

**Journal of The  
Association  
of  
Retired Flag Rank  
Officers  
(ARFRO)**

**The Need for Peace Education**



**VOLUME 14**

**MAY 2011**

## EDITORIAL NOTE

The Association continued with its activities throughout the year under review. There were five (05) lectures during the course of the year. The content of the lectures is reproduced in this journal. We express our sincere thanks to all the eminent persons who delivered these lectures and participated actively in the question and answer sessions thereafter. Apart from the membership of ARFRO, the Army, Navy and Air Force were well represented at these lectures and so were the students of the Defense Services Staff College.

The consolidation process, post conflict is continuing and rehabilitation of displaced persons is also progressing. ARFRO has also made some contributions to assist in the rehabilitation of displaced persons and gifted some items to such persons.

The Organisation of Professional Associations (OPA) of which ARFRO has been an active member did not have any significant events during the year in which ARFRO could participate, although representatives of ARFRO make their contribution to the activities of the OPA.

Well attended socials were held throughout the year, where members, their spouses and guests enjoy reminiscing on their activities whilst in service. These socials were held in service messes and ARFRO is grateful to the Service Commanders and the services concerned for providing these facilities.

The Ranaviru Family Counselling and Support Services (RFCSS) sponsored by ARFRO has been quite active under the guidance of Major General (Dr.) Dudley Perera. Two major awareness workshops and educational field visits were conducted in Kandy and in Galle districts and over 250 war widows and children participated in each of these visits. Viru Daru Diriya an organization in Melbourne, Australia has awarded 25 scholarships to date for the children of war widows.

The Service Chiefs have always supported ARFRO in its activities and our thanks are due to them for their interest. The Corps of Military Police continue to provide facilities for meetings, lectures and functions in their officers' mess for which ARFRO is grateful. The Corps of Signals has also assisted in the provision of equipment for lectures and presentations. Their services are gratefully acknowledged.

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OF  
RETIRED FLAG RANK OFFICERS  
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16, Edmonton Road,  
Colombo 6.

Telephone: 2514190

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### In Memoriam

It is with deep sorrow that we record the demise of  
 Brigadier C. N. Panabokke  
 and  
 Brigadier M.P.A. Jayawardena KSV

# THE NEED FOR PEACE EDUCATION

By

Lankabimanya Justice C. G. WEERAMANTRI

Presentation to ARFRO on 26th July 2010

## **Introduction by: General Deshamanya J. E. D. Perera VSV Founder President ARFRO**

*Thank you Mr. Chairman; If I were to give a comprehensive introduction of our distinguished speaker this evening I will need a couple of hours. I shall therefore be brief about Sri Lanka's most distinguished son in the international sphere. I got to know him when I was Sri Lanka's High Commissioner to Australia in 1982. When the riots broke out in July 1983 there was much media hype and verbal clashes between the Sinhalese community and the Tamil community living in that part of the world. Anyway, as the official representative I had to defuse what was going on but it was a huge task. I remember on one occasion Mr. Lalith Athulathmudali rang me and said that all sorts of things are being said in Perth as he was obviously informed by people in Perth; why don't you go there and try to defuse and I said that I have already taken action but you are closer to Perth than I am and that he was welcome to come to Perth. Fortunately, there were people of eminence like Judge Weeramantri who took an interest in this and he started the Organization for Sri Lankan National Unity and had people from all communities joining and under his able leadership they did a lot of work during that period which helped to defuse whatever that was going on. He has played a leading role through his writings and judgements in several developing areas of the law. These include the legality of nuclear weapons, sustainable development, preventing science and technology from denigrating human rights, exploring the interface areas between law and religion, promoting cross cultural understanding and developing peace education. Judge Weeramantri was elected to represent the Third World Countries at a Conference on "Equality and Freedom" to mark the Bicentennial Celebrations of the USA in 1976. He has authored over 20 books and 200 articles. He has lectured on these topics in over 50 countries. We are privileged indeed to have him here to address us on "The Need for Peace Education". I invite you Sir, to come to the podium to address us.*

