

UNHRC Resolution against Sri Lanka: What It Really Means

by Dharshan Weerasekera

The United Nations Human Rights Council at its recent sessions held in Geneva, adopted a US-sponsored resolution against Sri Lanka, expressing dissatisfaction with the pace of reconciliation and accountability since the end of the war with the LTTE, urging the government to make haste in implementing the recommendations of its own Lessons Learnt and Reconciliation Commission, and also calling for other more credible measures to ensue accountability. The resolution also promises “technical assistance” to further these ends. The basic problem with the resolution, from the Sri Lanka government’s point of view, is that the attempt to judge a nation’s intentions or sincerity in carrying out certain reforms, instead of what it has already done or is doing with regard to those same matters, is a violation of fundamental concepts in international law such as sovereignty and non-interference in the domestic affairs of a country, among others. Ambassador Tamara Kunanayakam, Sri Lanka’s representative at the HRC, has said, “They are judging our intentions, not the ground reality.... [I]t gives a role to the Council that was never intended.”¹ She has also said, “A resolution on Sri Lanka will, many feel, be the ultimate test of the Council’s politicization. It will make it or break it.”²

Ambassador Eileen Chamberlain Donahue, the US representative, has pointed out some of the difficulties the resolution entails from the American point of view: “The case of Sri Lanka is different and difficult. It is essentially dealing with large-scale civilian casualties, allegations of government involvement in large-scale civilian casualties during a civil war that took place over many years, but ended in 2009. It’s not an on-going crisis, and for that reason it’s slightly more challenging.”³ So, the US is itself admitting that there’s no ongoing “crisis” in Sri Lanka, and that this makes the resolution “difficult.” Meanwhile, at least prima facie, it is clear that the attempt to judge Sri Lanka’s “intentions” is a violation of the sovereignty and freedom of action allowed every nation under international law. All this therefore raises the interesting and crucial question as to why the US is still willing to pursue the matter with such single-minded focus? Why is Sri Lanka suddenly so important to the US? Explanations, theories, and conjectures abound. The purpose of this essay is to briefly consider some of the main explanations, and to give an assessment as to the best one.

There are four explanations generally given for why the Americans are acting as they are: first, that they are pursuing the R2P (“Responsibility to Protect”) agenda; second, “domestic pressure” (i.e., pressure coming from the Tamil diaspora); third, what can be called the “they hate us” explanation (i.e. they are jealous of our success in defeating terrorism and certain other matters); and fourth, “geopolitics.” In my view, the first is the best and most likely explanation, while the other three, though perfectly reasonable, can’t quite explain,

¹ “The battle will have to be fought to the last minute,” The Permanent Mission of Sri Lanka to the United Nations office at Geneva, (www.lankamission.org) March 7, 2012

² Ibid

³ “Pieris-Samarasinghe differ in Geneva as US talks tough”, *Sri Lanka Sunday Times*, March 4, 2012

individually or in combination, the particular intensity and focus with which the US seems to be pursuing Sri Lanka. I argue, however, that the R2P connection to Sri Lanka and to this resolution in particular is relevant in a slightly *different* way than has hitherto been explored in public discussions, but to see this, one has to set it in context with the other explanations. So, let's first review the latter, starting with "domestic pressure."

It is indisputable that there is a powerful pro-Tamil Lobby in countries like Britain and Canada. The question, however, is whether the Tamil Lobby in the United States is powerful enough to exert direct pressure on the government at its highest levels, particularly at the level of the policy-making apparatus. In Britain and Canada, this may indeed be the case. With regard to Britain, for instance, there is evidence that UK-based Tamils may have the ability to influence if not dictate the priorities of no less than a Foreign Secretary.

