

Tape 1 – 25-08-2010 – Mr. Jayantha Dhanapala

Chairman – opening statement

Mr. Dhanapala before we commence I wish to outline the general procedure as far as this Commission is concerned. Now you are entitled to make your representations either in public or in camera – the choice is yours. Thereafter the Commissioners are entitled to seek clarification from you on the representations that you make or on any matter that is relevant to the Warrant. Now you are entitled to respond either in public or in camera. Nobody else can ask you any questions except the Commission. So you will have to decide whether you are making your representations in public or in camera – the choice is yours.

REPRESENTATION OF MR. JAYANTHA DHANAPALA

Thank you Mr. Chairman. Distinguished Members of the Commission, first of all may I thank you for your kind invitation to make some presentations to you. Thank you also for the option given to me of either speaking in camera or in public. I have always believed in the principle of transparency and so I would gladly speak in public because I have nothing to hide especially from the public of my country.

May I begin this ... Mr. Chairman I will begin with a few remarks which may seem politically incorrect but perhaps a little frank. The recent history of Presidential Commissions has been a dismal and uninspiring one. We have the Udalgama Commission which was aborted and we have a number of Commission Reports which have not been implemented. Nevertheless, the personal stature of all of you as Commissioners and the integrity that is widely respected of yourselves encourages me to appear before you and speak in order that our country can enjoy a future of peace and reconciliation.

May I also say at the outset that I believe that your Commission has been appointed one year too late. Nevertheless, and despite the fact that your mandate is a narrow one, artificially framed by certain time constraints, I believe that you will rise above the blame game that is common in the politics of Sri Lanka and ensure that a foundation is laid for a future of a stable, a durable peace and a reconciliation with all segments of our population.

My written submission is already available to the distinguished Commissioners, and I will not read it out but I will quote from it from time to time and expand on what I have sent to you.

I think the lessons that we have to learn from the past are both positive lessons and negative lessons. I think that the conflict that has ravaged our country is not only the result of the perversity and the venality of the LTTE and its leader Prabakaran, but also the cumulative effect of bad governance on the part of successive Governments in Sri Lanka. Our inability to manage our own internal affairs has led to foreign intervention but more seriously has led to the taking of arms by a desperate group of our citizens. I think we need to rectify this bad governance and the first and foremost task before us is to undertake constitutional reform in order to ensure that we have adequate devolution of power. We have already missed several opportunities in the past; we have had an APRC functioning for quite some time but its report is still languishing in obscurity and needs to be presented to the public of Sri Lanka for discussion. We need to have State reform; we need to have rule of law established; we need to ensure non discrimination amongst our citizens; we need to have – as I said before – devolution of power and a tolerance of dissent and a strengthening of democratic institutions.

I will not spend time here outlining my ideas for constitutional reform. There are many constitutional lawyers of repute in our country, all of whom should be consulted, but I would say that constitutional reform is one of the highest priorities that we must address. At the same time we cannot postpone that reform until your Commission concludes its work because it is of great urgency. I think also that the importance of education as a primary tool in creating a tolerant society has to be addressed. We have all gone through a national trauma; we have all seen the brutalization of our society and we must ensure that never again should our children be exposed to the violence and to the false values that have been encouraged. I think as the UNESCO preamble says “war begins in the minds of men”, and conflict in Sri Lanka began with the attitudes of our people towards each other. And we must do everything possible to ensure that through education these attitudinal changes take place. I think the study of each others language is therefore a primary tool to ensure this attitudinal change. Educationists with great expertise in the subject than I have will advise the Government of Sri Lanka how and what techniques can be adopted in order to teach languages effectively. I think it has to be done in the earliest stage of one’s education. It is not to be regarded as something that is a curiosity. We have the experience of many countries – multi linguistic countries – in Europe and elsewhere, who have taught children as many as 4 languages at the same time. And if our students can learn foreign languages when they go abroad on scholarships, I am confident that we can marshal the investment necessary in order to have trained teachers teaching Sinhala to Tamil children and Tamil to Sinhala children and this will result in a greater understanding of each others cultures. We must also encourage the teaching of each others religions. This could be done at a more senior level, perhaps after the “O” Level in order again that there can be greater cultural understanding and tolerance and religious harmony.

If I may go on to talking about foreign policy and the foreign service in which I have had a great deal of experience having been a career diplomat for my country. I think it is important that all diplomatic and consular missions of Sri Lanka be staffed by officials conversant in both Sinhala and Tamil particularly where there are members of the Sri Lanka expatriate community present. Many of them come to these Missions in order to service their consular needs and I think proficiency in those languages is vital. It is also important that the symbols, the photographs and the communication methods that we use reflect the rich diversity of our culture rather than reflecting only one ethnic group or one religious group.