It gives me great pleasure to speak to you today on a topic which is of vital importance not only in Sri Lanka but throughout the world because peace education is a neglected topic in peace curricula throughout the world. It is a very sad thing that school authorities do not find the space in their curricula to introduce a subject called Peace Studies or something of a related nature and it is despite all our efforts; I and many others who have been concerned about this have been speaking about this to education authorities all over the world but the problem is that what are called "bread and butter subjects" that is subjects that helps you to gain employment crowd out everything else from the school curricula. Even the education that we had in History and Geography when we were little children is no longer available to many children throughout the world. This is very sad and leave alone peace studies, they do not get even the rudiments of the way in which the present world community evolves. Parents are also partly to be blamed for this because parents exert pressure on the educational authorities to fill up the curriculum with these "Bread and Butter" subjects

and the result is that perspective subjects are left out. Anything that gives them an idea of comparisons between different countries, historical perspectives, philosophical perspectives, religious perspectives all of those are left out. Also in all countries in the world people are boxed in within the culture or the religion to which they were born. If you are a Christian, you are in the Christian box, if you are a Muslim, you are in the Muslim box and so forth and you do not see any of the perspectives beyond your own religion. I believe, that it is our duty towards our children of this Twenty First Century to give them a cross cultural understanding and I have founded a centre in Sri Lanka to impart cross cultural understanding to as many of the student population as we can. Cross Cultural Understanding means that you must have a perspective across the culture into which you were born. You are a Buddhist because you were born a Buddhist, you are a Muslim because you were born a Muslim, you are a Christian because you were born a Christian. So you must know your religion extremely well but that does not mean that you must know nothing about the other religions and

when you study the other religions you will see that all the religions teach the same fundamental rule relating to human conduct and sad to say people perceive other religions sometimes as being opposed to them and there is talk in the air of a clash of civilizations, of a clash between Christians and Muslims born out of a total ignorance of the richness of the contributions of these other cultures to the world scene and that is a defect of the education system. Now, for example, this so called clash of civilizations; the Western World knows nothing of the tremendous contribution; when I say the Western World I mean the average citizen of the Western World, knows nothing about the enormous contribution to civilization of the Islamic civilization which flourished especially in the 8th, 9th, and 10th Centuries, it was illuminating the rest of the world in all aspects of science, literature, sociology, and even law and Western Lawyers do not know that the first treaties of International Law were not produced in the 17th Century by Western Jurists as they imagine, but were produced 800 years earlier by the Islamic Jurists on all those matters which today are central to International Law such as the Treatment of Diplomats, Sanctity of Treaties, Conduct on the Field of Battle, Treatment of Enemy Property and all that sort of thing. It was all there in the Islamic Law centuries before the West even thought of it. This kind of ignorance is colossal and I think it is the duty of our generation and the education authorities to correct this. But we are not doing that and this is the cause of so much tension in the world today. When you talk of inter-religious understanding we are also in the field of the environment because what is happening today is that our generation is causing damage to the environment as no generation in history ever did. We are plundering the rights of future generations for our short term gain and we are even depriving them of the right to breathe clean air because we are creating an absolutely contaminated atmosphere to generations yet to come; but we don't seem to care. I remember when the nuclear weapons case was argued before the International Court of Justice, one of the lawyers for the non-nuclear powers said that the pollution of nuclear weapons lasts for 24,000 years. We all know that; all nuclear activity has that after life of pollution of the atmosphere and of the surroundings for 24,000 years and this lawyer was saying if stone age man have been able to pollute our environment in the way that we are polluting the environment for 24,000 years to come, we would have said "what savages", "what brutes", "what barbarians", but of course you cannot expect better from such ignorant fore. Well, we know what we are doing but we don't seem to care;

our political leaders don't seem to care, they are still talking of nuclear weapons as a possible weapon of war which is absolutely ridiculous if you have any regard for the future of the human race. As people like General Eisenhower who knew so much about war has said "if there is another war it would probably be the extinction of civilization". But we don't seem to care and this is why Peace Education is an absolutely imperative necessity in all our schools.

Now, what do we mean by Peace Education? Peace Education means that you should know something about the philosophies down the ages of peace for 3000 years. Ever since civilization began the philosophers and the religious people have been thinking in terms of a reign of peace throughout the world, that world which in the future will live under the rule of law and not under the rule of force. In fact the Hindu Law Books were among the first to talk about this because the Hindu Law Books go back much further than most others and 3000 years ago they were talking in terms of the Future Sovereign of the World. Now, you all know the word "Chakravarti", Chakravarti is a universal ruler, an emperor who holds dominion over the whole world. So the Hindu Law Books said that the ultimate sovereign of the world will not be a Chakravarti but will be the kingless authority of the law. What they were saying in that beautiful phrase was that 3000 years ago they were anticipating that eventually the world would live under the rule of law and not under the rule of a physical sovereign. Everybody would be subject to the same law, they would be obedient to the law and there would be peace on earth. That was the sort of philosophy that was there in all the religions. Take whatever religion that you choose today and it always talks in terms of peace but when we talk about the rulers of the world, they talk in terms of the rule of war; they talk in terms of the rule of force. There is something wrong somewhere and what is wrong is the gap in communication. If there is a gap in communication even those rulers of the world today, half of them have probably not had an education in what we would call "Peace Education" and they would not know what Plato, Socrates, Aristotle or about the eventual dominion of the higher principles over the whole world. Cicero spoke of the world as being one unity; all mankind is one unity; we were born to be one with all fellowmen on earth, that's what Cicero said and likewise you have the other philosophers working towards this for centuries but without success. True enough these wars were going on, true enough there were the philosophers and there were the religions