A Wikileaks cable reveals that former British Foreign Secretary David Miliband's frantic shuttle-diplomacy to Sri Lanka during the last stages of the war, ostensibly to plead the cause of the civilians trapped in the conflict zone, may well have been to win Tamil votes back home. The cable details the assessment of senior US diplomats in London, of conversations they had with one Tim Waite, the Sri Lanka Desk "team leader" at the British Foreign Office:

Waite said that much of HMG and ministerial attention to Sri Lanka is due to the "very vocal" Tamil Diaspora in the UK, numbering over 300,000 and who have been protesting in front of Parliament since April 6. He said that with UK elections on the horizon and many Tamils living in Labour constituencies with slim majorities, the Government is paying particular attention to Sri Lanka, with Miliband recently remarking to Waite that he was spending 60 percent of his time at the moment on Sri Lanka.⁴

To turn to Canada, Martin Collacott, a former Canadian High Commissioner to Sri Lanka, has pointed out that Canadian Diaspora Tamils once prevented the government from designating the LTTE a terrorist organization. Writing in the *Independent Post*, he says,

Canada's failure to label the Tigers as terrorists ... contravenes the recommendation of CSIS (Canadian Security Intelligence Service) which is the Canadian agency best suited to determining the nature of militant groups. The reason for the government's failure is clear. Through intimidation tactics, the LTTE exercises a considerable measure of control over members of the Tamil community. LTTE-friendly community leaders are willing to ensure that liberal candidates win votes in Tamil-heavy urban constituencies, provided the federal government turns a blind eye to fundraising.⁵

The question, however, as I have pointed out, is whether Tamils in the *US* have the same capacity and clout to exert direct pressure at the highest levels of the government. The US

⁴ See, "Wikileaks: David Miliband championed aid to Sri Lanka to win votes of Tamils in UK" *The Telegraph*, January 22, 2012

⁵ Martin Collacott, "Canada's role in Tamil terror," *National Post*, January 26, 2005

certainly has a significant population of Tamils (over 300,000 by some estimates⁶) but due to the way US Congressional districts are demarcated by slicing through various demographic groups, it is unclear whether US-based Tamils, even in places where they are numerically concentrated, can leverage themselves to become a crucial swing-vote in close elections. It may be that US-based Tamils have an “ace up their sleeve” of this kind, but in my view it is unlikely, or at any rate the matter has not been adequately investigated as yet. Until there’s some certainty on the matter, until someone shows exactly how, or through what channels, or through some other type of concrete evidence or corroboration, that the influence is being exerted, we can’t use it as a basis for an explanation.

We next turn to the “they hate us” explanation. What this explanation says, in essence, is that the US (and the West) is jealous or envious of Sri Lanka’s success at defeating terrorism, and in general, in pursuing an independent path with respect to its interests and developmental goals (and having some positive results to show for it). In this regard, a remark by well-known lawyer and political commentator S.L. Gunasekera is interesting, because it captures something of the frustration felt by many Sri Lankans:

There can be little doubt that the Resolution before the HRC was borne, not out of any kind of concern for human rights or justice, but out of the limitless pique of the West that we “WOGS” had what they deem to be “impertinence” and “insolence” to spurn their advice to commit national suicide by declaring a “ceasefire” when we were on the point of defeating the LTTE, and that we succeeded in defeating them and restoring a very significant degree of peace in our land, whereas the West has only failure to show for their endeavors in those countries which suffered from their “tender ministrations”—the wholly chaotic situations that exist in Iraq, Afghanistan, Libya, etc., etc.⁷

The explanation is quite reasonable, and it also makes a certain amount of intuitive sense. The crucial question, however, is whether Sri Lanka’s smug attitude, behavior or recalcitrance is enough to cause American planners, who are usually seasoned professionals, men and women operating from very rational assessments of the US’s long-term interests, to contemplate “regime change.” In my view, for the US to contemplate “regime change,” the country that is targeted either has to have some resource of overwhelming value, or have some other capacity to threaten core American interests in a concrete and definable way. (As a general matter, it should be remembered that the notion of a “threat of a good example,” as it has been used in other contexts, for instance to explain American actions in the Vietnam War, is that the targeted country possesses some idea, philosophy or outlook that it can export to other countries, that in turn can have a concrete and definable impact on American interests, in terms of negating or countermanding the ideas, ideologies, philosophies, and doctrines that America itself holds dear, and which, in effect, sustain the American system.)