A special responsibility devolves on the Ministry of External Affairs with regard to (“an out reach to the” ed by JD) expatriate Sri Lankans. Expatriate Sri Lankans have gone abroad for a variety of reasons. We have to respect those reasons. We have to keep them linked with an umbilical cord to Sri Lanka. They do have grievances. Some of them have gone because of the conflict; some of them have gone because of discrimination; some of them have gone because they would seek greener economic opportunities. Whatever their reasons may be there is still a strong emotional tug that prevails and we need to use that. Ultimately the way in which we win over the expatriate community is the way in which we manage our own affairs here within Sri Lanka. If we have a political solution that is just and equitable I have no doubt that we will engage all shades of opinion of the expatriate community; harness the capital they have for investment here; but more than that, harness the goodwill that they have. Today we have large numbers of our expatriates present in western democracies. And since western democracies are driven by interest groups, these groups can form lobbies which can be very hostile to the national interest of Sri Lanka unless (a) we have the right political solution in Sri Lanka; and (b) unless we reach out to them and ensure that they understand what is happening in Sri Lanka. I am glad to see that initial steps have been made by the Government of Sri Lanka to engage members of the Sri Lankan Tamil community abroad and that there is some hope that there will be investment by them in the country.

May I move on to the fact that in diplomacy what is important is the balanced language of diplomacy that we use and the diplomatic channels that are used. I think we have an able Foreign Minister now; we have a professional career diplomatic service. We should use these assets in ensuring that the international community is briefed about developments in Sri Lanka. There is no point in having demonstrations on the streets of Colombo or in engaging in vituperative comment through our leaders in order to express disagreement with the stances of foreign governments. We need to engage in diplomatic negotiations; we have the assets to do so and we have to use those assets. I think it is also important for us to recognize that whether we like it or not human rights will remain an important part of the foreign policy dialogue in the international community. We have a proud record of having signed a number of international conventions and these conventions establish global norms which we are pledged to observe. And we do that through regular reporting under the various conventions by delegations from Sri Lanka appearing before committees in Geneva and in New York and allowing ourselves to be questioned by experts from those committees within the hearing of NGOs and others who are present. We cannot react hypersensitively to the concern of the international community whether from the west, from the east, from the north or from the south with regard to human rights in Sri Lanka because that today is an international norm and we have to accept the right of the international community to look at our record and we are able to defend that record. I think it is important that while the relevant Ministries in Sri Lanka contribute towards making these regular reports available to the international community and to the responsible authorities that we should at the same time ensure that our delegations include not only government officials but even representation from the opposition groups and from NGOs, so that we try to present a national delegation talking about the human rights situation in Sri Lanka. Nobody is more concerned about ensuring human rights in Sri Lanka than her own citizens.

May I go on to the subject of International Humanitarian Law. And although there are more competent authorities in your Commission than I am to talk on the subject, I believe that we have learnt a great deal of lessons from the experience of combating one of the most ruthless terrorist groups in the country. The primary purpose of International Humanitarian Law is the protection of civilians, and we have been exposed to a terrorist group who have used child soldiers unconscionably; who have used civilians as human shields and who have used suicide bombers to cause mindless destruction of property and the deaths of thousands of innocent civilians. How does a conventional Army of a nation state pursue a conflict with that kind of combatant? The rules of war as they exist today do not cater for that situation. We would be providing something innovative to the international community if we can discuss amongst our outstanding international lawyers here – and we have a galaxy of talent from Judge Weeramanthri to Dr. Rohan Perera to Dr. Lakshman Marasinghe and many others - who could all form a brains trust on behalf of the Government, engage with the International Committee of the Red Cross, the guardian of the Geneva Conventions, the 4 Treaties and the 3 Additional Protocols which today constitute International Humanitarian Law in order to try to give some guidance to armies of nation states as to how they should react to such a situation. We were very fortunate that in the end game of our conflict in May of 2009 we were able through the bravery of our own Army to save ourselves the possible holocaust of 300,000 civilians dying in the final stage. The earth bund behind which they were held as human shields was breached at great sacrifice by our Army and we were able therefore to minimize civilian losses. I do not think we have an accurate estimate as to what the civilian losses were in the cross fire but there were civilian losses. The tragedy would have been much greater if not for the bravery of our soldiers. But what if there was a tragedy greater than what happened. We would have been then denigrated in the eyes of the international community for no other reason but the fact that these civilians were being held as human shields. We have to I think engage first of all the ICRC and then the rest of the international community in order to perhaps convene a diplomatic conference to

discuss the formulation of a new protocol with regard to combat with non state actors. This is a phenomenon that is taking place all over the world and I think the marshalling of international opinion on this issue will be one of the contributions that we can make in the codification of international humanitarian law.

The other issue that I think important for us to make some kind of innovative move drawing from the experience of having been in conflict with the Liberation Tigers of Tamil Eelam is the issue of the responsibility to protect concept. This is a concept that you will recall was embraced in the UN General Assembly's Summit of 2005, the 60th UN General Assembly when the Heads of States adopted the responsibility to protect concept which basically means that the primary responsibility for the protection of civilians lies with the Government of that state. But if a Government is either unwilling because it is a dictatorship or unable because it is a failed state to exercise its sovereign authority to protect its own civilians then that authority passes to the international community but subject to the fact that it has to be approved by the Security Council through a resolution.

