

## India needs nuanced approach post-UNHRC Vote on Sri Lanka

Gautam Sen

April 4, 2014

The Sri Lankan Government recently extended the period of investigation for its Presidential Commission (PC) that is probing the cases of alleged disappearances in its northern and eastern provinces. The extended period is from 1983 to 2009; earlier, the investigations were limited to the period between 1990 and 2009. The extension was granted via amendment through a Presidential Warrant on March 25, 2014.

The PC was appointed by the government as follow-up to its Lessons Learnt & Reconciliation Commission (LLRC), established in the aftermath of the Fourth Ealam War. The PC was appointed to counter international pressure as well as to ascertain the fate of those people who surrendered to the Sri Lankan Army over the period and disappeared. At the same time, it sought to address persistent demands of Sri Lankan Tamils, from within the country and outside, for a credible probe on the many instances of human rights violations. The LLRC's recommendations, and the subsequent steps taken by the government, had not generated adequate confidence among the international community on the Sri Lankan government's response to the above-mentioned issues. The revised period of probe for the PC is significant because the extended period now goes as far back as the anti-Tamil riots in Colombo in 1983, while also covering periodic civil strife and state-sponsored armed action in Sri Lanka, the Indian Peace-Keeping Force (IPKF)'s operations on the island in concert with Sri Lankan forces, and, finally, the full-scale war between the Sri Lankan armed forces and the Liberation Tigers of Tamil Elam (LTTE), which ended with the crushing defeat of the latter in May 2009.

The import of the government's decision was in the timing, as it was notified before the final voting on the latest US-backed resolution in the United Nations Human Rights Council (UNHRC) at Geneva, which mandates an international probe on Sri Lankan war crimes. Though India abstained on the resolution in the vote taken on March 27, it has been passed in the UNHRC with 23 countries supporting it, 12 abstaining, and another 12 voting against it.

Thus, the Sri Lankan government's decision to stretch the period of its internal probe back to 1983, intends to address internal criticism of the IPKF's performance when the latter had exercised operational control over the integrated north-eastern province, and to bring it within the purview of the Commission's investigations. It is likely that India viewed this as a pressure tactic, one that appears to have been intended to dissuade it from voting against Sri Lanka at the final voting stage of the UNHRC resolution. One doubts, however, that this not-so-subtle pressure tactic on Sri Lanka's part was a crucial determinant in India's decision to abstain at the UNHRC vote.

Notwithstanding the stand taken by India at Geneva, it has to tread cautiously because the country will go to polls shortly and such decisions would be subject to critical analyses by the contesting political parties from the point of view political suitability. In India, the domestic political reality is that both the outgoing United Progressive Alliance (UPA)-II as well as its major opponent, the National Democratic Alliance (NDA), will be looking for political support from the Tamil Nadu (TN)-based political parties for future government formation. The TN parties cannot be expected to forego any opportunity of garnering electoral support on the issue of protecting so-called Sri Lankan Tamil interests. This logically implies that there would still be strident demands that India unhesitatingly support the widening of the human rights violations probe in Sri Lanka and invoke international involvement. Presently, it seems that India, weighing the balance of interests, opted against an intrusive resolution on Sri Lanka, which would have had implications. It would also have had the potential to undermine the Sri Lanka's sovereignty in the event of an international war crimes tribunal being set up, framing charges against incumbent Sri Lankan state functionaries and negating that country's constitutional processes.

Notwithstanding the above-mentioned scenario, there is reason for India not to be pusillanimous on a probe covering the IPKF period, from 1987 to 1990. The IPKF did not face verifiable criticism of the nature faced by the Sri Lankan government or its Army during and after the end of the Ealam Wars, either during the IPKF's operational period or post de-induction from the island. Moreover, there was no instance of en-masse uprooting of local people or forced disappearances in any of the operational areas of the four Indian Army divisions deployed in Sri Lanka during the period concerned. The local, Indian and international media had broad access to the operational zone and had extensively covered the operations and IPKF-initiated reconstruction-cum-rehabilitation activities. The poignant book *Broken Palmyrah* by Rajini Thiranagama and three other university teachers from Jaffna is perhaps the only documented material available in the public domain that could be a credible reference during such a probe vis-à-vis the IPKF's actions. Therefore, such an investigation is unlikely to damage the reputation of Indian armed forces deployed under OP Pawan, the code name of the armed action initiated for disarming the LTTE and thwarting the latter's military activities detrimental to Sri Lanka's unity, and both countries' security, consequent to the Indo-Sri Lanka Accord of 1987. Nevertheless, it must be remembered that there would be political and diplomatic ramifications of an expanded probe on India-Sri Lanka relations, as proposed to be undertaken by the PC at this juncture, which have to be suitably registered by New Delhi before Colombo.

It would appear that India accorded preponderance to the broader interests of national sovereignty before its final stand on the UNHRC resolution. India's Permanent Representative to the UN Offices at Geneva indicated India's firm belief that adopting an intrusive approach that undermines sovereignty and institutions is counter-productive. New Delhi also cannot be oblivious to the likelihood of parallels being drawn in the future by some countries inimical to India, to push for similar probes in Jammu & Kashmir, the North-eastern states or even in the Left-wing extremist violence affected regions. For example, there have been critical references in the recent past from the UN Rapporteur on Human Rights on the invoking of the Armed Forces Special Powers Act (AFSPA) in these troubled areas, and some political groups, both within and outside the country, had tried to capitalise on this. Thus, the most pragmatic approach would be to continue to exert pressure on the Sri Lankan Government to attempt an effective internal institutional approach towards an effective follow-up of the LLRC's recommendations and broad-

basing the work of the present three-member PC<sup>1</sup> by including in it eminent Sri Lankans (jurists, administrators—serving or retired—and social activists) across the socio-political spectrum; in particular, Sri Lankans other than those within the coterie of President Rajapakse. It is of utmost essence that representatives of stature nominated by Chief Minister Wigneswaran of the northern province of the country, be included in the PC and the terms of reference of the body mandate that its deliberations be consensual and recommendations rendered within a precise time-frame.

India should, therefore, work out a stand within an Indian consensual political ambit (even while India's election process is on), which sends out a clear message that lack of adequate follow-up of the LLRC recommendations and the less-than-effective manner in which the latest PC has functioned till now, is unacceptable. The PC's probe has to be revitalized and given a visible thrust by suitably expanding its composition and method of functioning. Its mandate must also be made precise and time-bound. India should not sacrifice her broader interests—and those of the Sri Lankan Tamils—without compromising on the sovereignty and unity of its neighbouring island country. This may, however, be a daunting task given the grass-root Sinhala political support President Rajapakse still enjoys, as evident from the latest results of the elections to Sri Lanka's western and southern provincial assemblies.

***The author is former Additional CGDA and has served in Sri Lanka.***

*Views expressed are of the author and do not necessarily reflect the views of the IDSA or of the Government of India.*

---

<sup>1</sup> The present members of the PC are: Maxwell Paranagama (ex-judge; also a member of the LLRC), Priyanthi Vidyaratne (DG: Census) and Mano Ramanathan (ex-Monetary Board Member), all from the Government establishment.