⁶ “Tamil Diaspora,” V. Sivasupramaniam, www.sangam.org, (Association of Tamils of Sri Lanka in the USA)

⁷ S.L. Gunasekera, “Today it is Sri Lanka, Who will it be tomorrow?”, *Transcurrents*, March 19, 2012

But it is not clear this is the case with Sri Lanka. For instance, Sri Lanka is not a “communist” country. Nor does it export or purport to export any other ideology or practice antithetical to core American values. (One might say that oil has been discovered off the coast of Sri Lanka, and that perhaps this is what the US is after in the long term. But to the best of my knowledge, there hasn’t been any mention of “Sri Lankan oil” in any of the major US foreign policy journals or think-tank publications, which latter are usually a reliable way to gauge the priorities and concerns of US planners. So it is unlikely that “Sri Lankan oil” is currently even in the radar of US foreign policy concerns.)

To turn to more pertinent matters, the fact is that on many important issues, Sri Lanka’s *conduct*, as opposed to its *attitude*, is exactly what America wants. Sri Lanka’s foreign-trade policies, for instance, including the embrace of the so-called neo-liberal agenda, are perfectly compatible with American interests. Robert Blake, former US Ambassador to Sri Lanka, currently Assistant Secretary in the Bureau of South Asian Affairs, and one of the prime architects of the present resolution, has said that Sri Lanka has “great opportunities” for American companies.⁸ Meanwhile, one of Blake’s predecessors, Ambassador Jeffrey Lundstead, has said categorically, “The US has no significant strategic interests in Sri Lanka, certainly in comparison with other areas of US engagement.”⁹

Given this situation, then, it is unlikely that Sri Lanka’s attitude or recalcitrance would constitute a “threat” in the minds of American planners. Certainly, Sri Lanka is a bit eccentric. But as long as it doesn’t hurt the US where it matters—i.e. in the wallet—what does it matter? A cold and calculating policy-man would say, “So what?” Live and let live. At any rate, it cannot explain the *intensity* of the attention and fixation the US seems to have developed for Sri Lanka.

Finally, third, we have geopolitics. Rohan Gunaratna, a well-known security expert, deals with this aspect when he says, “Sri Lanka has become a pawn in the geopolitical chess game between the West and India versus China, the emerging superpower.”¹⁰ Again, the explanation is reasonable and makes a certain amount of intuitive sense, but there are complications. First, we need to distinguish between the interests driving US foreign policy from the interests driving the respective policies of other Western nations. The US’s geopolitical interests are unique and different, on account of it being the world’s sole superpower. Second, with respect to the geopolitics of the Indian Ocean region, in my view, it is not possible to say that there is a nexus between the US and India on one side, and China on the other. Each of these powers has distinct interests in the region, some of which coincide, and some clash.

In general, the South Asian region has been relatively unimportant in American geopolitical considerations. The main American theaters of operation in Asia as a whole have been Central Asia and the Middle East on one side, and the Far East on the other, in both of which America has fought (or continues to fight) major wars. South Asia, therefore, has largely figured as a sort of staging area, or transitional point between these two theaters. Traditionally, the US’s primary “involvement” in South Asia was its relationship with

⁸ Charita Fernando, “Rights Row,” Lanka Business Online, March 21, 2012

⁹ *Asian Tribune*, “US aid to Sri Lanka declined since 2005, now halted,” July 24, 2011

¹⁰ “Sri Lanka in catch-22 situation”, *The Nation*, March 18, 2012

Pakistan (and through that, indirectly, with India.) From about the 1950's to the 1990's the US was an unreserved supporter and backer of Pakistan, which set it at odds with India. In the 1990's this dynamic began to change, when the Americans began to pursue a policy of increasing co-operation and comity with India over certain areas of mutual interest, particularly trade. Lloyd I. Rudolph and Susanne Hoeber Rudolph, of the University of Chicago, explain this as follows:

For roughly 50 years, the US destabilized the South Asia region by acting as an offshore balancer. Its actions allowed Pakistan to realize its goal of "parity" with its much bigger neighbor and to try to best that neighbor in several wars. With the end of the Cold War (1989,) the Soviet withdrawal from Afghanistan (1989,) and the collapse of the Soviet Union (1992,) little was left to justify the US acting as an offshore balancer in South Asia.¹¹

If we look at all this then from the perspective of the grand geopolitical stage, or "chess board," Sri Lanka is not really in an area of the world where the US is inclined to take drastic action (except, perhaps when it comes to Pakistan). India remains the "superpower" in the region, and the US is happy to let this status quo continue as long as it is mutually beneficial, especially with respect to trade matters. If Sri Lanka were to pose a geopolitical "threat," the US can rely on India to neutralize it.

So, this is the background in which we have to approach any clash between US and Indian interests on the one hand, and China on the other. The only way Chinese actions in Sri Lanka could become a threat to the US is if the Chinese obtain something like a naval base on the island. But India would never allow this—not because it is acting in concert or collusion with the US, but because it would jeopardize India's own hegemony in the region. The Sri Lanka government, meanwhile, is well aware of India's concerns on these crucial matters, and the folly of thwarting India when it comes to her core interests. Sri Lanka's High Commissioner to India, no doubt echoing the sentiments of his bosses in Colombo, is on record as saying, "China is an old friend. India is an older friend. Our political and economic friendship with China will not be at the expense of India."¹²

Meanwhile, valuable insight into the US's own assessment of any "threat" posed by the Chinese in Sri Lanka can be gained from a recent Wikileaks release of a cable sent by current Ambassador Patricia Butenis to Washington. In the cable, classified "confidential," she writes,

At times the Government of Sri Lanka strikes a defiant nationalist tone, claiming that it does not need the US and the West since it can turn to new friends such as China. The trade figures do not bear this out, as investment and trade is a one way street, and the West remains an irreplaceable export market. Sri Lanka exports 37% of its goods to the EU, followed by the US with a 23% share. Meanwhile the US runs an enormous trade deficit with Sri Lanka. In 2008 Sri Lanka exported \$1.96 billion of goods to the US, and

¹¹ Lloyd I Rudolph and Susanne Hoeber Rudolph, "The making of foreign policy for South Asia," *Economic and Political Weekly*, February 25, 2006, political-science.uchicago.edu, p.705

¹² www.worldlatestnews.com, February 11, 2011

only received \$283 in American imports. Although China may well offer an excellent long term market, in terms of trade opportunities Sri Lanka's new friends cannot compete with her old ones in the United States and EU.¹³

To repeat, core American geopolitical interests are well protected in Sri Lanka: China can gain as many concessions as it wants, but America can leave it to India to make sure the Chinese don't cross a certain critical line.

That leaves R2P. Ambassador Kunanayakam has said: "The West has been developing this argument to justify and legitimize interventions in Yugoslavia, Iraq, Afghanistan, Libya and now Syria. Their real objective is *'regime change'*! Many Ambassadors in Geneva have been telling me that this is also what they want to achieve in Sri Lanka, so we take it very seriously."¹⁴ But the question still is, "Why?" *Why* would the US want "regime change" in Sri Lanka, at this precise point in time? The only way to answer this question is to refer to the explanations we have already considered—for instance, that the US is being driven by "domestic pressure," that there are "geopolitics" involved, that Sri Lanka poses some sort of ideological threat, and so on. As we have seen, however, these explanations don't hold up under close scrutiny. So what could possibly be the reason that Sri Lanka is important to the US in connection with R2P?

There is no question that the resolution is a boost for the R2P doctrine in general: the HRC's endorsement of the resolution can be trumpeted as another instance when the international community endorsed or approved the core concepts behind R2P. This, in turn, will join the panoply of other precedents that the US can rely on if and when it wants to apply the doctrine in some specific situation in the future, whether in Sri Lanka or in some other country. But, there has to be more to it than this. For instance, if what the US wants is simply another precedent to bolster or boost R2P, it could focus on plenty of other countries, countries with *ongoing* crisis. The unique aspect of the US's attentions to Sri Lanka is that here the attempt is to hold a country "accountable" for alleged offences that happened in the past. Sri Lanka, in other words, is a test case. But for what, exactly?