all of which thought peace. Now Christ himself was known as the "Prince of Peace". He said "Peace is what I leave and my Peace I leave you" and He always spoke in terms of the abandonment of force and resort to peace as the ultimate objective. Buddhism is full of teachings of Peace; Hinduism talked of the eventual rule of law and Islam likewise; the greeting in Islam is Peace be Upon You because Peace is central to its whole philosophy. So if you look at any other religion it talks in terms of Peace. There are eight duties expected of a right thinking individual and one of them is the promotion of peace. So all of these perspectives are lost completely to the present generation and this is indeed a pity because we do not know the rudiments of what we ought to be taught in school.

Just a few names from History; there is Thomas Campiast who wrote the Imitation of Christ who said that "All men desire peace but few men desire the things that lead to peace". That is the problem, we all desire peace but there are certain things we have to do achieve peace and we are not prepared to do that; to live simple lives, not to be in search of pomp and power, not to be in search of empires for ourselves and not to be in search of enormous fortunes. That's what all religions preach and we say we follow those religions but we do exactly the opposite and we are looking for things that lead not to peace but to war and if you want power for yourself, if you want wealth for yourself, if you want pomp and pageantry for yourself you are not going to get those unless you are not going to force it down on others and that is what leads to war. Then there is Erasmus who wrote in the 16th Century a beautiful book about the "Complaint of Peace". Erasmus was a great peace philosopher and he said "look at all the animals, beasts and the birds and all of them; they live in community, they live in harmony and they pursue big projects of their own; so they are in union with themselves but the foulest of all beings is humanity because humanity is always quarreling with itself and he said he personifies peace as a young lady and here is peace trying to find refuge in a human home. So peace goes (the lady) goes to the council chamber of the state, she has no place there she is chased out. She goes to rural assemblies, she is chased out, she goes to a provincial council, she is chased out, she goes even to the family and even in the family sometimes there is no peace and she is chased out and perellapakis that is the complaint of the lady peace; complaint of peace is that there is no human institution within which this poor lady can find refuge because peace is chased out of all our human assemblies. So there is something wrong there.

Now all this long history in philosophy leads to the work of Hugo Grotius who wrote in 1625 a great book called "The Law of War and Peace". The 30 years war was a religious war which raged in Europe between 1618 and 1648. Christians were killing Christians in the name of religion and it was one of the most devastating wars that Europe had gone through and much of Europe was devastated by the 30 years war. At that time there was the holy Roman Empire and there was the authority of the Papacy which had held a number of states under their rule of law but what Grotius foresaw was that with the 30 years war these great empires of power were breaking down and once these empires breakdown individual states which were under the canopy of those vast conglomerates of power would emerge as individual states having to sink or swim on their own. So you would not be under the protection of the empire or the Papacy but you would be a State having to struggle for survival on your own. So Grotius, percipient person that he was, saw that a due law emerged to replace the old sovereignty of the higher law of the church or of the Holy Roman Empire that unless there was a new law there would be the law of the jungle amongst these dozens of new states that were emerging from the Holy Roman Empire and the Papacy. So he decided that he should work out a new rule of law and that was the beginning of international law in the Western World in the year 1625 and Grotius wrote this wonderful book "The Law of War and Peace" drawing attention to the rules that should govern the international community which he called international law and that was the ruling system for hundreds of years. But Grotius, because he was writing in the midst of wars of religions could not attach religious sanctions to his rules because there were differing interpretations of religion. So he said that he was grounding these rules of good conduct amongst nations on the experience of humanity and he based all his rules such as the sanctity of treaty in which diplomats should be treated, the way in which wars should be conducted and so forth. So, he based it all on human experience and for that reason international law has distant itself from religion ever since 1625. I have been arguing that, that period is past; the time when we could not rely on religions because of differences and it no longer exists because all religions teach the same thing they all teach the dignity of the human person, the unity of the human family, the peaceful resolution of disputes, the avoidance of aggression, the resort to peace as a means of arbitration or international arbitration; all of these things are taught by all the religions and I have been pointing out when I was on the International Court that this Western

International Law is in a sense is outmoded because it is based purely upon Western tradition and it divorces itself from the great springs of moral wisdom that are contained in the great religions and that we should go back to the primal sources of human wisdom to fertilize international law and I think I have been successful because I was able to introduce into the jurisprudence of the international court for the first time perspectives from Hinduism, Buddhism, Islam and so forth and international lawyers are beginning to pick up these threads and to point out that all these rules are being reinforced and can be reinforced if we use the wisdom of religion.

