

Cover Story

THE GENEVA RESOLUTION

The Noose

Thirty years ago, the issue of the observance of human rights in Sri Lanka surfaced in the apex United Nations human rights forum, in the aftermath of the horrible July 1983 riots. A coalition of Western countries, Western-based human rights NGOs and aggrieved expatriate Sri Lankan groups linked the issue of human rights (one-dimensionally) to the treatment of the Sri Lankan Tamil ethnic minority.

Significantly, the human rights abuses that surrounded the 1971 and 1988/89 insurgencies of the southern-based People's Liberation Front (JVP) were scarcely the subject of scrutiny, let alone resolutions of UN human rights bodies.

Throughout the brutal conflict between successive Sri Lanka governments and the secessionist Liberation Tigers of Tamil Eelam (LTTE), the issue of Sri Lanka's human rights remained a matter of international concern. But the widespread revulsion of the atavistic terrorism of the LTTE deterred any resolutions that were critical of the government from being adopted.

Effective diplomacy and a cooperative dialogue with the UN human rights agencies and others – especially with India, after 1987 – contributed to this.

TRAGIC IRONY It is, therefore, a supreme and tragic irony that in the wake of a decisive victory of the Government over the LTTE five years ago, more resolutions have been adopted by the UN Human Rights Council (UNHRC) than before 2009, culminating in the critical resolutions of 2012, 2013 and 2014.

The 25th session of the UNHRC adopted a resolution on 27 March on “promoting reconciliation, accountability and human rights in Sri Lanka,” which can have incalculable consequences for the stability of the country unless its implementation is

managed wisely, both by Sri Lanka and the international community working together.

TAKING STOCK No amount of convoluted and disingenuous argument about the numbers – 23 for; 12 against; and 12 abstentions – can conceal the fact that the adoption of the toughest and most intrusive resolution against the wishes of the Government of Sri Lanka must surely be a moment when we, as a nation, must pause and take stock.

The early warnings, following the 2012 and 2013 resolutions, came in the statement issued by UN High Commissioner for Human Rights Navanetham (Navi) Pillay, at the conclusion of her 2013 visit to Sri Lanka and subsequent statements in Geneva. This was supported by the statements of the Prime Minister of the UK and the Department of State of the USA, forewarning another resolution at the UNHRC.

KEY DRIVERS The US and UK (whose heads of missions in Colombo were summoned to their respective capitals and visited Geneva while the UNHRC was in session) were the two key drivers of the resolution. But the recommendation in UN High Commissioner for Human Rights' report to the UNHRC was especially ominous.

It stated: “The High Commissioner recommends that the Human Rights Council establish an international inquiry mechanism to further investigate the alleged

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Tightens

BY Jayantha Dhanapala

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violations of international human rights and humanitarian law, and monitor any domestic accountability processes. OHCHR (Office of the High Commissioner for Human Rights) stands ready to assist in such a process.”

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OUT OF THE BLUE The 2014 resolution has many surprises that were not expected by observers. They had assumed that while a resolution was inevitable, it would only be a few degrees harsher than in 2013 – without the much feared ‘international inquiry mechanism’ demanded by UN High Commissioner for Human Rights, and supported by some human rights organisations and extremist Tamil expatriate groups.

Indeed, the draft resolution (L.1) that appeared on 11 March conformed to this expectation. This was a second mutation. But while it mentioned in the preambular and operative paragraphs, inter alia, a welcome of the Provincial Council elections held on 21 September 2013; broadened the scope of alleged human rights violations to include post-2009 reports of sexual violence, disappearances, extra-judicial killings, torture, the Weliveriya incident and other human rights abuses including violence against minority religious groups; and sounded a cautionary note on the truth-seeking process hinted at by the Government with South African help; it stopped short of calling for the “international inquiry mechanism” recommended by the UN High Commissioner for Human Rights.

Instead, it asked that Navi Pillay “assess progress” and “monitor relevant national processes,” “investigate alleged violations and abuses of human rights by both parties,” and report orally and comprehensively in 2015. The operative that was focussed upon was the call on the Government “to conduct an independent and credible investigation into allegations of violations of international human rights law and international humanitarian law.” How the two processes were to be reconciled was left vague.

Changes took place between the version of 11 March and that of 14 March, which remained in the resolution that was adopted. They include the following.

❑ Positive addition of a new preambular paragraph: “Reaffirming its commitment to the sovereignty, independence, unity



and territorial integrity of Sri Lanka,” probably in response to the Government’s protests about the infringement of Sri Lanka’s sovereignty and a signal to the LTTE rump.