In my view, the significance of the resolution (and there's really no other way to put it) is that it allows the US to continue its assault on, and undermining of, some of the core concepts and foundational pillars of international law. This assault is part of a new direction or focus in US foreign policy, though of course not in an explicit or overt way. There is very little public discussion of this matter.

R2P, or Responsibility to Protect, is based on the general sentiment that if there are atrocities taking place in a country, the community of nations can't stand by and let it continue, but must intervene in some way to prevent it. It got international recognition at a 2005 UN Summit where the UN General Assembly endorsed, in broad terms, some of the principles and ideas behind the doctrine. Here, however, things get a little complicated. The distinguished American scholar and critic Noam Chomsky explains the matter as follows:

¹³ "Wikileaks: Sri Lanka's new friends cannot compete with her old ones." *Colombo Telegraph*, March 26, 2012

¹⁴ "The battle will have to be fought to the last minute," (www.lankamission.org), March 7, 2012

The version of R2P adopted by the 2005 UN Summit affirms what had already been accepted, at most with a shift in emphasis, which was why it was so easily adopted. There is, however, a radically different version of R2P presented by the 2001 Evans Commission, which adds a provision allowing “regional” organizations to act without Security Council authorization in their “areas of jurisdiction”.... [I]n practice, the Evans extension refers solely to NATO, which claims an extremely broad “area of jurisdiction.” The Evans version of R2P simply reinstates the so-called right of humanitarian intervention, which has always been vigorously apposed by the non-aligned countries, the traditional victims.¹⁵

So, the version of R2P that the US is trying to push is the “Evans version”, i.e., the version that would allow the US, if it can gather together a cabal of nations to support it, to intervene anywhere in the world at any time, and do so under cover of “international law,” or at any rate the pretense that it is carrying out the “will” of the community of nations as a whole. It is easy enough to see the uses and benefits of this version as a US foreign-policy tool. But the problem (for the US) is that there are fundamental contradictions between the scheme and international law, not to mention that a large number of nations, the “traditional victims,” will never allow it.

It is important to be as clear as possible as to the precise use or benefit that the Evans version has for long-term US foreign policy. To repeat, it allows the US, if it can gather together a cabal of nations—a “coalition of the willing,” in a manner of speaking—to intervene anywhere in the world, and do so under cover of “international law,” or at any rate the pretense that it is only carrying out the “will” of the community of nations at large. The “coalition of the willing” is fashioned on a project-by-project basis depending on the needs of each situation. For instance, there would be one coalition for Iraq, another one for Libya, quite another for Sri Lanka (perhaps in the future,) and so on. The point is that the specific coalition does not matter: as long as there is *some* coalition, the US can justify its actions.

The beauty of the system is that once the “coalition” is formed, its view, opinion or *diktat* that the particular intervention in question is justified becomes the sole basis for subsequent action. At the same time, however, an impression is given, and indeed a certain legal imprimatur is obtained, that the whole world is backing the intervention. The notion in traditional international law, that on important questions the community of nations comes together and discusses the *merits* of a case before taking or endorsing action, is completely contravened. Certainly, there is “discussion,” but only for the sake of decorum and tradition: the decision to intervene is taken quite independently of the results of any “discussions,” and indeed is carried through even if the whole world, other than the “coalition of the willing,” is opposed to it.

But that is appalling! It is outrageous! True. From the point of view of the “traditional victims,” it *is* outrageous. But if we want to understand what is going on with R2P, we have to look at it from the point of view of the people who think up these schemes. From the point of view of US foreign policy, R2P—or rather, the Evans version—makes perfect

¹⁵ Noam Chomsky, “Kosovo, East Timor, R2P and Ian Williams,” *Foreign Policy in Focus*, August 17, 2009

rational sense: What sole superpower wouldn't want to have a mechanism that would allow it unrestrained and unhampered freedom of action anywhere in the world?