Now I think it is important for us to expand that concept to bring in the culpability of those members of the international community who have subscribed to the situation that has caused injury to the civilians of a nation. I talk about the way in which terrorist groups are given sanctuary; are harboured; are supplied with arms and training by some countries with regard to ("their" ed by JD) neighbours or with regard to other countries. We know that in our case this has happened, and I don't want to name countries, but even countries who have allowed their financial procedures and systems to be abused in such a way that money can flow from their countries in order to buy the arms and ammunitions that cause the deaths, the maiming and the destruction of property in Sri Lanka are to blame and there is therefore a responsibility to protect our civilians and the civilians of other nation states from that kind of behavior on the part of members of the international community, and I think this is something that will echo with many countries in the Non Aligned Movement where Sri Lanka has a very respected position and where I hope we will be able to raise this issue.

Let me move on to another point Mr. Chairman, a point very close to my heart because of my long career in disarmament and that is the fact that we are at the right opportune time to de-weaponize our society. The insurgencies in the south in 1971 and in 88/89 and the LTTE conflict has led to a proliferation of small arms and light weapons. Small arms and lights weapons were regarded as being the only insurance we had for our own security and nobody felt secure without a gun. We have had private armies proliferate; we have had all politicians with their own security personnel armed to the teeth; but now that the conflict is over we have a unique opportunity to get rid of these arms that are surplus to our needs. Of course the law enforcement agencies and the armed forces of our country should continue to retain their own arms but arms in the hands of others should be strictly regulated. We have an antiquated colonial ordnance that goes back to 1916 with regard to the possession of arms and the licensing of arms and although penalties have been increased recently you still have many loopholes in the law. A number of deserters during the conflict fled the battle field with their guns. I don't think we know what has happened to those guns. Some of those guns have percolated to the underworld and we need to ensure that they are recovered. The President has inaugurated a successful campaign against the consumption ("of" ed by J.D) alcohol called Mathata Thitha. I think it is very important for us also to inaugurate a campaign Aviyata Thitha so that we have a full stop to the proliferation of small arms and light weapons. It is an international problem and I was privileged in my capacity as Under Secretary General for Disarmament in the United Nations to lead the UN program. A program of action was adopted in 2001 and we were able to have in many countries mopping up of small arms and light weapons particularly in a post conflict situation. Bon fires took place called flambelape ("flamme de la

paix”ed J.D) with regard to surplus arms and weapons. So I believe that the time has come for us to engage in a nation wide campaign to de-weaponize our society and to ensure that human security is protected through other means than with guns.

May I also raise an issue with regard to a possible Race and Religious Relations Act. Many countries which are as pluralistic as we are in a societal formation have had Race and Religious Relations Act and a Race Relations Board which ensures that there is a prosecution against any hate speech or any other hate campaigns against individual groups whether ethnic or religious. I think it is important for us to have this kind of legislation and enforcement of that legislation. I know it is already embodied in other parts of the Criminal Procedure Code and you who are lawyers are perhaps more informed about that. But perhaps their codification in a Race Relations and Religious Relations Act will give it greater prominence and if there is a Board which can ensure this I think we will ensure that in the same way as anti Semitism has been prohibited in many western democracies although it still exists under the surface, we need to ensure that these attitudes are wrong, they are not helpful to building national cohesion and not helpful towards establishing a national identity as Sri Lankans.

There are also immediate reconciliation measures that can be taken. I think the armed forces of our country should be open to all ethnic groups and all religious groups. I am glad that already recruitment is taking place in the Police of Tamil constables and Tamil officers. We should extend that to the armed forces. Secondly I have read with some concern about LTTE graves being razed to the ground. I think we need to treat the dead with respect whether they are from the LTTE or whether they are from the Government troops, and I think while of course LTTE graves should no longer be a subject of veneration regarding them as martyrs the relatives of those who died should be given the option of having the remains of these persons who fell during the conflict transferred to other cemeteries if they wish to. I have been proud to be associated with a group called Sri Lanka Unites which is a youth organization which has for the second time this year organized a conference where youth from the ages of 15 to 20 participate from schools throughout the country – the north, south, the east and the west – and they meet together for 5 days at a conference and in between these conferences they have formed reconciliation clubs and their experience has been a very moving one. I have had the privilege along with Judge Weeramanthri to address these students last year and this year. And if a group of young men voluntarily can start a program like that I think at a macro level the Government itself can ensure that reconciliation pervades our country. May I also say that the President’s own example of addressing gatherings in the Tamil language is one that should be emulated by his other Ministers and by other political leaders in the opposition. I hope that that example is in fact instilled in the minds of other citizens so that we can always have a harmonious country speaking each others language which is a first step towards respecting each other as individual citizens of the same country with the same human rights.

I thank you Mr. Chairman

END OF REPRESENTATION

QUESTION TIME

Mr. H.M.G.S.Palihakkara

Thank you Mr. Dhanapala for your wide ranging observations and comments on many matters relevant to our Warrant ranging from human rights, education, language to international humanitarian law. They will certainly be food for thought for our recommendations. I just have 3 questions if I may. One relates to something in your written paper which you I think perhaps did

not refer to here. I would like to hear more from you on your thought about the collective statement by political parties in Sri Lanka as expression of concern, regret or solidarity with reconciliation process – as a launching pad for reconciliation process – would like you to flesh this thought out a little bit more for the Commission. One question. Second relates to your very interesting thought on the lessons learnt as it were about rules of engagement for the security forces dealing with huge international humanitarian law situations like human shields like what we faced at Nanthikadal etc. You have said that this is diplomatic avenue one could explore and you mentioned the diplomatic conference as a possible mechanism for that and others have suggested perhaps inter governmental working group on this issue could be a way out. Could you please give your observations on the modality. I for one believe this is a very good avenue to explore. Nevertheless the modalities of doing so I would like your further thoughts on it. Finally if you could please elaborate on the idea you mentioned about responsibility to protect. Expansion of that to cover the non state actors mis-using liberal international and national legal regimes how it would help the issues on our mandate. I would like further light on your thoughts on those 3. Thank you.

