (for Rwanda) on the basis of which international courts were established to adjudicate on charges of war crimes and related atrocities represented a major reinforcement of the axiom that 'national sovereignty' is conditional on the willingness/capacity of a nation-state to protect its people from the more barbaric violations of human rights.

It was probably the acquiescence of the international community in the face of the successfully completed or ongoing prosecutions of Jean Kambanda and Jean-Paul Akayesu of Rwanda, and Slobodan Milošević, Radovan Karadzić, Ratco Mladić and many others of former Yugoslavia, by the *ad hoc* UN tribunals, and, then, the approval granted by the UN General Assembly in July 1998 for the setting up of a permanent 'International Court' to try similar cases, that prompted Secretary-General Kofi Annan to declare: "State frontiers should no longer be seen as a watertight protection for war criminals and mass murderers". Annan elaborated this idea in his address to the 54th Session of the UN General Assembly in September 1999, envisioning for the new millennium new paradigms of world-wide protection of human rights.

The 'Right to Intervene' as exercised during the last few decades of the 20th century either through the Security Council or by regional associations of States such as the NATO and the ECOWAS (Economic Community of West African States) or by individual nation-states such as the United States, Russia or India, fell short not only of expectations but also of the ideals being espoused by some of the main exponents of 'coercive intervention' to counteract gross violations of human rights in intra-state conflicts. From genuinely humanitarian perspectives, the barely concealed national self-interest that featured most of these interventions was also a source of embarrassment. It is this dissatisfaction, rather than the claimed response to the impassioned plea by Kofi Annan (referred to above) that triggered off Canada's initiative in September 2000 to establish an 'International Commission on Intervention and State Sovereignty' (ICISS), entrusted with the task of probing the "entire range of legal, moral, operational and political considerations" pertaining to the responsibility of States to protect victims of serious violations of human rights.

Since it was the ICISS that laid the foundations for the concept of 'Responsibility to Protect' ('R2P') it is necessary to take note of certain features pertaining to its composition and its record of work. The ICISS consisted of 12 members, all of whom were appointed by the government of Canada. It was co-chaired by Gareth Evans (Chief Executive of the 'International Crisis Group',

one of the most ardent advocates of 'intervention') and Mohamed Sahnoon (a UN diplomat from Algeria). Only two of its members were from States that could face (however farfetched) the prospect of a future external interference with their rights of sovereignty (Philippines and Guatemala). Likewise, the 'Advisory Board of the ICISS', also appointed by the Canadian government, consisted of 16 members, only 4 of whom were from States that could become vulnerable to coercive external intervention (Venezuela, Chile, Palestine and Thailand). The ICISS, in the course of preparation of its report, did have a series of 'round-table consultations' with handpicked invitees in about ten host countries of which, significantly, only Mozambique could, by any stretch of imagination, figure as a future target of 'external intervention'.[1] The ICISS report is also likely have had expert inputs from scholars and diplomats like Thomas G Weiss, Don Hubert, Francis Deng and Loise Arbour. Yet, for all that, the overall impression conveyed by the information available on the process of formulation of the ICISS report submitted to the UN is that it was almost exclusively a product of a small group of like-minded persons (highly distinguished, no doubt) who figure at the forefront of the intensifying campaign for external humanitarian intervention in intrastate conflicts. This impression finds unintended confirmation in the solemn preamble to the report according to which … "We (the ICISS) prefer to talk not of a right to intervene but a responsibility to protect".

According to those at the vanguard of the doctrine of 'R2P', the idea that sovereignty of a given State is conditional on its government's willingness/capacity to ensure the protection of human rights within its domain is a paradigm which 'R2P' shares with what they perceive as the already well established 'Right to Intervene'. They claim, however, that, unlike the right to intervene (the exercise of which is discretionary, and has always remained "the prerogative of the intervener"), the responsibility to protect is a mandatory duty vested upon all States that have the capacity to provide the required protection of human rights, the non-performance of which constitutes a violation of "an undisputed obligation of international law".

Other distinctive features of 'R2P', as postulated by its exponents may be summarised as follows:[2]

- (Unlike the concept of 'Right to Intervene') the R2P "squarely embraces the victims point of view rather than questionable State-centred motivations".
- The R2P entails a "continuum" of intervention involving (a) prevention of human rights violation, (b) reaction (in the event of failure to prevent), and (c) rebuild

[1]. The other venues of such 'consultation' were Ottawa, Geneva, London, Washington DC, Santiago, Cairo, Paris, Delhi, Beijing and St. Petersburg.

[2]. Throughout the recent years Ms Louise Arbour, the UN High-Commissioner for Human Rights has figured more prominently than any other among the 'exponents' we refer to here. Among the other ardent campaigners for 'R2P' were/are Gareth Evans, Francis Deng, Roberta Cohen, Samantha Power, Thomas G Weiss and, of course, Kofi Annan. The extracts cited here (except where other sources are acknowledged) are from Arbour's '*Responsibility to Protect as a Duty of Care in International Law and Practice*' United Nations Press Release, November 2007.

(presumably, safeguards against future violations), employing "early warning", "diplomatic pressure", "coercive measures" including military intervention, legal action against perpetrators of atrocities, and providing incentives to States for protecting human rights.

- Since the capacity of a State (or a group of States) to intervene in the prevention of gross human rights violations in another State depends on the "geographical distance" from the scene of events (i.e. the venue of such violations), the neighbouring States that possess the capacity to intervene should carry a relatively greater 'responsibility to protect'. This, however, does not reduce the obligation of the other States to intervene in the protection of people from rights violations, particularly those represented in the UN Security Council.

Formulated as a *moral obligation* of the international community to protect, with recourse to various forms of coercive intervention across State borders, innocent victims of massive atrocities, there could be no serious objection to 'R2P', provided the intervener (a State or a group of States including the dominant powers of the world assembly) is not motivated primarily by self-interest and also has a reasonably clear record of 'human protection' within their own countries. Such a moral obligation is, in fact, no more and no less than, say, the responsibility to 'protect the environment' or 'preserve the cultural heritage of mankind'. The problem, however, lies in the fact that what is being claimed for this concept extends well beyond moral imperatives and, consequent upon such extravagant claims, raises issues (including those pertaining to morality) that are even more harmful to humanity than inaction in the face of the more barbaric forms of rights violations.

One comes across in the writings on the concept of the 'R2P' several assertions concerning its 'legal' status in relations between states. One such claim is that the 'R2P' as formulated by the ICISS has been endorsed by the UN General Assembly when it adopted the resolution titled **'60/1. 2005 World Summit Outcome'** (a.k.a. 'Outcome Document'). Placed under detailed scrutiny, however, one finds certain incongruities in this claim. There was, first, the intense controversy generated by the ICISS Report among the UN membership in which, as stated by Weiss,[3] the strongest reservations were expressed by the United States (potentially, the most powerful coercive intervener) and those of the 'Non-Aligned Movement' (the largest grouping of potential target-States of external intervention). Some significance has also to be attributed to the fact that, whereas the ICISS Report refers throughout to "The Responsibility to Protect" (with capitals that denotes the title of a multifaceted concept), Articles 138 and 139 of the 'Outcome Document' (which are often cited as evidence of *adoption* of that concept in its totality by the general assembly) refers simply to a function of "responsibility of each individual State to protect

[3]. Thomas G Weiss (2007) *Humanitarian Intervention: Ideas in Action*, Polity:116-117

its population from genocide, war crimes, ethnic cleansing and crimes against humanity" (Article 138) and of "a responsibility (of the international community) to use appropriate diplomatic, humanitarian and other peaceful means … to help protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity … (and be prepared) to take collective action in a timely and decisive manner … should peaceful means be inadequate and national authorities manifestly fail to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity". This, surely, is a watered-down version of the ICISS recommendations – one which represent, *inter alia*, an implicit rejection of some the specificities pertaining to intervention including the so-called "Principles of Military Intervention" enunciated by the ICISS. It should also be stressed that the coercive intervention envisaged in Article 139 remains subject to the qualifications and constraints implicit in Article 5 of the 'Outcome Document' which reads as follows:

> "We rededicate ourselves to support all efforts to uphold the sovereign equality of all States, respect their territorial integrity and political independence, to refrain in our international relations from the threat or use of force in any manner inconsistent with the purposes and principles of the United Nations …"

Moreover, as pointed out by Welsh,[4] the substance of Articles 138 and 139 are not significantly different from the existing pledges relating to cross-border intervention for 'human protection' by groups of nation-states such as those of the 'Constitutive Act of the African Union' to which representatives of 53 member States of the Organisation of African Unity had become signatories in July 2000. From the viewpoint of gaining an understanding of what the 'R2P' genuinely represents, it is also vitally important to note that the responsibilities of the UN as specified in Chapters VI, VII and VIII of its Charter of 1945 are not different in substance from those found in the 'Outcome Document' of 2005. This, in turn, implies that there is no grounds whatever to the claim that the latter signified the formal acceptance by the UN of a new paradigmatic framework of coercive intervention as postulated in the concept of 'R2P'.[5]

The claim by Loise Arbour and others that the 'R2P' is "anchored in existing law", when placed under scrutiny, also requires considerable qualification. The "existing law" specifically referred to by Arbour is the 'Convention on the Prevention and Punishment of the Crime of Genocide' adopted by the UN in 1948. The essence of Arbour's contention is that, since the 'Genocide Convention' places on the international community the obligation of "prevention and punishment of genocide", the endorsement of the 'R2P' by the UN through the 'Outcome Document' of 2005 – whether there was such an endorsement, as shown above, is a debatable – implies that the same obligation extends to the other atrocities of war crimes, ethnic cleansing and crimes against humanity. In her own words:

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[4]. Jennifer M Welsh (2007) *Humanitarian Intervention and International Relations*, OUP: 187

[5]. Arbour (*op. cit.*: 5) has indeed categorically made such a claim.

> "The responsibility to protect norm, therefore, reiterates an existing legal obligation (under the 'Genocide Convention'). It is only reasonable to presume that it is the same kind of obligation that the Outcome Document was referring to in relation to war crimes and crimes against humanity, where it articulates the scope of responsibility to protect".

Arbour asserts further that the interpretation of the related laws by the International Court of Justice in the trials that emerged from the Yugoslav civil wars has established the principle that the failure to fulfil the obligation of prevention and punishment is itself (to quote) "would carry legal consequences". In what looks like a daring bid to browbeat the UN Security Council into refraining from opposing coercive intervention as contemplated in 'R2P' Arbour argues as follows:

> "The members of the Security Council, particularly the Permanent Five Members (P5), hold an even heavier responsibility than other States to ensure the protection of civilians everywhere. If their responsibility is to be measured in accordance with the International Court of Justice's analysis, it would seem logical to assume that a failure to act (against the crimes referred to in 'R2P') could carry legal consequences and even more so when the exercise or a threat of a veto would block action that is deemed necessary by other members to avert genocide, or crimes against humanity".

Does this represent a coercive intervention by the UN High-Commissioner for Human Rights on the Security Council by the UN High-Commissioner on Human Rights? What we need to add in order to highlight this strange 'logic' is a brief comment on the restricted reach of the 'Genocide Convention' from which Arbour's propositions are said to be drawn. The United States ratified the convention only in 1988 (40 year after its adoption by the UN), and that too, subject to a series of "reservations" and "understandings". Qualifications were also attached to its ratifications by several other countries such as Bahrain, Bangladesh, India, Malaysia, Philippines, Singapore, Vietnam, Yemen and Yugoslavia. Moreover, the convention, as formulated in 1948, excluded from the definition of 'genocide' the killing of members of a social class, members of a political or ideological group and 'cultural' killings.

One of the main problems of exercising either the 'Right to Intervention' or the 'Responsibility to Protect' pertains to the authenticity of the information upon which a related course of action could be based. That, typically, 'internal conflicts' are highly complex and are seldom simple confrontations between 'good guys' and 'bad guys', is perhaps too banal for specific mention. Such bipolarity entirely free of discordances was not seen even in the venues of mass atrocities such as Bosnia, Rwanda or Somalia. Further, the groups at mutual conflict in several major 'civil wars' continue to be nurtured by massive international networks of support including well organised and highly sophisticated campaigns of propaganda and disinformation. Quite often, all parties at conflict violate human rights, and all parties often attempt to distort or conceal information. What could be even more problematic is that, even on simple aspects of a conflict which need not be misunderstood if sufficient care is exercised in the gathering of information, it

is not infrequent for observers from outside to make commit major errors. A classic example of how even a person of impeccable scholarly and diplomatic repute who has, in fact, made several field visits to Sri Lanka could fall victim to disinformation even on easily verifiable matters of demography is found in a recent volume co-edited by Francis Deng (the renowned expert on 'Internal Displacement', tremendously influential in human rights affairs of the UN) according to which "…almost 400,000 Sinhalese were settled in the North (of Sri Lanka) by 1971". The literature on the Sri Lankan conflict is replete with this type of blatant distortion and falsehood, "the high-speed communications and sophisticated fact-finding technologies" referred to by Arbour notwithstanding.

To Loise Arbour the problem of authenticity of information is of little consequence. She pre-empts a possible criticism of 'R2P' based on the difficulties of acquiring an objective and accurate understanding of a conflict configuration prior to intervention in the following terms, albeit with an almost casual not towards the universally accepted principle of presumption of innocence until guilt is proved.

> "…(I)t is fair to say that perpetrators always seek to obfuscate reality, to discredit both the information that points to their culpability and those who provide it, routinely demanding further proof. They question the bona fide credentials of those who accuse them, as well as the veracity of their sources. They stall or deflect action and will continue to have every incentive to rely on such tactics in the future. Buying time and spreading misinformation is, after all, in the perpetrator's own self-interest. But from the Holocaust, to the Rwanda genocide, to crimes in Darfur, it has never been a lack of credible information that has prevented States from taking action. Moreover, avoiding action to avert or stop atrocities by hiding behind claims of ignorance or of a lack of unassailable evidence has become not only implausible but altogether preposterous in an age of high-speed communications and sophisticated fact-finding technologies."

That Louise Arbour's campaign for the concept of the 'R2P' (to which she refers repeatedly as "the norm") is so surprisingly deficient in objectivity and clarity of thought is illustrated further by her display of sleight-of-hand in meeting what, in terms of geopolitical realities, constitutes one of the most significant objections to the 'R2P' in its ICISS formulations. Having presented the essence of this criticism as follows:

> "However, detractors came forward even before the norm (i.e. R2P) could be tested. These critics saw in the norm yet another incarnation of moral imperialism. Concerns over the rationale of 'regime change' that the US and its allies employed to justify the war in Iraq only reinforced their suspicions. And once again the custodians of the orthodoxy of non-interference warned that the concept of responsibility to protect could be manipulated to become the license for the sole superpower to intervene whenever Washington sees fit and even if much of the world begs to differ;

the only response she makes to the criticism is to say: “Yet recognition of the norm’s (sic.) inherent merits came in 2005 when the World Summit endorsed the concept in a unanimous statement by world leaders”. Where is the answer to the “detractors”?