But the problem, as I have said, is that there is a fundamental conflict between the Evans version and the wishes, desires, and interests of a very large proportion of the world's nations, the "traditional victims." The latter would never allow or approve of the former if given a choice, and they would have the core principles of traditional international law as an iron defense to back up their position.

If we put ourselves in the shoes of a hypothetical but rational US planner, this is a straightforward policy-problem: How do you do you make the Evans version prosper in the face of fundamental contradictions with traditional law? The obvious and reasonable answer is that you have to *weaken* international law. Since there is no way to do this brazenly or openly (without losing one's own credibility, or of kindling the fury of the "traditional victims," which latter, if united, is a force to be reckoned with), you have to do it surreptitiously. So what do you do? You do the only reasonable thing in the circumstances: attack the core concepts of international law in a systematic and sneaky way, so as to denude those concepts of any real meaning or force.

This is the context in which we have to see the present resolution against Sri Lanka. Sri Lanka is a "test case" in the sense that it allows the US to extend its range in challenging key international law concepts such as "sovereignty," "exhaustion of domestic remedies," and so on. In this regard, the following observation by Ambassador Kunanayakam, is highly relevant:

In her statement to the Human Rights Council, the US Under Secretary of State, Maria Otero, unilaterally outlined the values which, she said, would guide their work within the Council, totally disregarding the principles that the UN General Assembly has determined and which the US accepted when taking its oath as member of the Council! "*Cooperation*", which is embedded in the UN Charter and a duty incumbent on all States, is replaced with "*dialogue*"; "*impartiality*" and "*non-selectivity*" replaced with the vague and subjective values, "*principle*" and "*truth*"¹⁶

American diplomats—indeed, diplomats as a general rule—don't use words loosely. We can rest assured, meanwhile, that a US Undersecretary of State is well aware of international law, particularly the UN Charter, not least because the US helped draft it! The shift to these new concepts then is deliberate and calculated. What they are doing is building a record. They are compiling precedents where core international law concepts are reinterpreted, and where they can show that the international community itself—including the "traditional victims"—by acts of omission or commission, endorsed the new interpretations. It is all part of that steady effort to sap the life blood out of core international law concepts: to carve out their marrow and substance, until in the end nothing is left but the brittle, empty, and hollow shells.

¹⁶ "The battle will have to be fought to the last minute," (www.Lankamission.org), March 7, 2012

Sri Lanka allows the US to take these “reinterpretations” to hitherto unexplored areas, namely, to give them the option of intervention in countries where there are no *ongoing* crisis, under the pretense of seeking “accountability” for alleged crimes committed in the *past*. After this, there is really nothing more to accomplish: the theoretical and legal framework for intervention is complete. So that, in short, is the real significance of the US’s fixation on Sri Lanka.

To summarize, what is really at stake with this resolution (and no doubt the resolutions that are to come in the near future, perhaps as soon as the next HRC session,) is the integrity and future viability of international law itself. This is an issue that is relevant not just to Sri Lanka, or even just to third world countries, the “traditional victims,” but to the West also, or at any rate those persons in the West, including the United States, who still feel international law has some value and purpose, and is worth saving. Simply put, there has to be a renewed debate and discussion on R2P. Someone has to put it to the nations of the world, clearly and unambiguously, whether they want to choose international law, or whether they want to choose R2P—not R2P in its general sentiment, or the 2005 UN Summit version—but the “Evans version”, or any other such extension which leaves wriggle-room for dubious interventions.

If the countries of the world decide they want to dump international law, then so be it. But if they say they are for international law, they have to also make their position absolutely clear with respect to R2P, and they have to do it by positive law, by some sort of resolution, at the UN or at some other such international forum. In my view, international law will once again be on solid ground only if there is such an explicit affirmation and re-dedication to its core principles. Otherwise, the whole enterprise is sunk, and we might as well admit it.

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