Mr. Jayantha Dhanapala

May I respond Mr. Chairman. Well first of all my suggestion that a collective apology to the people of Sri Lanka was owed by all political parties was a result of my saying that there has been a cumulative guilt on the part of all parties with regard to the bad governance that led to the conflict and caused the seeds of the conflict. And I think one way in which to wipe the slate clean would be for all political parties to acknowledge that there have been missed opportunities in the past in the formation of a collective identity for the Sri Lankan people and in good governance for the people of Sri Lanka. I think this should come not only from the Government but also from all the opposition parties and if there can be the formulation of a collective apology I think it would go a long way towards instilling in the minds of the people the fact that this is a common responsibility that we have. I harp back to the very inspiring letter which the late Bishop Lakshman Wickremasinghe wrote after 1983 when I think he took upon himself the right to apologize on behalf of the Sinhala people for the atrocities committed in 1983. Something on those lines might be done by all parties because this is not just something that can be ascribed to one community or to the other but it is a collective guilt that we have, a collective responsibility. And so that is what I would suggest. May be it can be done within the framework of the APRC or may be it can be done outside of it. That itself is a point of detail.

On the second issue with regard to international humanitarian law, I think the ICRC with whom I have considerable experience – I served on their international advisory group for 4 years – and I know they have a great deal of expertise in the subject. After every major conflict in the world from the late 19th century we have had a gradual building up of international humanitarian law. After World War II in 1949 there were a set of Geneva Conventions and so because the prevalence of non state actors and the problem of international terrorism is so widespread and because all civilized societies agree that no cause can justify the use of terrorism and because we have already something like 13 international conventions banning all forms of terrorism, we need to look into how counter terrorism can take place within the norms of international humanitarian law. It is not going to be an easy task because we are being confronted by ruthless enemies who disregard civilized norms and who are ready to use child soldiers; who are ready to use suicide bombers and are ready to use civilians as human shields. How does a well trained professional army react to individual situations. I think if we engaged in a dialogue – in a civilized diplomatic dialogue with other countries and with the ICRC – we will find a lot of people in similar situations; whether it is in Afghanistan; or whether it is in Iraq; or whether it is in some other place, Colombian Government fighting the FARC guerillas and so on. We will be able to make a contribution towards counter terrorism which is a very serious problem confronting the international community.

Forgive me Mr. Palihakkara your last question was – I did not have a pen to take notes. Yes, on the responsibility to protect my point was that the Canadian Commission that was responsible for the original report and which came up with what seemed at that time to be very cogent recommendations in the wake of what had happened in the 1990s in Rwanda and in Srebrenica in the Balkans was perhaps not completely the picture that people who had suffered from terrorism sought, and I think countries such as ours have a duty by the international community to present our experience and to try to extrapolate from it so that there could be a greater understanding of the responsibility of each and every member of the international community to prevent their territory being used for terrorism in other countries. This of course is already there in a number of treaties and in a number of resolutions adopted in the UN General Assembly. But for it to be added on consciously as part of the responsibility to protect concept I think it is very important because otherwise we are only having a situation where if a country is unable to protect a group of its citizens whether they be of a religious minority or an ethnic minority or a political dissident group, the situation automatically moves into the Security Council where matters of real politik begin to play and that could be very dangerous for small countries like Sri Lanka, and we need therefore to highlight the fact that causes that led to any situation in a country where a particular minority is affected could be as a result of incitement from abroad; financing from abroad; training of militias from abroad and I think that has got to be highlighted and I am sure that there are many countries – large countries including India – who have the same concern and who will join in the cause with us. Perhaps the Non Aligned Movement is an arena in which we can launch this initiative because there are a number of countries in the Non Aligned Movement who are not entirely happy with the concept of responsibility to protect even though it was adopted at the summit level in 2005 at the UN General Assembly Summit.

Dr. Rohan Perera

Mr. Dhanapala let me follow up on the couple of questions which my brother Commissioner raised. Let me first of all thank you for your presence this afternoon and also for the very comprehensive memorandum which you submitted and which you so ably supplemented in your presentation. May be I will start with your last response on R2P. As you said there were concerns on the part of states. But if those concerns flowed from the possibility of abuse for political ends as an instrument for intervention in the internal affairs of a state and for this reason perhaps the concept underwent change when the heads of state or the Governments came out with some document what was originally proposed by the Gareth Evans Commission. And I believe last year there was further report by the Secretary General outlining the precise scope of the application of R2P limiting it to those 3 situations – crimes against humanity; war crimes; and I believe it was aggression. But just limiting it to those 3 situations and that its liberal application is not warranted such as to cover situations of assistance to victims of disasters. I believe all this flowed from the concern of states that while there is inherent merits in the concept with possibility of political abuse. So how do we approach that concern while we sort of also take on board the question of victims of terrorism? So there has to be some sort of balancing in that exercise.