3. “Humanitarian” Interventions in Sri Lanka

When modern nation-states encounter serious internal or external threats to their survival the responses of their governments often entail deviations from the principles of fundamental human rights. This, as Sri Lankan experiences illustrate, has been particularly evident when such challenges take the form of pestilential terrorist violence perpetrated by well organised groups, especially those such as the LTTE that are nurtured by networks of support global in their dimensions. In any conflict situation featured by organised terrorism, however, regardless of the nature and scale of the challenge to the existing order, the government’s responses have tended over the past few decades to become subject to intense scrutiny from the perspectives of fundamental human rights as stipulated in various United Nations declarations and/or as perceived by various self-appointed guardians of such rights. The organisations that engage in such scrutiny range from those that function within the institutional system of the United Nations such as the ‘High Commission for Human Rights’, and the ‘Human Rights Council’ (since 2006, the successor to the ‘UN Commission on Human Rights’); and trans-national non-government organisations based almost entirely in the affluent and politically powerful countries of the ‘West’, among which the best known are the ‘International Commission of Jurists’, the ‘Human Rights Watch’ the ‘Amnesty International’ and the ‘International Crisis Group’; to small, informal, community-level groups of concerned persons; all of which, at whatever organisational scale and cohesion they operate, appear to be impelled by commitments to liberal paradigms of governance which, as evident even in the principal declarations and covenants of the United Nations Organisation on human rights, are hazy in their formulations and difficult to apply to specific situation with objectivity and precision.

The intensified focus on human rights dimensions of the Sri Lankan conflict since about mid-2006 when the Tiger battle-field losses began to assume a distinct trend has had diverse manifestations, one of which was the dispatch by the United Nations Organisation to Sri Lanka a virtual procession of its high-ranking officers on advisory and fact-finding missions. This has included Philip Alston, UN Special Rapporteur on Extra-Judicial Executions, in November 2006 (evidently, a second coming); Alan Rock, Special Representative of the UN Under-Secretary for Children in Armed Conflict, in November 2006; John Holmes, UN Under-Secretary General for Humanitarian Affairs, in January 2007; Manfred Novak, UN Human Rights Council Special Investigator on Torture, in August-September 2007; and the most formidable of them all, the renowned Loise Arbour, UN High Commissioner for Human Rights, in September 2007.

At the vanguard of another front of the onslaught on Sri Lanka were certain international NGOs – the 'Amnesty International' which has a longer record of concerned vigilance in the internal affairs of Sri Lanka than any other civil rights institution, the Brussels-based 'International Crisis Group' represented recently by Gareth Evans, and the 'International Commission of Jurists' which intervened in the so-called 'Muttur Massacre' (examined in detail later in this chapter). The other powerful bases in the West from which attacks have been launched included the Westminster Parliament where a barrage of harsh and ill-informed criticisms were levelled at the government of Sri Lanka by several participants of an extraordinarily lengthy debate on the Sri Lankan conflict, and the US Congress which on 26 October 2007 passed a motion to prohibit the sale or transfer of military equipment and technology from the United States to Sri Lanka.

There have been, in addition, the diverse interventions and pressures channelled through the Western diplomatic missions in Colombo. The Norwegian embassy, for instance, had several clandestine 'deals' with the Tiger high-command that violated all norms of diplomatic relations between friendly States, and is now lying low (hopefully) exhausted by its efforts. Under the so-called 'UK Peace Building Strategy', the British High Commission operated in the Eastern Province, evidently without prior consent of the government of Sri Lanka, a 'Monitoring Centre' (for intelligence gathering on a daily basis) and a network of support to local-level NGOs (many of which are known to be infiltrated by the LTTE). Apart from these there is the almost incessant chorale the main refrains of which are that the war is un-winnable, that devolution is the panacea, that the government is insensitive to demands for safeguarding human rights, and that acquiescence in the face of Tiger aggression is the means of achieving peace. Jurgen Weerth (German ambassador and EU President's representative), Robert O Blake (United States' ambassador), and Dominick Chilcott (High Commissioner for the UK) have been among its main exponents in the recent past. They have had ample support from the local NGOs of the 'peace industry', certain leaders of the Sri Lankan Tamil community engaged in an attempt to achieve Eelam "by other means" and, of course, the embittered leadership of the United National Party.

Those who believe (as the present writer does) that the campaign of coercive intervention referred to above has, to a considerable extent, had the effect of weakening the economic and military capacity of the government of Sri Lanka (but not, so far, its resolve) to safeguard its sovereignty and territorial integrity from external and internal threats, and, conversely, strengthening the LTTE campaign for secession, do not deny that violation of human rights ranks among the main problems of governance in the country. Nor do they subscribe to the view that all such interventions are sinister in motive, and that constructive and well-informed humanitarian intervention is of no relevance to efforts at restoring peace and stability in Sri Lanka. Their reservations on the recent interventions, however, stem from several considerations that warrant specific mention.

There is, first, the question of impartiality of those who come to Sri Lanka on 'fact-finding' missions. A well-known but seldom discussed fact is that, in the home countries of these persons, there are powerful LTTE front-organisations that function in unison with human rights lobby groups and the more 'liberal' political parties, and that, at least two of the UN officers referred to above by name have had association and contact with known LTTE propagandists.

Some of these visitors arrive in Sri Lanka with the fixed idea that "Sinhalese-Buddhist chauvinism" is at the heart of the Sri Lankan problem. [See, for example, International Crisis Group, *Sri Lanka: Sinhala Nationalism and the Elusive Southern Consensus*, Asia Report N°141 of 2007, prepared, no doubt, on the basis of the expertise of Gareth Evans.] This appears to have a profound impact on the objectivity which they bring to bear upon their fact-finding efforts. They concentrate on finding evidence to reinforce 'conclusions' already held. The axiom that in field investigations (in the Social Sciences) "the investigator finds what he is looking for" is applicable to what often happens in the course of their explorations. Most of these dignitaries, despite pretences to the contrary, have, in any case, only superficial and cursory 'field experiences' during their stay here. As their work schedules and travel itineraries often indicate, it is from the NGO hirelings of the foreign funding agencies and those of the Colombo "diplomatic cocktail circuit" that they obtain the "first-hand information" they claim to have gathered. Their forays in the main venues of conflict in the 'north-east', undertaken with misplaced self-confidence that even glimpses and brief personal encounters would suffice to grasp the essence of the problem – inability to communicate in the 'native' languages does not matter, given their instinctive understanding of gestures and nuances – make them fall easy prey to stage-managed scenes such as the one which enabled one of them to discover that soldiers of the Sri Lanka army supply the Karuna Group in the Eastern Province photographs of potential child recruits.

The second set of reservations relates to the 'spatial' dimensions of these external interventions, the most pronounced features of which is the selectivity discernible in the records of intervention. There have all along been many situations around the world of gross violation of human rights on which the UN agencies and the NGOs have maintained silence or made only token responses. For instance, interventions, even those that take the form of mild criticism, of situations with which the economic interests of the United States are intimately involved, if undertaken at all, have tended to be no more than perfunctory gestures – sops to the liberal lobby. States with gigantic economies (especially those that are large markets for consumer products of multinational firms or for hi-tech industries in which a few western countries have a monopoly – aircraft, state-of-the-art weaponry and IT hardware), along with the petroleum giants, have also (with a few exceptions that reflect, more than all else, resentment of defiance) tend to be left alone. It is the weaker countries that have the highest propensity of falling prey to the human rights vigilantes. In the case of the latter category of States, the relative ease of access (including the safety factor, and the availability of a sycophantic or pliant officialdom in the host

country) also appears to be a principal covariant of the intensity of intervention. More important than all else is, of course, the dependence of the host country on external economic aid which, in situations of extreme crisis such as that experienced in the aftermath of the Tsunami, assumes the form of a free-for-all for unrestricted intervention. In short, it is the economically weak, dependent, conflict-ridden countries with a tradition of subservience to the 'West' that bear the brunt of the challenge to sovereignty from supposedly "humanitarian" external intervention.

Thirdly, at least in certain types of intervention, there are the questions regarding the personal credentials and motives of those at the forefront of intervention. The extract from a recent article by a scholar of the Sri Lankan Tamil community[6] presented below on the most virulent critics of Sri Lanka at the House of Commons debate on Sri Lanka (referred to above) provides a vivid illustration of our reservations that need to he highlighted.