Now, reference was made earlier to the nuclear weapons case; nuclear weapons case was the greatest case that came before the International Court of Justice. It came when I was there when the General Assembly asked the International Court of Justice to make a pronouncement on the legality or otherwise of nuclear weapons. I wrote a dissenting opinion saying that nuclear weapons were absolutely illegal in all circumstances whatsoever and I reinforced that opinion with wisdom from all the world religions and I will tell you something that I picked-up from Hinduism. In Hinduism there is a Ramayana and the Mahabharata which contain not only the history of the relationships between princesses but also a statement of religious principles and we find that it is said in the Ramayana that Rama had been told by his generals that there was a hyper destructive weapon that he could use against Ravenna which would destroy the enemies countryside and decimate his population. But at the same time Rama was told "you should not use this without first consulting the Sages of the law". The rulers at that time were presumably more civilized than the rulers of today and they obeyed this advice and consulted the Sages of the law and the Sages of the law told Rama that he could not use this weapon in war; why, because the purpose of war is to subjugate your enemy and live in peace with him thereafter and not to ravage his countryside and decimate his population. So Rama did not use that hyper destructive weapon that was available to him. So I used that as one of my illustrations from World Wisdom to show that nuclear weapons were absolutely illegal under international law and that is one specimen of the wisdom you get from ancient cultures.

I will give you another example; there was a case involving the damming of the waters of the Danube. It was a case against Hungary and Slovakia. Hungary was complaining that some works by Slovakia were

damaging their environment by damming the waters of the Danube. So, for this purpose I looked at all the ancient traditions of the world and I found tremendous wisdom in all of them and I gave pre-eminence to our ancient irrigation system in Sri Lanka which elevated the task of looking after the environment for the benefit of future generations to a top level priority. As you know King Prakramabahu said "not a drop of water should fall into the sea without first serving the needs of man" and therefore this reservoir of benefit to the environment was carefully tapped and conserved and used for the benefit of the environment and that is what you call Sustainable Development. You must have development because you need jobs, you need produce for economic wellbeing of the community but at the same time you cannot do it at the cost of future generations. Future generations must be very high in your table of priorities and you must balance your present needs against your duties to the future. That is the origin of Sustainable Development and Western lawyers thought that this has been invented in recent times but I told them that the sermon of Arahath Mahinda to Devanam Piyatissa more than 2000 years ago exactly underlined this principle because Mahinda told Devanam Piyatissa "what is this you are doing, you are hunting these animals for your pleasure. Remember you may be the king of this country but you are not the owner of this land, you hold it for the benefit of those who are entitled to use it". So that is the notion of trusteeship which we have lost sight of in the modern world. So, we think of ownership rather than trusteeship, we think in terms of short term advantage rather than the long term preservation of the rights of people, we think in terms of our rights rather than our duties, we think in terms of the individual rather than the group; all these are false ways of thinking which have been introduced into legal systems and have become the basis of modern legal systems through the dominance of Western ways of thought especially after the industrial revolution when profit and profit alone became the sole criterion of what was right because the Western economy and Western states are driven by the need for profit whereas prior to that civilization did not have this primacy of profit; it looked at duties, it looked at trusteeship, it looked at a collective benefit rather than the individual advantage and so on. So all of this is most important and arising from this I have founded a Center known as "The Weeramantri International Center for Peace Education and Research" where our primary principle is the principle of trusteeship and we teach children and university undergraduates and even young lawyers this principle of trusteeship. What

we are trying to teach the students of today is that they are under a duty of trusteeship toward the generations yet to come and every year we hold what we call the "Training for Trusteeship Workshop" where I get from the Vice Chancellors of all the universities in Sri Lanka the names of their best students and we put together 60 or 70 of them in a working camp for 5 to 7 days and teach them that they as individuals are trustees for the future. We start with a cross-cultural exposure to all four religions and what they teach on this and we give them this feeling, whether they are from Jaffna or Matara or Batticaloa or Colombo they are all put together and initially they are a little reluctant to be in each others dorms but after sometime they become very friendly with each other and at the end of the workshop they part saying that they are friends for life. So that is what we need on a massive scale and we are able to do that through our Center only in a limited way but we have these camps annually and we have wonderful results and these young students who are future leaders of the country are also made to undertake work programmes which they carry to different parts of the country, we give them a little seed money for this and they have been doing some wonderful programmes with mixed teams of Sinhalese, Tamils and Muslims. They go across to Batticaloa and work in an old peoples home; the medical students and so on and the law students go and hold legal aid clinics in war stricken areas and a lot of work like that is being done because we generate in them a feeling of enthusiasm for what should be done for the benefit of the country and a feeling of responsibility that each of them has as an individual responsibility to do something. So, this is peace education and I have spoken to principals of schools and in fact the Education Department once arranged a few years ago for me to speak to 150 school principals on this need for Peace Education in schools. I spoke to them and gave them so many details but nothing has emerged from it; it's very sad! Of course I work a lot in connection with UNESCO and UNESCO organized recently for me to go to Seoul and speak to school principals from 30 countries. I did that and they were very enthusiastic about this idea which they may carry to their respective nations. So anyway these are the things that we are trying to do and the basis of it is the principle which is taught by all the religions and all the cultures of the world that we must think in terms of future generations.