The second of course is more observation on humanitarian law. The sense that I have is that given again the sensitivity of states in according some sort of legitimacy – international legitimacy – by making non state actors treaty partners – we have this in the land mines convention. You referred to the Geneva Protocol. Now our own experience was that this was the argument that the LTTE used in one of the cases in Canada with regard to fund raising although they had not subscribed to the Geneva Protocol. The argument was that we have undertaken international obligations therefore we are not a terrorist organization but a liberation movement which has accepted international obligations. So there is a certain concern that once you have a treaty or a protocol imposing rights

and obligations on states and non state actors on an equal footing you may be giving a certain legitimacy. Now perhaps for that reason the ICRC in its most recent publication on clarifying the concept of direct participation in hostilities has opted not to go down the path of a diplomatic conference culminating in a convention or a protocol but to provide interpretative guidelines to states to clarify the concept of direct participation in hostilities in internal conflict situations where the, as you know, where the traditional battle field has receded to the background and the civilian centre becomes part of the theatre of conflict. So taking into account the sensitivities even the ICRC has opted for this approach of interpretative guidelines or soft law than hard law given this dilemma with regard to the non state actor. So in that context how do you see the political feasibility of a binding legal instrument or would the soft law approach be a better option? This is more a comment than a ... I am not expecting an answer straight away.

Thirdly I would refer to paragraph 7 of your memorandum – the question of representation ... the role of the diplomatic service. As you are very much aware over the last 30 years perhaps and you were very much part of that the role and primary function of the diplomatic service was of a ... in a sense a negative nature (character) or a reactive – to react to allegations or violation of human rights. To react or respond to you know with the refurbishment of the image of the country. That was in a conflict phase (end of tape)

Side B

Dr. Rohan Perera (contd)

Now with the end of the conflict, post conflict phase, how do you see the challenges that would arise and what are the – you talk of out reach effort – what are the challenges in the diplomatic service or diplomatic offices of Sri Lanka playing a pro active role in contrast to a reactive role and a more positive role particularly in this ... in the context of the out reach program which you are talking about? Perhaps some clarification of that would be of help to the Commission. Thank you.

Mr. J.Dhanapala

Mr. Chairman and distinguished Commissioners. On the R2P concept yes there has been a gradual shift of emphasis from the Canadian International Commission co-chaired by Gareth Evans which made its original proposals and which went through a mutation as it appeared in the final document and that was largely because of non aligned opinion. But what I think is important is that there has to be an acknowledgement that the sovereignty of countries has abinitio(?) (“ab initio” ed JD) been interfered with when there is a training of terrorists; the provision of sanctuaries for terrorists; and the financing of terrorists plus the feeding of terrorists with the oxygen of finance when they need to buy their arms and ammunition and that recognition was absent. So in other words we were looking upon the violation of the fundamental principle of non interference in internal affairs and the state’s sovereignty issue because post facto a situation where civilians were found to be unprotected. The International Community was assuming the right through the Security Council to come in but my point is there has been already interference in the internal affairs of those countries and a violation of their sovereignty before that took place because they had contributed towards this situation and a recognition of this has to be an integral element of the responsibility to protect so that when the situation arises we have to recognize this.

The 3 categories that you mentioned are also of course part of the International Criminal Court as you know and the fact that it has now been restricted to that does not really change the situation very much because small countries could still be very vulnerable in this situation if there is no recognition that there have been contributory causes from the international community in the

creation of this vulnerability of their populations or segments of their population to the situation where they have been affected

On the question of International Humanitarian Law if I may clarify, I was not suggesting that non state actors should be a party to the conventions and the treaties of Geneva which uphold International Humanitarian Law. I was only suggesting that there has to be a clarification as to how the terms of engagement can ensure that conventional armies are not charged with the violation of humanitarian law because they are facing a new situation where instead of a conventional army facing them in a battle they are facing a non state actor to whom the norms of war do not apply. And that is why I think there has to be some special exceptions, some either a delegation of international humanitarian law in particular situations or a new set of rules of engagement which will recognize that non state actors who do not observe the Geneva conventions are not entitled to be treated in the same way as a conventional army is on a battle field.

I don't know the answers to this Mr. Chairman and distinguished Commissioners but it is something that has to be explored by international humanitarian lawyers in concert with the ICRC and if a diplomatic conference is not the chosen way to go by all means by other kinds of negotiations and international consultations.