> The head of the 'British All-Party Parliamentary Group for Tamils' is Keith Vaz (Labour Party MP for Leicester East) and one of the other members in Andrew Pelling (Conservative Party MP for Croydon Central). Keith Vaz was suspended from Parliament for a month on the allegation of a financial impropriety few years ago… Andrew Pelling had a majority of just 75 votes at the last general elections and is fighting to retain his seat at the forthcoming election. Croydon Central constituency has considerable Sri Lankan diaspora population, mostly Tamils. Andrew Pelling was arrested in September 2007 for beating his second wife and suspended from the Conservative Party for the same offence. Both these MPs (and most likely others in the All-Party Committee as well) do not have genuine concern for the Sri Lankan Tamils. Their only concern is getting the emotional votes of the Tamil diaspora communities and perhaps large donations for their electoral campaigns from proxies of a banned organisation."

The prejudices and pre-conceived notions of the promoters of human rights, their boundless self-righteousness, and their receptiveness to disinformation before, during and after their fact-finding exercises in the country are features with which Sri Lankans have become familiar. Their right to preach on the perniciousness of Sri Lankan nationalism (which, they say, is based on a distorted view of history), on the irrelevance of the concept of national sovereignty to the changing world order, and on the evils of majoritarian dominance of a democratic polity is hardly ever challenged. [Note here Gareth Evans' condescending statement on "states who gained independence during the decolonisation era" being very sensitive regarding their sovereignty.] The self-assurance and contempt with which they not only belittle Sri Lanka's efforts to adhere to the norms of democratic governance despite being beleaguered by an intensity of terrorist

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[6]. Muttukrishna Sarvananthan, 'Norwegian and British Interventions in Sri Lankan Conflict', *The Island*, 19 December 2007. This article, sub-titled "A Sorry Tale of Misinformation and Misunderstanding", furnishes useful insights that pertain to the general question of why human rights activists in the West often tend to be impelled by misconceptions and prejudice in their attitudes towards the Sri Lankan conflict. Sarvananthan, a 'Development Economist', has studied in several British universities.

violence only a few States have ever had to encounter, but also denigrate institutions of government (including the judiciary for what they condemn as "politically wrong" decisions), often receive passive acceptance, sometimes with a knowing smile or a solemn nod from their local sycophants.

The current 'human rights onslaught' against Sri Lanka has a cause-and-effect connection with the adverse publicity given to the country by certain media personnel and institutions, specially those of the western countries where there are large communities of expatriate Sri Lankan Tamils some of whom have, in collaboration with those who share their interests and inclinations, established powerful networks of propaganda and political lobbying. There have, on the one hand, been instances of manufactured "news" disseminated even by prestigious media firms, a classic example of which is a programme broadcast at primetime by one of the five main TV channels in the United Kingdom which Kath Noble ('Truth, Lies and Foreign Journalists', *The Island*, 14 November 2007) has exposed as the product of skulduggery by two Irish women with the help of a Sri Lankan attached to the BBC in Colombo. On the other, there is the far more constant barrage of comment and criticism which are even more insidious in impact for the subtlety they display. The prominent feature of this category of attack is that, in the related publications, both the LTTE as well as the Sri Lanka government are charged, in general terms, (thus displaying impartiality and pious concern for human suffering) with the entire range of "crimes against humanity" and then, elaborate in graphic detail, usually with "evidence" furnished by unnamed sources – "it is reliably learned that…", "a senior officer who wished to remain anonymous stated that…", "the general impression in diplomatic circles is that …" are among the stock phrases used to refer to the sources – the accusations against the government. Even without this type of embellishment, the resulting harm to the government and to the country's image is far greater than that inflicted on the LTTE, for the simple reason that, what causes extreme outrage is not brutalities committed by the LTTE with which the world is familiar and for which highly influential and articulate groups find extenuations ("What, after all, is the murder of a few hundreds of Sinhalese peasants compared to, say, the horror of 9-11?", or "Didn't all great liberation struggles have pronounced elements of terrorism?", or "Isn't John Kennedy's declaration that 'violence in pursuit of liberty is not crime' the ultimate liberal wisdom"?).

The sketches presented below on external "humanitarian" interventions in Sri Lanka during the recent past, and the comments on what those who have intervened have accomplished, together with the detailed study (in the next section of this chapter) of a recent episode of the Sri Lankan conflict upon which there was a massive convergence of humanitarian interventions from diverse sources outside the country, are intended to serve as the empirical basis of our general impressions recorded above. The sketches that follow, it needs to be emphasised, are meant not to question the expertise or the integrity of the persons and the institutions concerned, but to show why their efforts are looked upon with cynicism by many people in Sri Lanka and why they

are having the (probably unintended) effect of aiding and abetting the most diabolical and heinous violators of human rights in the country.

Sketches on Recent Humanitarian Missions

Alan Rock, Representative of the UN Under-Secretary for Children in Armed Conflict

Alan Rock was commissioned by the 'UN Under-Secretary for Children in Armed Conflict', Radhika Coomaraswamy, to investigate and report on the plight of children in the war-affected areas of Sri Lanka. His arrival here in November 2006 coincided with several major setbacks for exponents of the idea that the Northern and Eastern provinces constitute a 'traditional Tamil Homeland', among whom Coomaraswamy herself had figured prominently during her long career as Director of the Colombo-based 'International Centre for Ethnic Studies'. The "setbacks" referred to included the Supreme Court declaration that the continuing recognition of the Northern and Eastern provinces as constituting the area of authority of a single 'Provincial Council' is unconstitutional, and the debacle of the LTTE in its military efforts to expand its control over the Eastern Province. The time of Rock's visit was also one in which the propaganda machine of the LTTE was desperately attempting world-wide to attribute their defeats in the Eastern Province to alleged collaboration of Sri Lanka's security forces with the Tiger renegade Karuna especially in crimes against humanity such as the forced recruitment of children to Karuna's cadres – a crime which the LTTE has for long been regarded guilty. Thus, Rock's mission in Sri Lanka was correctly timed!

So was the choice of Rock as the 'missionary', whoever did the choice. Allan Rock, early in his political career, had been identified with the 'radical' end of the Canadian Liberal Party, and had espoused causes such as legalisation of abortion, gay marriages and rights of asylum seekers in Canada, invariably before his party adopted such postures. Later, as a senior member of the Liberal Party, he had association and contact with LTTE activists in Canada; and he (along with several other party stalwarts) participated in the festivities of LTTE front-organisations, suggesting that his interest and concern were not confined to the expatriate Tamil community in Canada. In 2002 he was rewarded by his party leader with Canada's ambassadorship at the United Nations. Soon after his departure from that post in 2006, he was reported to have urged a reform of the UN system, expressing dissatisfaction with the UN's failure to protect civilians in conflict situations, and stating specifically that "(d)espite our efforts, women are still raped and violated as a matter of course, children are still forcibly recruited, and defenceless civilians continue to be killed". Ideal man, no doubt, to dispatch to Sri Lanka!

Rock spent most of his stay here in Colombo. He did make a hurried tour of the East, especially to those areas that were still under LTTE control. What more would he need as a source of 'evidence'? He gathered enough information from various witnesses including weeping

parents to substantiate his belief that the Sri Lankan army is helping the Karuna group to abduct their children, and is in collusion with the Karuna men in committing many other atrocities. Happy with the time well spent, Rock returned from the mission, prepared his report (in collaboration with the Under-Secretary, one would imagine), and submitted it to the UN in early February. Now, is Alan Rock so absurdly gullible as to believe that Karuna needs the help of the security forces to recruit children from his own community in the Eastern Province? This is not unadulterated stupidity – no way, not when it is linked with what Rock's sponsors require from his 'mission'. For them, the most embarrassing blotch in the great liberator's image in the 'West' is not assassination, mass murder and trivia like that, but his use of children as cannon fodder. So, the discovery that Rajapaksa also does it – assisting Karuna to do it is, of course, the same thing – helped.