I should also mention to you that there is in Germany an Organization called the "World Future Council" of which I am a Founding Member which has

set before itself the task of protecting the environment for future generations and they go all over the world spreading this message and the World Future Council is also assisting us in these programmes and what we need is to infuse into each and every child the notion that each one of them can do something. There is in most people a feeling of helplessness; what can I do, it is the great conglomerations of power that can do anything and what can I do as an individual? Now that is not right because there is so much you can do as a child in a school and there are so many exercises we have devised which children can be asked to perform in their school surroundings which will give them an indication of what they can do. For example; even take ten year olds in a school; you could ask them in the last month have you seen a fight on the road when you were passing by, if there was a fight what was its cause, if there were causes, could those causes have been prevented, could you have intervened and done anything to make matters a little better? That sets them thinking. Then again you can give them some scenario and ask them to divide into two teams and argue this; what should have been done and what should not have been done. That sets them thinking. Write essays on Peace. Look at the great philosophers of the world; may be people like Grotius, may be people like Jeremy Bentham who wrote about World Order of Peace and so on and make that a study and write a short essay. There are innumerable things like this that can be done, once I gave school principals a whole set of these exercises which they could perform. One is to have a presentation of a news item; draft a news item of what happened yesterday and the pros and cons how it could have been avoided if there was some violence and how each one of you could do something; collect quotations on peace as stated by the great peace philosophers; then think in terms of the great peace congresses that have taken place. Now that is never taught in schools and it is something that we all ought to know. I will give you a brief resume of this; all through history there have been people who have spoken about peace. There have been the peace philosophers and religious philosophers but they are all on one side. There are those who wield power; they are in the citadels of power but these are two different worlds; the peace philosophers talk about peace and everybody says that they are nice people but the rulers in their castles do what they want. Now this is a huge separation that has gone on for centuries. Rulers in fact say among themselves "what do those people know about real power and how to run a state, it is we who know that, they are day dreamers" of course they are very well

meaning people but they do not know how power is organized. So there was no bridge between these two. Then there was a very significant event in the 19th Century which I need to explain a little bit. As you know, the 19th Century was a Century of wars. It started with the Napoleonic War which ended in 1815 and there were brutal wars, wars of devastation which had ruined many countries in Europe in a terrible way. So when there was Waterloo and finally peace after the Napoleonic War there was a great desire to have a world free of war and from 1815 onwards the world was full of organizations that decided to work for a world of peace. In fact they say that in the 19th Century from 1815 onwards there were four hundred peace societies in practically every country in the world which devoted a lot of attention to the problem of how to avoid another war because they saw the devastation caused by the Napoleonic Wars and they were to some extent successful apart from a few wars, the 19th Century was largely free of wars. Then, there was also in the 19th Century the great Ecumenical Movement, there was a Theosophical Society and various groups like that much influenced by Buddhism amongst other influences which worked very hard to make the general public of Europe aware of all these philosophies and what happened was that there were even philosophers like Tolstoy in Russia who wrote very strongly against war. Then the Ruler of Russia Czar Nicholas the Second in 1898 became an ardent follower of the Theosophical Movement and there was a significant thing that happened in 1898. Russia was an absolutely autocratic state and it was a very powerful state and every month the diplomats to the Court of Russia would be summoned to a meeting in the foreign office at St. Petersburg where they would be briefed on what the Russian Empire had been doing and what he proposes to do and so forth. So one day in 1898 when all these ambassadors had met in the Russian Foreign Office, they were handed a letter addressed by the Czar to their respective sovereigns and what the Czar said in this letter to his fellow sovereigns was "now look we have lived for so many centuries under the rule of war; let us now try to live under the rule of law. So how can we do this; we must have a great peace conference to which I am inviting all of you where we will discuss all these issues and as a brand new century is about to dawn, namely the 20th Century let us make that a Century of Peace. We have had the 19th Century, the bloodiest Century so far; it was a Century of war, so let's make a Century of Peace". So Czar Nicholas wrote this letter which was handed out to the diplomats and people who were observing the scene said that the diplomats were