Your last point if I may ask you to help me

You are right that as a diplomatic service in the same way as our armed forces were suddenly confronted with facing a situation of a rebellion and a questioning of the authority of the lawfully elected Government, the diplomatic service too was faced with a new challenge where it had to counter propaganda that was very subtly and very well funded, and I myself in my period in Geneva had to face the onslaught of a campaign with regard to human rights in the international fora. Now in the post conflict situation I think we need to be pro active and we need to be very well briefed and this is unfortunately a failing in our system in Sri Lanka where the Foreign Ministry is not as well briefed by other Ministries as it should be. We have to develop a much better system of briefing our diplomats and our foreign missions with regard to current situation in the country. We cannot leave it to them to get the information themselves. There has to be a regular feeding of information to them so that they can tell the rest of the world what is happening with regard to economic development in the north, in the east, and elsewhere; what new efforts are being made with regard to a political solution. The proceedings here in the Lessons Learnt and Reconciliation Commission itself should be conveyed to the international community and therefore a more pro active and aggressive even campaign by our diplomats will be necessary going and talking to the governments and to the international organizations to which they are accredited on this issue. And in doing so we have to of course ensure that our diplomatic service is staffed by citizens of all ethnic groups and all religious groups so that there is no hint or suspicion of any discrimination. We have also got to ensure that we maintain a civilized dialogue with the international community instead of appearing to be like some extreme countries and DPRK comes to mind where their own tenor of language has isolated themselves from the international community.

So we need to once again re-capture the high moral ground that Sri Lanka had in the past and be able to negotiate with conviction and with candour but at the same time within the civilized norms of diplomatic parlance pursuing our case as best we can.

Dr. Rohan Perera

Thank you Mr. Dhanapala, may be just a follow up on the R2P. Yes certainly taking on board your concerns the vulnerability of small states. Now couldn't the same objective be achieved through a reinforcement of established principles such as the non use of territory for hostile acts against other

states in particular neighbouring states; a duty to cooperate. So the principle of duty to cooperate in the suppression of serious international crime including trans frontier flow of funds which is very clearly set out in Security Council Resolution 1373. So isn't there an existing plethora of principles and resolutions on which you can build up or reinforce this duty to cooperate rather than trying to expand this somewhat controversial concept of R2P which I said again at the beginning, the concern is the potential for political abuse of that concept?

Mr. Dhanapala

I agree that there are a number of conventions, number of resolutions which certainly prescribe particular types of behavior for the international community. The problem is in their lack of implementation and while we have no one mechanism that can implement these laws we need to perhaps agitate for some mechanism to do that. But at the same time we must talk about those obligations within the context of R2P. It is not always done in that context. The R2P concept is discussed as a separate concept without necessarily linking it to this question of the export of terrorism and the abuse of countries with regard to the export of terrorism and trans border terrorism.

Chairman

You touched on the importance of the expatriate community and how we could reach out to them. Can you give your expressive thoughts as to how we could reach out to them because at present the Government has been trying to reach out to the expatriate community and on the other hand certain people have expressed the view that the Government is not really reaching out to this expatriate community only a few individuals. Now can you tell us how we could reach out to the expatriate community to get involved in the development of certain neglected areas of this country and also get them to make investment in this country?

Mr. Dhanapala

Well first and foremost Mr. Chairman as I said before I think the final solution to the problem lies here in Sri Lanka. If we are able to have an acceptable solution to the problems that led to the conflict acceptable to all segments of our country then I think the challenge of reaching out to the expatriate community will be much less a formidable one.

The second point I would like to emphasize is the importance of having an accurate knowledge of how many expatriates we have. I know that the Government of India in the United States where I was Ambassador actually commissioned a private consultancy firm in order to establish exact numbers because the statistics of all countries do not necessarily have a consensus of their citizens by their national origin and so we need to know exactly how many Sri Lankan expatriates exist; where they are; before the Foreign Missions of Sri Lanka can engage in a pro active task of linking up with those expatriates.

Thirdly I think it is important for our Ambassadors with their limited travel budgets to be able to visit these various places where there are large congregations of Sri Lankan expatriates. In the United States where I was Ambassador there are 3 large concentrations of Sri Lankans in the tri-state area of New York, New Jersey and Connecticut; in the west in California where you have a large number of Sri Lankans – both in the north and south California – and of course in the south in Texas and other places. But beyond that in every state there are large numbers of Sri Lankans and if representatives of the Sri Lanka Mission visit those places, and if we have more even honorary consuls in as many of these places as possible, we would be able to reach out to these people. I found, for example, in my own inter actions with the US Government particularly in the US Congress, that individual Sri Lankans had more direct contact with these elected representatives of

the US Government, whether it is the House of Representatives or the Senate, then I could possibly have because one of them either was a Montessori teacher of their children or one of them was a doctor looking after one of those elected representatives and therefore had a better rapport with those people than I did.

So it is important for us to be able to use these expatriates in order to prosecute our own interests and that is how the Indian lobby functions so effectively in the United States. They are very well funded of course and they are able to pursue Indian Government aims through their expatriate community and I am sure that we will be able to do the same ourselves if we were better organized and better funded.

Prof. Karu Hangawatte

Thank you very much Mr. Ambassador for being here and showing your interest in this nation and its people really. We appreciate very much the memorandum you submitted making extremely valuable suggestions. On the 2 questions actually – one is very brief and has also been dealt with extensively by Dr. Rohan Perera about R2P. As a principle yes it is a very sound suggestion to protect, especially the smaller nations who are unable to use the traditional self defense principles to act against nations who harbour or protect or support terrorists. I think one of the major problems has been the internationally at least within the UN and the definition of terrorism I think there is no agreement as to what terrorism means although some nations have declared war against terrorism. Terrorism is almost like the ghost that everyone has seen but nobody knows what it looks like. And even within the United States – you served as the Ambassador you obviously know this – there is no agreement as to what terrorism means. The State Department definition is different from the definition of terrorism of the FBI and the CIA definition is different from those. So they have different definitions. I think that is probably one of the major problems and that may be why internationally they have tried to address this through various other mechanisms that address cross border offences, cross border activities so on and so forth I think but it is a very valuable suggestion I think that should be pursued.