John Holmes, UN Under-Secretary General for Humanitarian Affairs and Emergency Relief

Among the high ranking UN visitors to Sri Lanka in the recent past, John Holmes probably stood apart from the others for the conservative stances he, in his earlier career as a senior British diplomat, had tended to adopt over controversial issues. He figured in the inner circle of John Major's government as Private Secretary to the Prime Minister, and continued to occupy the same post under Tony Blair until January 2007 when he became 'UN Under-Secretary' – a controversial appointment that displeased several human rights lobby groups. It seems as if, in his subsequent work, he has made an extra effort to win over his erstwhile detractors.

During his visit to Sri Lanka in August 2007, Holmes (in the company of UN officers stationed in Colombo) met key political leaders and senior civil and military officers of the government and discussed the state of the conflict here – in particular, the risks and hazards faced by those engaged in humanitarian work in the context of the killing of 17 'aid workers' the previous month. At these discussions Holmes had, while insisting on the need to ensure the safety of the aid workers, expressed satisfaction regarding the ongoing improvement of related conditions. At the press conference held on the eve of his departure on 8 August, many questions were raised on the same issues, eliciting from him responses that conveyed the same impression on his views. Yet, a day after his departure, the Reuter news agency released a report, based evidently on an exclusive interview granted by Holmes to its correspondent in Colombo on 7 August (i.e. the day before the open press conference) which attributed to Holmes the statement that: "… the record of safety of humanitarian workers here is one of the worst in the world". The Reuter correspondent had also spiced his report (which he had withheld until Holmes' departure) with the exaggeration, quoting unnamed sources, that 34 humanitarian workers had been killed in Sri Lanka since January 2006.

Though Holmes' assertion was not exactly a contradiction of the impression he had conveyed publicly, there were obvious inconsistencies in what he had said at different times to different

audiences. This cast doubt about Holmes' integrity and strength of character. He appeared to have displeased everyone other than the Reuter correspondent. The human rights wallahs in Colombo were unhappy about the misplaced bonhomie displayed by him to his official hosts. His official hosts were outraged by what looked like Holmes-Reuter connivance to rubbish the country. In fact, the Bangkok-based *Asian Tribune* (Vol. 7, No. 1 of 12-08-2007) reported (arguably, in somewhat exaggerated vein) that "Holmes returned after his 4-day visit to Sri Lanka with his reputation in tatters (and) exposed as an unreliable and crafty double dealer".

Manfred Novak, Investigator on Torture for the UN High-Commissioner on Human Rights

Novak's visit to Sri Lanka (1 – 8 October 2007) took place soon after the LTTE attack on the Anuradhapura airbase, and a few days before the arrival of the 'UN High Commissioner' Loise Arbour. Novak, as a promoter of human rights, already had a reputation for taking controversial stands against anti-terrorist action by governments, according greater priority to the rights of those accused of engaging in terrorism than to the rights of their victims (as he probably believed his UN job demands), and basking in the publicity so received, especially for his mildly hilarious confrontations with the giants of the world community. Thus, for instance, in August 2005, he attracted a great deal of attention on himself with the public statement that Great Britain will be cited for human rights violations if the Blair government goes ahead with plans to deport "renegade clerics and terrorist sympathisers", and lamenting "a tendency across Europe to circumvent the obligation not to deport anybody if there is serious risk that he or she might be subject to torture". Similar media publicity followed the clash he had in November 2005 with the Bush administration over the torture of Iraqi prisoners incarcerated at Guantanamo Bay.

Novak's visit was obviously intended to pave the way for the impending request by Loise Arbour for the government's endorsement of her plan to establish in Sri Lanka a 'field office' of the UN High Commissioner for Human Rights. Since the government did not agree to that request, it was thought necessary to react to the gumption of recalcitrance with the whip. Thus, in the report Novak produced after his visit he claimed to have received "numerous, consistent and credible allegations from detainees who reported that they were ill-treated by the police during inquiries in order to extract confessions". This extravagant and barely credible claim regarding the scope and thoroughness of his investigations, however, was not substantiated by him with specific information (of the type any serious investigator would be expected to furnish) on aspects of his investigations such as which prisons and police stations he visited, how many interviews he conducted, what type of prisoner/detainee he interviewed, what language/s he used for communicating with the victims etc. Yet he had no compunction whatever in declaring that "torture (same as 'ill-treatment'?) is widely practiced in Sri Lanka (and) is prone to become routine in the context of counter-terrorism operations". Given the charlatanism which Novak has previously displayed, it is not surprising that no reference has been made in his report to the stark

reality that it is in operations of the terrorists that there has always been the most barbaric forms of torture, as, for instance, the remnants left behind by the LTTE at their eviction from the 'east' would have borne ample testimony for Novak to see if only he had cared to look.

Philip Alston, UN Special Rapporteur on Extra-Judicial Executions

Alston visited Sri Lanka in November-December 2005 and, thereafter (according to him) kept a close tab on the local situation, making a brief second visit to Colombo in November 2006. Alston ranks among the more passionate campaigners for external intervention against human rights violations in Sri Lanka. In October 2007 he was reported to have "castigated the Human Rights Council in Geneva and the UN General Assembly for not having taken any action to address the spate of extra-judicial executions by the military, paramilitary and insurgent groups in Sri Lanka". In his report to the Third Committee of the UN General Assembly on 26 October 2007, he added his weight to the demand for the establishment of a permanent international human rights monitoring mission in Sri Lanka. It appears that Alston's report found a favourable response in the US Senate where a resolution moved by Patrick Leahy (Chairman of the US Senate Sub-Committee on Foreign Assistance and Appropriations) for a suspension of aid to Sri Lanka earmarked from the 'Millennium Fund' was adopted.

The following extract from a memorandum by Rajiv Wijesinghe, Secretary General of Sri Lanka's Secretariat for Coordinating the Peace Process (SCOPP), provides a glimpse of how Alston's condemnations of Sri Lanka appear to those ardently committed to the search for a negotiated settlement of the country's conflict and are in a position of authority over the related procedures.

> "Mr Alston's report does raise questions about the working methods of UN special rapporteurs and the methodology of the reports they present in what seems to be in all seriousness to the General Assembly. Leaving aside the question of Mr Alston's 2006 report, which was thorough and helpful, it seems strange that, with no references at all to the Sri Lankan government in the body of his 2007 report (save for one historical mention pertaining to the correspondence of one of his predecessors in 1995), Mr Alston ends his report with the claim that the situation in Sri Lanka has now erupted into crisis".

Loise Arbour, UN High Commissioner for Human Rights

As indicated above, the fact that Loise Arbour's visit to Sri Lanka in mid-October 2007 was a response to intense lobbying (mostly by pro-LTTE groups in Europe) for direct UN intervention in Sri Lanka in the form of establishing a permanent 'human rights mission' in the country was well known here even prior to her arrival. According to Tania Noctiummes and Jean-Pierre Page ('Loise Arbour's Diabolical Project', *The Island*, 10 October 2007), she had, in fact, already announced her intention of pressing the government to open a 'UN Human Rights Field Office' in

Sri Lanka. Arbour, moreover, is known to have canvassed at the UN the view that "…any government's commitment to human rights should include a willingness to allow an office of the UN High Commissioner to operate in their country" (Sanha de Silva Jayatilleke, 'Monitoring Missionaries', *The Island*, 13 October 2007). What was known about her more generally is that, despite her awesome credentials as a scholar-jurist and her 'celebrity' status, her work as UN High Commissioner for Human Rights has generated intense criticism and controversy. She has been the target of charges of arrogance, self-glorification and excessive bias, especially in her interventions in the Balkans and the Middle-East. According to her own admission at an interview broadcast from the 'Carter Centre' in Atlanta on 7 September 2007: "…there are claims all over the world that the human rights agenda (of the UN) is a carrier of Western values (and that) it is manipulated in the pursuit of Western – read US – interests". (Needless to say, she refuted the claims.) At the same interview, though she expressed concern on violations of human rights by the United States (to the delight of 'liberal intellectuals' of that country, no doubt), she, as UN High Commissioner for Human Rights since 2004, has carefully refrained from any concrete action against such violations.