amazed that this most absolute sovereign in the world should think in terms of peace and they thought that there was something wrong with him because it was a Century of war because of the Emperor of Russia. But they had to send it to their respective sovereigns and they had to treat it with respect because it came from the Czar of Russia. Germany gave a very lukewarm response, America said alright and some other countries were enthusiastic and eventually they decided to meet in 1899, just before the brand new Century dawned. Now, where was this conference going to be held? Everybody said that you can't have it in one of the major capitals, must have it in a small capital and they said that Geneva is the obvious place. So they were going to hold it in Geneva. The Empress of Austria who was visiting Geneva happened to be assassinated by somebody who was out of his mind. So then everybody said that Geneva was not safe and then the queen of Holland said "why don't you come here, this is the land of Hugo Grotius and I will give you hospitality and that is how the Hague became the center of International Law. It was held at the Hague, the great peace conference of 1899. Now all children in schools should know about this but they never know anything about this. That was the greatest Assembly of the Apostles of peace and of the Heads of States that had ever taken place in world history and this went on for days and days in the Hague and philosophers gave their views directly to the representatives of the sovereigns and the sovereigns heard this for the first time and there was a great resolve to do what they could to achieve a brand new Century of peace; namely the 20th Century. But as you know we bungled it and made the 20th Century supersede the 19th as the bloodiest Century on record. But anyway if they had followed Czar's ideas this would not have happened. So they had this peace conference and they decided to try to set up a permanent Court of Justice to arbitrate between the nations. Now, what is the biggest obstacle to some of these peace moves at these big congresses? The biggest obstacles are the big powers. The big powers do not want to see their sovereignty restricted. So the big powers objected. How can you have a super natural court to have jurisdiction over us, we will never consent to it they said. So they could not moot this idea of an International Court of Justice but they succeeded in having what was called the Permanent Court of Arbitration. So they had the Permanent Court of Arbitration set up shortly after the peace conference, that's a group of arbitrators who can be voluntarily appointed by states that have a dispute with each other and the Permanent Court of Arbitration was able to

resolve numerous disputes between states which would otherwise have led to war. So that was a great step forward but still they could not get the International Court of Justice which they wanted. Because they failed there had to be another war and the great war of 1914 to 1919 came about which was the bloodiest war surpassing even the Napoleonic War in its brutality and so we had the first great war and after that of course the world seems to need a war to bring it to its senses. So they assembled again at another great peace conference in Versailles and here they were trying to work out a new scheme for a world of peace after this bloody war. Now, the proposal for an International Court of Justice came up again and of course it was debated and of course the big powers opposed it because they did not want a court that had compulsory jurisdiction over them and I remember reading the speech of the Belgian delegate at that Conference. The Belgian delegate, a representative of the small powers who wanted this international court said "Ladies and Gentlemen, we have met here to do justice to the millions of soldiers who have sacrificed their lives to give us a better world. The way to do that is to have an International Court of Justice where the judges can enter in majesty to determine the disputes between nations. But if you are not agreeing to this; the speech goes on, I apologize to you, I do not have the oratorical skills of Cicero or Demosthenes but listen to me for a moment, preserve silence in this room and you will hear coming in from that window the sound of mourning and weeping; what is that, that is the mourning and weeping of mothers and widows of our best and righteous young men who gave their lives for a better world, whose lives we are trying to honour today. Listen for another moment and from the other window you will hear the sound of mourning and weeping and what is that; that is the mourning and weeping of those bright young men who were going through agonies on the battle field to give us a better world. We are betraying their memory if we do not install an international court ". Thanks to the Belgian delegate and others from the smaller countries they were able to create an International Court of Justice, but not with compulsory jurisdiction but with jurisdiction over countries that accepted the jurisdiction of the court. So it was a sort of voluntary, compulsory jurisdiction but the Permanent Court of International Justice was established after World War I and that was the ancestor of the International Court of Justice to which I belong which came after World War II because even that was not sufficient, if they had given more powers to that Court there wouldn't have been World War II but there was World War II and they came to

their senses a little bit more and in San Francisco they had the International Court of Justice but we have still not learnt our lessons fully and I am only hoping and praying that we do not have to have World War III to bring us to our senses. The public who knew something about the history of peace, would restrain their Rulers when they want to go to war but that restraint is not there even in the biggest democracies and the result is that Rulers get away with so many violations of international law.