- ❑ The addition of the words “land use and ownership” in the preambular paragraph referring to the Government’s progress “in rebuilding infrastructure, demining and resettling the majority of internally displaced persons, while noting nonetheless that considerable work lies ahead in the areas of justice, reconciliation, land use and ownership...”
- ❑ Reformulation of operative paragraph 4 to refer to “alleged” attacks on persons and places, holding those responsible accountable while preventing future attacks.
- ❑ The separation into three of the one operative paragraph on the visits of

special rapporteurs – one dealing with the visit of the Special Rapporteur on Internally Displaced Persons which took place in December 2013; the invitations already extended to the Special Rapporteurs on the Rights of Migrants and the Right to Education, and a general paragraph urging the Government “to cooperate with other special procedures mandate holders and to respond formally to their outstanding requests, including long-standing requests.”

- ❑ Strengthening of old paragraph 8 into paragraph 10 (see accompanying box).

INDIAN ENIGMA The sting is actually in the tail, and it is not surprising that the Sri Lanka delegation and its supporters reserved their main objections to this paragraph, asking for a separate vote on



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it (after the usual procedural tactic of a no-action motion was lost). That separate vote attracted 14 in favour, including India rejecting the international inquiry, but it could not muster the required majority to delete the offending paragraph. The enigma remains – would India have voted for the resolution without this paragraph?

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The key issue is to explain the transition from the draft of 11 March to that of 14 March, and the final resolution that was adopted.

First, amidst uncertainties about the forthcoming elections in India and Tamil Nadu support, the transition lost the Indian vote from a 'yes' to an abstention, with a strong explanation of its vote affirming support for Sri Lanka's sovereignty, while rejecting "intrusive" mechanisms and reasserting New Delhi's control of India's foreign policy over regional pressures – notwithstanding the Congress Party's manifesto.

Next, inputs from the Chief Minister of the Northern Provincial Council, the TNA, SLMC and Sri Lankan civil society may also have contributed, especially when Ruki

Fernando and Father Praveen were arrested on 16 March while the UNHRC was sitting. Further, the international situation, with the annexation of Crimea and increasing tensions between the West and Russia was the backdrop, with Tamil Nadu calling for a referendum in the north and east of Sri Lanka.

MODUS OPERANDI The all-important question now is about how the resolution will be implemented. Despite many precedents of similar mechanisms in the past, how will the twin processes of the Government implementation of operative paragraph 2 in conducting its "credible" investigation relate to the UN High Commissioner for Human Rights' process, where the UN High Commissioner for Human Rights de facto takes the lead?

If the Rajapaksa Government rejects the resolution (as it has already done) and doesn't cooperate with the UN, are we heading for a tightening of the noose, with sanctions being imposed by the US and EU eventually? Are the choices before us the road taken by Robert Mugabe's Zimbabwe, or the conciliatory path of Myanmar? Or is it possible for the compromise of making the speedy implementation of operative paragraph 2, building on the Paranagama Commission on Disappearances and using the rich talent we have in our legal fraternity, to pre-empt and trump operative paragraph 10?

LLRC WARNING It is wise, even at this late stage, to heed the warning of the Lessons Learnt and Reconciliation Commission (LLRC) appointed by the President of Sri Lanka, which said three years ago: "Sri Lanka now faces a moment of unprecedented opportunity. Rarely does such an opportunity come along without equally important attendant challenges. This is especially true of any meaningful effort towards post-conflict peace building following a protracted conflict. Sri Lanka's case is no exception."

It adds: "Terrorism and violence have ended. Time and space have been created for healing, and building sustainable peace and security so that the fruits of democracy and citizenship can be equitably enjoyed by all Sri Lankans. To this end, the success of ending the armed conflict must be invested in an all-inclusive political process of dialogue and accommodation, so that the conflict by other means will not continue."

We have, so far, disregarded this advice, and the 'conflict by other means' continues amidst disquieting official reports of a revival of LTTE terrorism.

THE STING IN THE TAIL

"Takes note of the recommendations and conclusions of the UN High Commissioner regarding ongoing human rights violations, and the need for an international inquiry mechanism in the absence of a credible national process with tangible results," requests the Office of the High Commissioner for Human Rights.

- To monitor the human rights situation in Sri Lanka and to continue to assess progress on relevant national processes.
- To undertake a comprehensive investigation into alleged serious violations, and abuses of human rights and related crimes by both parties in Sri Lanka during the period covered by the Lessons Learnt and Reconciliation Commission, and to establish the facts and circumstances of such alleged violations and of the crimes perpetrated with a view to avoiding impunity and ensuring accountability, with assistance from relevant experts and special procedures mandate holders.
- To present an oral update to the Human Rights Council at its 27th session, and a comprehensive report followed by a discussion on the implementation of the present resolution at its 28th session.