Amnesty International – UK-Based Human Rights NGO

Throughout the recent decades the UK-based 'Amnesty International' (AI) has figured among the more vociferous organisations engaged in efforts to promote fundamental human rights in Sri Lanka. It is, of course, well known that 'AI' has often been accused of excessive bias towards the LTTE in its publications and in the other modalities it adopts in the performance of its functions in relation to Sri Lanka. My own conclusion in this regard, based upon a careful study of 53 commentaries and news reports published by 'AI' in its website from November 2005 (commencement of the Rajapaksa presidential tenure) to September 2007, is that the charge of a pro-LTTE bias cannot be sustained on the basis of the factual contents of the publications. Traces of partiality, however, could be discerned both in the 'AI' style of reporting – for instance, the strict adherence to the 'rules of evidence' it displays when reporting a crime committed by the LTTE, in contrast to its indiscriminate acceptance of the veracity of almost any accusation levelled at the government of Sri Lanka – as well as in some of its propaganda antics such as the infamous "ball tampering" fiasco at the venues of the ICC Cricket World Cup matches in March 2007. In fact, its major publications on Sri Lanka such as the 'Report' based on investigations of an 'AI' team led by its Secretary-General Irene Khan portray the LTTE in a somewhat more unfavourable light than it does the government of Sri Lanka.

Human Rights Watch (HRW) – US-Based Human Rights NGO

Founded in 1978, the HRW has been actively involved in campaigning against human rights violations the world over, focusing (randomly) on issues such as politically impelled murder,

oppression and discrimination, corruption in public affairs and subversion of democratic norms of governance. It has expressed its concern mainly in the form of publishing reports and making direct representations to centres of power such as the UN, US Congress, EU Parliament, and the Vatican.

On human rights violations in Sri Lanka its principal informant appears to be INFORM, the Colombo-based NGO with which it maintains close contact. In urging the US House of Representatives to suspend aid to Sri Lanka, the report submitted by the HRW in October 2007 included the charge that: "In the past eighteen months there has also been a significant jump in the abuses by the government forces, such as indiscriminate shelling, extra-judicial executions, and forced disappearances (and) there is evidence that government forces have stood by while pro-government armed groups have carried out abuses, including forcibly recruiting children into their forces".

That the sharp increase in the intensity of the HRW attacks on Sri Lanka since about mid-2006 could be linked to something more than the escalation of violence in the country is suggested by one of its most recent (November 2007) campaigns – namely, submissions made to the UK government that the LTTE renegade Karuna should be tried for 'war crimes' such as the murder of about 600 police officers who, in June 1990, had surrendered to the LTTE under instructions from the then president Premadasa, and several large-scale massacres of Muslim and Sinhalese civilians of the Eastern Province in the early 1990s. This is quite interesting. At the time these crimes were committed, Karuna, though serving as military chief of the LTTE in Batticaloa District (which was yet to become a vital part of the exclusive Tiger domain) was certainly not in the LTTE's highest leadership ranks. It is, of course, possible that Karuna did participate in these barbaric acts, though evidence regarding such participation is yet to be unearthed. In this context, our interest stems from two considerations. First, the HRW has hitherto never campaigned for the prosecution of the genuine LTTE leaders of that time (some of whom have, in fact, been permanent residents in western countries) for committing 'war crimes'. The more intriguing issue is whether, from the viewpoint of the HRW and those operating under its cover, the real 'war crime' committed by Karuna is not so much the atrocities he might have committed under Prabhakaran's command, but his defection from the Tiger ranks, and thus contributing decisively to the military defeats of the LTTE debacle in the Eastern Province. Is HRW's fig leaf displaced somewhat?

4. Muttur Tragedy: Multifaceted Intervention

The killing of sixteen workers attached to the French aid agency *Action Contre la Faim* or 'ACF' (16 Tamils and 1 Muslim; 13 men and 4 women) on 4 August 2006 in the course of the armed confrontations between the security forces of the government and the LTTE received world-wide publicity as a heinous crime for which the government of Sri Lanka should be held

responsible. It evoked condemnation by spokesmen at the highest levels of organisations concerned with human rights. The present 'case study' on the 'Muttur Tragedy' is intended to serve as an elaboration of the problems and pitfalls inherent to the type of intervention referred to in the sketches presented above. .

Muttur is a township of mixed ethnicity in which the Muslims constitute about 90% of the total population. With its regular ferry service across Trincomalee Bay, Muttur forms the principal gateway for the entire area covered by the Administrative Divisions of Muttur, Seruvila and Ichchalampattu. Of the total population of the Administrative Division of Muttur (45,298 in 2004) Muslims constitute 62% and the Tamils 38%. The agricultural hinterland of Muttur town (approximately 30,000 acres of paddy) is served by water from the Allai tank regulated at the Mavil Aru anicuit. The entire Muttur Division was well within 'government controlled territory' (the so-called "cleared areas") as demarcated (albeit somewhat imprecisely) under the Ceasefire Agreement. However, since early 2002, the LTTE had, in defiance of the terms of the agreement, established a series of bases and encampments in the southern and eastern parts of the Division. Some of these were believed to have been equipped with heavy artillery that could bombard the government naval base at Trincomalee. This had been ignored by the government of that time in accordance with its policy of "confidence building".

On 20 July 2006 the LTTE closed the Mavil Aru anicuit, thus depriving irrigation water to downstream paddy land. This was, indeed, a challenge for a showdown for control over the entire Mahaveli delta, based on the belief of the LTTE leadership that the recovery from the 'Karuna' and 'Tsunami' setbacks was adequate by this time for its fighting cadres to achieve the twin objectives of evicting not only the security forces of the government but also the Muslim inhabitants from this area. Following six days of failed negotiations with LTTE for a resumption of the supply of water to the channel network, on 26 July the government resorted to military means for reopening the anicuit and flushing out the LTTE cadres from that locality.

Soon after the commencement of confrontations over the closure of the anicuit the LTTE captured the army encampments located in the vicinity of Muttur town thus opening a second front of the battle. Thereafter, in a pre-dawn attack on 2 August, the Tigers commenced their occupation of the town. By the following morning a large number of well-armed Tiger combatants appeared to be in control of the town, having forced most of its Muslim inhabitants to either flee or seek refuge at public venues such as schools and mosques. In the course of this 'conquest', the Muslims were evidently subject to the entire range of harassment including killing, looting, extortion, assault and intimidation, thus adding to the already embittered Tamil-Muslim relations in the town. The Tiger cadres also initiated a process of eviction of the Muslims from the town herding them out in the direction of the LTTE-held areas to the south.

The counterattack by the security forces on Muttur town began soon thereafter. By about 6 August the army had re-taken the town evicting the LTTE, killing a large number of its cadres.

This had involved both artillery bombardment as well as close-encounter gun battles. It is possible that the ACF workers were killed in the course of these clashes. There are, of course, several other speculative explanations, equally plausible. For instance, one cannot rule out the Tiger high-command deciding that the sacrifice of 17 lives would be worth the gains that will accrue from the likelihood of the army being held responsible for the killing, and thus ordering its cadres to kill the ACF workers prior to withdrawal from the town. Another theory is that Muslim civilians, intensely embittered by the suffering inflicted all along by the Tigers, killed the aid workers.