So that is the picture I want to give to you of the imperative nature of the need for a course of Peace Education leading from the school level upwards and even amongst lawyers and judges there is no awareness of this. Now you will be surprised to know that you can become a judge today in many countries of the world including Sri Lanka without knowing anything at all about international law because international law is not a subject in law schools. So you pass out as a lawyer, you practice for a few years, you become a judge and you do not know a word of international law and you are called upon to decide cases involving international law. I have said this in so many countries because law schools all over the world do not make international law compulsory and the difference today is that international law is very different from international law as it was practiced when I was a law student more than 60 years ago, international law was something up in the sky. We were concerned with domestic law, but today international law has grown to the point that international law fertilizes every department of domestic law, whether it be matrimonial law or industrial law or law relating to environment or arbitration law or whatever, it is international law that gives the requisite principles to domestic law and if the judges do not know international law then they are deciding cases without a proper equipment of knowledge of the latest advances of the international front which can fertilize domestic law. So I have been campaigning hard for this and I think there should be schools for continuous training for judges to bring this to their attention. So all this is vitally necessary to have the rule of law installed in the sense that eventually we all become citizens of one planet. We must give up all these parochial differences we have among ourselves. I often like to relate the story of the Astronauts who go up in a space craft. On the first day they call each other and point out to the receding earth and say "that's my country, that's my country"; but on the second day they can't see their country, so they say "that's my continent, that's my continent" and on

the third day it has receded so far that they can only say "that's my planet". Now we are in the stage where we are all members of one planet, every thing we do here, every one of us can have its repercussions in China and in Peru. That was not so in earlier times, but today everybody is our neighbour and Jesus was so keen in pointing out our duties towards our neighbour and the Good Samaritan parable is a wonderful story of how it is our duty to go to the assistance of our neighbour who is in distress even if we do not know him. Today the whole world is our neighbour we cannot think in terms of compartmentalization. Look at what's happening in Mexico, the oil leakage there; now that is a world problem as it is not a problem of one country or any one organization and anything we do, they say even a butterfly flapping its wings in China can influence people in Peru. It leads to a whole chain of consequences which we do not know. So we must be thoughtful about this and the great religions and the great philosophers are wonderful guides to lead us into a realm where we begin to think not in terms of the immediate benefit to oneself but in terms of the impact on everybody else. In fact I was giving a talk a couple of days ago on Judicial Ethics and I referred to the Noble Eight Fold Path of Buddhism and everyone of them is relevant to our actions in relation to our fellow beings. Right Thought; you must think correctly about our position, our responsibilities and so forth, Right Speech; we must not boast about ourselves or try to throw our weight about or insult other people, Right Action; we must do the right thing, Right livelihood; we must not get into the armaments industry for example and make enormous profits out of the killing and suffering imposed on others, Right Endeavour; we must put a lot of effort into whatever we are doing, Right Concentration; we must concentrate about what we are doing at the time we are doing it but at the same time we must have right mindfulness to think about the impact of what we are doing on those around us and also we must have a more distant vision, a right vision of what will be the long term effect of what we are doing, all of these principles are enormously relevant to our actions as citizens today, all of these needs to be taught in schools, whatever religion and all of these are vital for proper performance of our duties as human beings on this one common planet which is our common home and we are totally neglectful of our responsibilities towards the next generation if we ignore peace education which is vital to the survival of humanity.

Thank you!

Discussion:

**AVM Vijera Tennekoon:** *You spoke about the ICJ itself, I believe there was the question of Nicaragua and when certain information was required to be given that information was not provided to the ICJ and as a result they could not proceed with the case before them.*

**Lecturer:** Are you referring to any particular case?

**AVM Vajera Tennekoon:** *Yes Sir, this was where they said that the information was very sensitive and I think this was during the time of the Contra Rebels and things like that.*

**Lecturer:** What I can say about the ICJ Jurisdiction is that the International Court is the ultimate authority on all matters of international law because it is the highest tribunal in the UN System and has the same authority as the Security Council for the General Assembly and when it gives an opinion on a question of law, it is the absolutely final opinion on that matter. Whether the judgments of the ICJ are followed is another question because the ICJ does not have an enforcing arm. The ICJ cannot possibly have an enforcing arm because the ICJ does not have a single soldier or policeman at its disposal or at its beck and call and it is impossible for example to have a force that can exercise influence upon major countries like the major powers in the world today. So the ICJ relies for the enforcement of its judgments on its intrinsic authority and the ICJ has 80 or 90% of its judgments being obeyed by all countries. There are occasional cases where the judgment may not be obeyed but they are a rarity. Let me give you a good example; we had a good case against Libya and Chad; Libya is up in the North of Africa and Chad is to the South and there was a boundary dispute as to the boundary between the two countries and we had to look at the maps and the whole history of the matter and what happened was that there was a disputed strip between lines drawn by the two countries which was known as the Ouzo Strip which was about half the size of Sri Lanka and Libya was saying that it belongs to Libya and Chad was saying it belonged to them. The Libyan Army was very powerful and the Libyan Army marched into occupation of the Ouzo Strip and was there in occupation. Now Chad came to the Court; Chad and Libya had both accepted the jurisdiction of the Court; we went into the matter in great detail; I remember drawing lines on the map and I remember the boundary disputes I had to settle