I want to get back to really the main question that I have – about the constitution. I know that you have suggested that there is a great need (urgency) for a new constitution that cannot even wait until this Commission finishes its work. I agree that there is an urgency; there is a great need. The question I have is this country at least has attempted constitutions in the past in different ways which have to some extent flopped. To me it seems like constitutions have been made by certain interest groups without engaging the people because a constitution is a document that should express – I am sure you would agree – the wishes and aspirations of the people, I mean people as a whole, and we have made constitutions that express wishes and aspirations of certain people not all the people I think. So they failed. If people can't take ownership of the constitution or the laws that are made under it I wonder whether that would really lead to any democratic change or even development. So wouldn't you think it is better that we take into consideration study this further and do a more comprehensive job this time without falling into the same trap especially talking about the APRC. The problem I see there is you know its members were members of political parties. I wonder whether members of political parties the politicians necessarily represent the people – views of the people. I have just asked the question. Do you still think that the need is so great that we must jump into it and use whoever's ideas and just put something together or wait.

Mr. Dhanapala

Well I agree that the last exercise in 1978 was an exercise that was a top down effort forced down the throats with a 5/6ths majority that the then governing party had and indeed even the 13th Amendment was done under unfortunate circumstances without widespread consultation of the

people. But the APRC process has been a process that has taken place over a long period of time and a wide variety of political parties have been consulted. If the report of that Committee is published that could be itself the subject of widespread consultation of the people themselves and we would then be able to ascertain what the people think about it – that outline of constitutional reform. In the absence of any basis for consultation it is very difficult to ascertain the sentiments of the people. So we need to have some document before the people and I think that is why the publication of the APRC report is so very important. If the Government itself has an alternative proposal then that proposal should be presented to the people and on that basis we could have a widespread consultation which I entirely agree should precede any adoption of a constitution to ensure that the constitution reflects the genuine aspirations of the people of Sri Lanka.

Prof. Hangawatte

In other words there should be transparency, debate and participation; not just some people, people even in rural communities etc. everywhere.

Mr. Dhanapala

Correct.

Mrs. Manohari Ramanathan

Mr. Dhanapala, in your submissions you mention a Race and a Religious Relations Act. In your opinion what should be the main provisions of this Act if it is to come into being?

Mr. Dhanapala

I think the Race and Religious Relations Act that I envisage would be a codification of the existing laws that we have which prohibit discrimination on the basis of race and religion or caste or sex, ensuring to each and every citizen of Sri Lanka equal human rights and that amplitude of human rights would be guarded by this Act. But it will also be an Act that carries punishment so that if racial abuse or religious abuse takes place we will be able to have some kind of prosecution of that in order to ensure that the ethnic prejudices that may or may not exist in our community will be finally minimized if not totally eradicated, and I think this balance of behavioral norms will ensure to a large extent the kind of harmonious society that we want. It is true that we cannot ensure this through legislation, but the presence of legislation just as much as anti-Semitism today is only occasionally seen in western democracies we can I think minimize this kind of propagation of prejudices and certainly the younger generation will be in a situation where they know that using a term of ethnic abuse to a fellow citizen of theirs will no longer be tolerated not by the Government, not in a court of law and not by their parents either. So this is the kind of value system that will be enshrined in a Race and Religious Relations Act and which will be implemented by a Board which will supervise that. We have in a sense a national integration ministry and that is trying to do something like that but this is I think something which is beyond that and more permanently de-politicized body that can ensure this kind of racial harmony and religious harmony in our country.

Mrs. Ramanathan

Thank you.

Chairman

Mr. Dhanapala, we had the opportunity of visiting Vavuniya and the outskirts, and most of the people who made representations before us they were not concerned about constitutional reform. They were concerned about equality, equal opportunity, and where the state had to provide them with basic security, because all of them complained that they were victims of communal violence. They were not interested in a second chamber or an Executive President; those were not concerns as

far as what they told us. They were more interested in basic issues – equality, equal opportunity; job opportunities. Certainly they all spoke about the language but that is also intrinsically interwoven with equality; and they complained that sometimes they have the difficulty of going to a Police Station and making a complaint in a language which they did not understand, or it was recorded in a language which they did not understand. Those were the complaints that they had. They were not interested in constitutional reforms; Executive Presidency; a second chamber. So what have you got to say about that?

Mr. Dhanapala

Mr. Chairman long ago Alexander Pope said “for forms of government let fools contend; whatever is best administered is best”. But I think that we have now come to a situation where we recognize that the constitutions of any country is the bedrock of law and so the right of that peasant who appeared before you in Vavuniya asking that his complaint to a Police Station be recorded in his own language emanates from a fundamental constitutional provision because it is that constitutional provision that makes that right implementable and that right is something that he can appeal to because he may not understand it but all those rights have got to be enshrined in the document that is the Magna Carta of our country, and we need to have those rights including his right to direct representation as much as possible in his own constituency in Vavuniya. So I think that the question whether it is a bread and butter issue of having his daily meal or whether it is a question of his child being educated in his own language, or going to the Police Station and recording his complaint in his language, all these rights and all these duties which the Government has to perform on behalf of its citizens stem really from the constitutional provisions that are there and the panoply of laws that are then promulgated by the legislative assemblies of our country within that framework.