Soon after reports of the killing of ACF workers reached Colombo President Rajapaksa initiated an investigation – one that would use the expertise offered by several foreign governments. On the basis of preliminary discussions at which officers of the ministries of Defence and Foreign Affairs, local experts in the field of forensic medicine, and representatives of several diplomatic and aid missions participated, an investigation strategy was decided upon, and the information on the killings as available at that time was disclosed to the media at a press conference. Indicating the prevailing mood, the ACF Executive Director Benoit Miribel, when asked by the press for an opinion on who was responsible for the killings, said: “I do not know who is responsible. We will take all steps to get to the bottom of this tragedy”.

Since the killing of the aid workers had taken place at a time when the Army and the Tiger cadres were locked in fierce combat for control of the town (i.e. on 4 August), there appeared to be no means of ascertaining the veracity of the mutually conflicting charges which the various accounts of the atrocity contained until the completion of the investigations to the satisfaction of all parties concerned.

With the exception of the propaganda organs of the LTTE, most publications that contained references to the Muttur tragedy were cautious enough to place the blame in general terms on both the government as well as the LTTE for the rising tide of violence in the country, but refrained from making specific accusations. There were, however, the exceptions. The earliest Reuter report on the incident, dated 6 August 2007, quoted Jeevan Thiagarajah, the Head of the Consortium of Humanitarian Agencies (AHC) as stating: ”They (AHC relief team) found them (ACF workers) in the office on the ground, lying face down, executed, (and) the military, which says it now controls most of the town, said it knew nothing about the bodies and denied involvement”. A further report by Reuter correspondent Peter Apps datelined 8 August reported two persons he had interviewed – (a) Sinathambi Navaratnarajah according to whom on 2 August fighting raged throughout Muttur with the Tigers taking positions in key buildings in the centre, and that by 4 August most of the town’s people had fled, and (b) Richard Arulraja (father of one of the victims) who had said “… we heard the military personnel came and shot them.”

Far more significantly, the same report quoted Ulf Henricsson, the Head of the Sri Lanka Monitoring Mission, as saying: “When you (‘you’ meant the monitors) are not let in, it is a sign that

they (army) have something to hide" – a curious conclusion, given the fact that even by 8 August, Muttur town was still vulnerable to artillery attack by the retreating Tigers, and the army was still engaged in operations south of the town. Thereafter, in several published reports on the Muttur tragedy, Henricsson was cited as the principal authority for the conclusion that the ACF workers had been killed by the SLArmy. It was also probably on the basis of information from Henricsson that the 'Resolution' adopted by the European Union Parliament on 7 September 2006 stated: "(T)he SLMM has found that seventeen aid workers employed by the French humanitarian agency 'Action Against Hunger' had been shot dead by government forces in Muttur" (EU Parliament Resolution of September 7, 2006, Paragraph D of the 'Preamble').

The reference in the EU Resolution to the SLMM "finding" that the ACF workers were killed by the Sri Lanka army evokes special interest for several reasons – first, by early September 2006, the investigations into the Muttur killings had barely begun; second, the Monitoring Mission's own investigations at Muttur (if any) could not have been systematic and comprehensive because the process of resettlement of the displaced was far from being complete; and third, such a "finding" with the related evidence had not been formally conveyed by the SLMM to the government of Sri Lanka. This curious feature of the EU Resolution provides reason to speculate whether its references of Muttur represented an input of the Norwegians who, by this time, were not even attempting to conceal their pro-LTTE bias.

A report in *The International Herald Tribune* of 30 August 2006 authored by Shimali Senanayake and Somini Sengupta, though not adding significantly to the facts on the Muttur tragedy, sheds light on how Henricsson arrived at his conclusion regarding the culpability of the Army. Three reasons evidently formed the basis of the conclusion.

> "First, security forces had been present in Muttur at the time of the killings. Second, the government had prevented the truce monitors from going to the crime scene to investigate immediately after the discovery of the bodies. Third, confidential conversations with "highly reliable sources" had pointed to the culpability of security forces. No other group, the peace monitors concluded, could have carried out the killings."

This type of reasoning does cause surprise, especially in the context of the vital importance of Henricsson's position as the Head of the Monitoring Mission and the absurdly extreme circumspection he had always shown in pinning any crime on the LTTE. To comment briefly on these "reasons": (a) It is true that on 4 August, the army was present in Muttur, but so were LTTE cadres; (b) The army is very likely to have prevented the truce monitors from proceeding to Muttur, but its consideration could well have been the safety of the monitors. As for Henricsson's reliance on "confidential conversations with highly reliable sources", the question which he should have asked himself is whether it is reasonable to "convict" the Sri Lanka Army on the basis of evidence from undisclosed sources, given the fact that, contextually, the source of the information is vital to a determination of the credibility of the information.

In a paper by Mirak Raheem titled 'Muttur: A Betrayal of a Community' (*Tamil Times*, 15 August 2006: 28-30) – probably the most detailed account of the tragedy published during its early aftermath – both the army as well as the LTTE have been charged with indiscriminate shelling of the town and causing immense suffering to its civilian inhabitants by way of both death and injury as well as large-scale eviction. Sri Lanka government, in particular, is criticised in the paper for its seemingly callous neglect of the safety of Muslims of the area. However, its statement that "(F)inally on the 5th (August), three days after the battle began, it seemingly ended, as the government intensified its attack and moved into secure control over the town and the LTTE made a strategic withdrawal from Mutur (sic.)" is of direct relevance to the specific issue on which the present study is focused, for, it implies continuing armed confrontations in the town on 4 August, the day on which the ACF workers were killed. In addition, the following extract from this paper provides a glimpse of the nature of LTTE relations with the Muslim community at the time of their evacuation of the town.

> "When the Muslim community took the decision to leave south to Kantale, the LTTE said it would provide safe passage and even drinking water. Between the third mile-post and Pachanoor the LTTE cadres' behaviour abruptly changed – they began to verbally and physically abuse the civilians and demanded that the men should separate from the women and youth under 15. A masked man identified individuals among the crowd, who were accused of being members of Jihad, and they were tied up by the LTTE. There are conflicting reports as to what happened next, with some stating that the LTTE began firing at the men. A shell landed in the vicinity reportedly killing some of the LTTE cadres and the fleeing Muslims. It is still unclear as to how many of the men were abducted by the LTTE, with rough estimates ranging from 30 to 60 and how many were killed in the explosion or shot by the LTTE".

The origin of the notion of the Sri Lanka army carrying out the massacre has to be ascribed to Henricsson's clumsy logic. Its propagation was, of course, the result of the coordinated campaign of propaganda by various agencies which, with diverse motives and impulses, have tended to lean towards the LTTE especially over periods featured by its military defeats and other setbacks. The irresponsible statement which the SLMM Chief had rushed to make on the basis of speculation and prejudice was soon converted by these propagandists into an established fact, as indicated by the extract from the 'Declaration' of the European Union of 7 September 2006 cited above. There was, in addition, the usual crescendo of "genocide", "holocaust", "pogrom" and "extermination" charges from the LTTE propagandists and front organisations.

A discrepancy between the ballistics report submitted by the Government Analyst to the Magistrate's inquiry on 7 March 2007 and the findings by Malcolm Dodd (Australian pathologist invited by the government to observe the forensic examinations in October 2006) reflected adversely on the investigation procedures being pursued. According to the former report, the

bullets recovered from the corpses were all of 7.63 mm calibre. Dodd, however, though his expertise is in the field of forensic pathology, had ventured to make the ballistic-related observation that the calibre of one of the projectiles he had recovered from the skull of a victim was of 5.56 mm. Needless to say, the almost spontaneous response of all external vigilante was to accept the latter claim and to imply that the ballistic findings of the Government Analyst could well be part and parcel of a cover-up attempt. Such an insinuation, it should be noted, disregards the fact that the bullets being of either 7.62 mm or 5.56 calibre is of no consequence to an identification of the killers because cartridges with both types of projectile are in use by both the army as well as the LTTE. What is of even greater interest in the context of this display of prejudice is that a second report submitted by Malcolm Dodd in which he had admitted to an error in his earlier 'ballistic' findings, and stated that all recovered bullets are, in fact, of the 7.62 calibre, have had no impact whatever on publications of the recent past (including, it is sad to note, a report of the prestigious International Commission of Jurists) which have continued to highlight this so-called discrepancy.

Certain observations contained in the two ICJ reports generate doubt on whether the CJC has actually adhered to the "distinguishing" characteristic which it claims for itself – its "impartial, objective and authoritative legal approach to the protection and promotion of human rights through the rule of law" – to the preparation of its reports on Sri Lanka. For instance, in order to substantiate its claim that the investigations conducted by the government of Sri Lanka are featured by a "disturbing lack of impartiality", the ICJ report refers to Michael Birnbaum according to whom "(O)fficial police reports indicate that from the outset, prior to any investigation, the police had decided that the LTTE were responsible for the killing." The 'police reports' (referred to by Birnbaum as those compiled at "the outset") are evidently the records that contain the initial impressions of the investigating officer. These are usually based on an examination of the crime scene and haphazardly conducted interviews with on-the-spot informants – no less methodical than, say, the investigation of a truce monitor of the type Henricsson has shown himself to be. This routine procedure (similar to that followed in most countries) does not tantamount to formulation of conclusions, especially those that restrict the scope of subsequent investigations. Nor can the records be construed as indicating prejudgment and prejudice. Does Birnbaum or the ICJ imply that, had the police found at the outset of its investigations evidence of LTTE involvement in the crime, that evidence should not have been reported? Thus, by both misrepresentation of the purpose of the police reports on the Muttur killings as well as making no reference whatever to the actual contents of the police reports (which could be quite revealing, unless there is a presumption that the police cannot be impartial), the ICJ itself has committed the same offence of prejudgment with which it has branded the investigations conducted by the Sri Lanka police.

Further, in its criticism relating to the subject of 'collection of evidence', the ICJ states that, "apart from the family members of those killed, no other Tamils of the area have been questioned (by the police)". How did Birnbaum arrive at this conclusion? Police records contain only the evidence considered materially relevant to what is being investigated, and a comprehensive list of those questioned. Moreover, what this criticism implies is that, in order to meet the level of adequacy demanded by the ICJ, it would be essential to record evidence from Tamil witnesses, regardless of the near certainty that, given the specific circumstances of this crime, those of the Tamil community (unless they were participants in the killing) would not have been present at the time it was committed. Does the ICJ criticism also imply that the government investigators ought to have gone on recording evidence from Tamil witnesses until such time that some such witness says that it was the army that had killed the aid workers?

Yet another suspicion which the ICJ disseminates without actually making a categorical accusation is that some of the 'ballistic productions' at the investigations could have been tampered with. The basis of this suspicion is that the items referred to were not produced at the magistrate's inquiry by the authorised officer but by another, and that the sealed packets that contained the items were not opened in the presence of "an Australian expert observer". Is there a display of naivety (if not traces of racial prejudice) even in this criticism? Had there been a genuine conspiracy to defeat the objective of the investigation, wouldn't it have been possible for the conspirators to easily avoid any of the procedural irregularities?

In comparing the two ICJ reports, one also notes that the alleged "unwarranted interference" which the transfer of the inquiry to the Magistrate's Court of Anuradhapura, made in the April report, does not appear in the July report. Was this due to a realisation that the charge made in the earlier report was later found to be unwarranted? Finally, as noted earlier, there is the ICJ persistence with the "bullet calibre discrepancy", in disregard of the fact that it is unfounded and irrelevant to the determination of culpability to the killing.

How and why a group of seventeen aid workers (all, with one exception, Tamil) happen to be at the predominantly Muslim town of Muttur at such an intensely turbulent time has remained a mind-rankling question ever since the occurrence of this tragedy. In this context, the questions that have recently been raised (abridged as follows) by the Head of SCOPP, are, indeed, vitally relevant.

(a) Why were these workers sent to Muttur on August 1, 2006 – i.e. on the day before the Tiger cadres launched their attack on the town?
(b) Why were they not withdrawn, as workers attached to other aid agencies were, when, according to reports, some of them begged to be rescued?
(c) Did the ACF act with a sense of responsibility regarding the safety of its workers?
(d) Why has the ACF refrained from paying any compensation to the bereaved families?

To recapitulate the facts relevant to the first of these questions: A group of young Tamils arrived at Muttur, a predominantly Muslim town, at a time when an almost week-long battle was raging in the hinterland of the town and when the capture of the town by the LTTE was imminent. Soon thereafter (on 2 August) a much larger group of young Tamils (note that even in the "battle field" not all LTTE cadres wear uniforms) arrived in Muttur, occupied it with the force of arms, and caused intense havoc and misery to the inhabitants of the town. While this latter group held sway over Muttur (i.e. 2 August) there was no reported attempt by the ACF workers either to request rescue or to escape from the venue of battle (the reported telephone conversations on that day do not convey a sense of desperation among them). Soon thereafter (from about 3 August), however, heavy fighting erupted between the LTTE cadres and the army. Given the embittered Tamil-Muslim relations that prevailed in Muttur, what specific "actions against hunger" were the young Tamil men and women employed by the ACF expected to perform? It is in the context of these considerations that questions such as 'Why were they sent" and "What were they expected to do" assume significance.

The responses by the ACF authorities to these queries have hitherto been no more than a display of a level of imbecility which one does not associate with individuals holding positions of responsibility in organisations that have a global reach in the functions they perform. They have stated, for instance, that the T-shirts emblazoned with the ACF symbol worn by the aid workers should have immunized them from any danger. Implicitly, they have thus pretended both ignorance about the ground situation in Muttur at that time as well as lack of understanding of the reality that, for combatants (of both the LTTE as well as the army) constantly in danger of sudden death from any source and in any form, T-shirt insignia could hardly be of any consequence. Is this a pretence meant to cover a more sinister objective?

Implications of the reported information on the 'crime scene' from the perspective of motive should also have received the attention of the accusers of the Sri Lanka Army. The relevant information is that the corpses of the victims in the alleged "mass murder" had bullets embedded in the heads; firing had evidently been "close range"; the hands of some of the victims were tied at the back; and, as the Chief of the Consortium of Humanitarian Agencies was reported to have said, the corpses were placed on the ground face down when his team found them. These details, highlighted in pro-Tiger propaganda publications as evidence of not only a "mass execution" but also a post-execution "exhibition" of corpses, have been repeated even in reports published by reputed international organisations.

Admittedly, Sri Lanka is not unfamiliar with "executions *cum* exhibitions". The LTTE, for instance, has engaged in it on innumerable occasions especially in administering punishment to "traitors". It was also a widely practiced terror tactic during the insurrection of the late 1980s. In the aftermath of the Muttur tragedy, however, no conceivable benefit could have accrued to the SLArmy by proclaiming in such a manner that a mass execution had taken place. Nor is there any

evidence of an attempt on its part at concealment. Had concealment of the crime or confounding evidence been an intention, it would have been easy to place, say, a few guns and grenades amidst the corpses – not an entirely unknown practice among law enforcers – so as to make the killing look like an act of self-defence, while creating suspicion of possible collaboration between the ACF workers and the LTTE. What the army is reported to have done instead is to deny involvement in the killing, permit (as early as 6 August) a "relief team" dispatched by the Consortium of Humanitarian Agencies to examine the "crime scene" and to transmit impressions to their Chief in Colombo (who, in turn, conveyed the information to the Reuter correspondent as early as 6 August), and then ensure, with commendable professionalism (in the context of the fact that the army control over parts of Muttur still remained uncertain), the delivery of the corpses to the District Hospital at Trincomalee, thus facilitating subsequent investigation. Is there in this conduct the basis for a charge of committing a "crime against humanity"?

*Unabridged version of the article submitted by G H Peiris to the 'Jagran Forum' 2008

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