Chairman

Even the fundamental right to equality in our present constitution, for example, gives them a right to go and make a statement in a language that they understand. But these are constitutional norms which are operative now but they were more interested in something that was more pragmatic. They are saying look give us ... treat us like equal citizens. Now equality is a part of our constitution. They are not happy with that. They say something else must be done. As far as they are concerned it is not a constitution that is material. The whole thinking process of the people have to change; that is what they are saying. Most of the people - most of the peasants - except there may have been one or two politicians who were talking in terms of constitutional reforms but 99% of the people were not interested in constitutional reform. They were interested in basic issues that affected them – equality, language rights – those are the things that concerned them.

Mr. Dhanapala

The very fact that those concerns were presented to you means that there is something wrong at the grass roots level ...

Chairman

I agree. And they say that the entire thinking process of the people have to be changed. That is the most important thing according to them.

Mr. Dhanapala

Those thinking processes can be changed if we have a constitution that is more reflective of the concerns of the people and that is why we have to engage in a dialogue with the people in order to undertake that constitutional reform whether it is a second chamber or whether it is having stronger

Provincial Councils with police powers; powers over land as per the 13th Amendment as originally envisaged I don't know ...

Chairman

Land is something that they were concerned about. Land is. Actually by and large they were not interested in this question of constitutional reform. They were saying administratively there was this problem about colonization. The demography would be changed. Now those were things that they were concerned about including the people who were involved in provincial politics. They were very concerned about this question of land and colonization. Apart from that I must say they were not concerned about constitutional reform because as far as they say you may have constitutions but if your thinking process of the people, if they don't think in terms of one nation, the whole purpose is lost. You can have a very good constitutional document but that does not mean that there is going to be equality. So they say the people must realize that we are equal citizens; that we must be given equal opportunity; and this question of land is something that they were very concerned about. Apart from that and even some of them said even these mega projects we are not interested because to us before these mega projects are brought in there are more fundamental issues that have to be looked into. That was their thinking.

Mr. Dhanapala

I agree that the priorities at the grass roots can be very different but my submission is that if the constitution is in fact adjusted to suit and reflect those concerns we will be able to have a framework within which these rights can be realized. The fact of the matter is that we do not at the moment have even our 13th Amendment and 17th Amendment implemented. So there are constitutions which can be there in name without implementation and of course that would be a betrayal of the aspirations of the people.

Mr. C.Chanmugam

Mr. Dhanapala you made some very pertinent remarks on youth organizations and their possible contribution towards improving the reconciliation process as well as improving the base of our societal reforms. Is it possible for you to expand a little bit more on your experiences? Thank you.

Mr. Dhanapala

I was invited by a group of young persons at the level of university to be on the Board of Trustees along with several others of a group called Sri Lanka Unites and we were able to participate in a major conference that took place last year where over 350 schools were represented by prefects and head prefects of these various schools speaking in 3 different languages – in English, Sinhala and Tamil – with simultaneous translations. They participated firstly very hesitantly because they had never met each other. Some of them were coming to this conference center which was in Ambepussa very much for the first time and they were meeting people of other ethnic groups for the first time. There were of course mutual suspicions inevitably. But over a period of time with the various activities that were organized for them by this group and by listening to a number of adult speakers from different parts of the country we had a breaking down of their traditional attitudes and the bonding of all these young people together and these bonds survived well beyond the conference. They had visits organized bilaterally between schools in Jaffna and schools in Colombo as well as other schools in different parts of the country. They were encouraged to form reconciliation clubs in their own areas so that they could continue the message of reconciliation that was so vital. Some of them had lost members of their own family in the conflict and therefore there were feelings of bitterness and anger which did not evaporate overnight but over a period of time diminished. And this year a similar conference was held with also a large number of people; again people coming in from different parts of the world and establishing links as citizens of Sri Lanka

and as young people being able to adopt common aspirations for the country. And it was a very moving experience for me. I was there only for a day to speak to them but from the reports I have been getting from the youth leaders – these are called future leaders conferences – and I think it is a nucleus of a very important mass movement that can take place. Of course funding is a problem. They have to get sponsorship from various private sector organizations but if there is more of this I think we can spread the message of reconciliation amongst the youth because they are the future of our country and while our generation may have said to have failed the country that generation I think has a unique opportunity of doing some good for our country.

Mr. M.P.Paranagama

Is the National Youth Council also responsible for something like that?

Mr. Dhanapala

I am not aware of what the National Youth Council is doing but I am aware of what Sri Lanka Unites is doing because of my personal involvement. I must say that the Minister of Education last year did address this Sri Lanka Unites conference too Mr. Premajyantha.

END OF QUESTIONS

CHAIRMAN – closing statement

On behalf of the Commission Mr. Dhanapala I must thank you for having come here and expressed your views and I think all of us are going to benefit by the views that you have expressed and certainly it will be very helpful in the formulation of our recommendations. Thank you.