as a Judge in Sri Lanka and I was thinking of those boundary maps that we were drawing, but here we were drawing lines on maps to cover territory half the size of Sri Lanka. Anyway we went into the matter and held in favour Chad. Now what were we saying; we were saying to the Libyan Army "you have no right to be here, please get out of this territory as quick as you can" and we are saying it without having one soldier who can enforce our will and what happened, Libya could have disobeyed the order of the Court but Libya and Chad agreed on a date, they met on the site, the flag of Chad was ceremonially hoisted and the Army of Libya withdrew. Now that is a victory for international law and that is the way in which the judgment of the Court functioned in majority of cases. There are a few departures, but that is the way it functions and that was an excellent example which I often sight of the way in which there is authority in the judgments of the Court but that authority comes out of respect for the Court and not because of the enforcing arm of the Court's authority. So the same thing applies to anything else. With regard to the matter you raised, it might have been followed or not but it was not a matter that could be enforced compulsorily.

**AVM Vajera Tennekoon:** *The second question I would like to ask you is; you spoke of the religious personalities promoting peace. I am referring Sir to the Treaty of Torte Sellers drawn by Pope who drew an imaginary line along the Cape and he wanted the Portuguese to go into the East and plunder out there and the Spanish to the West and plunder out there; there were lots of wars out there and a lot of plundering. Would you like to comment on this Sir?*

**Lecturer:** What happened was in the era of Imperialism there were plenty of places where lines were drawn arbitrarily on the maps of the world and the powers that be at the time said this belongs to you, this belongs to the other party and so forth; this belongs to this country; this belongs to that country and that was the time when the Papacy was acting as a sort of a power and that was wrong. Not only there, but there was the Congress of Berlin for example where some African friends of mine have told me that a line was drawn through a village in which they lived and half the homes in the village went to the French Empire and half the homes went to the British Empire and those families then got separated, their village got broken in two, but the map drawers didn't care at all. That was all wrong; that was in the era of imperialism and of course even religious authorities; authority was invoked by

many kings and invoked quite wrongly. So as a result of the growth of peace activity that has been corrected and those were wrong interpretations even by those religious leaders of the teachings of their religions.

**Maj. Gen Mike Silva:** *In the case of Chad and Libya, supposing Libya ignored the request and was determined to stay, what is the position?*

**Lecturer:** The Court has not enforcing power. The only enforcing power it has is to refer the matter to the Security Council. So the Court could have referred it to the Security Council and the Security Council could then decide what action could be taken against Libya to enforce the judgment of the Court. But that would not have been practical and fortunately that was avoided but the point is that when parties subscribe to the jurisdiction of the Court, as Libya had done, they do not want to be seen as Treaty Breakers because they are binding themselves by Treaty to obey the order of the Court and once they do so they cannot in international law go contrary to their Treaty obligations, if so they are known as Treaty Breakers and violators of international law and they do not want to have that image and I should tell you also that Libya is a country that has not got a very good 'press' from the world press and this wonderful action which was in compliance with international law was highly reported whereas if Libya had violated the Court Order there would have been blazing headlines saying how Libya had violated the Court Order. So there are so many cases where the orders of the Court are complied with but the general public does not know and the general public gets the impression that the Court is ineffective but that is not so.

**Gen. Rohan Daluwatta:** *Sir, you mentioned that the greatest obstacle to peace movement is the big powers and they are the people who hold nuclear weapons also and how can they talk about human violations, human rights and all that whilst holding on to nuclear weapons which is in future going to be absolutely disastrous. What action are you taking in respect of this?*

**Lecturer:** You see what happened in the International Court was that all the judges, (we were 15 judges at the time,) one of the judges who I think was against nuclear weapons unfortunately died before the case was taken up. So there were 14 and we were divided seven, seven and all of us condemned nuclear weapons and said they violated all the rules of humanitarian

warfare but there was a group of seven who said "we do not condemn nuclear weapons totally for the reason that they did not want to express an opinion about the use of nuclear weapons where a country was under attack and its very survival was at stake. In that situation they did not want to express the view that nuclear weapons were prohibited. Now, I disagreed with that and there were six other judges who agreed with me and I wrote a very strong opinion saying in no circumstances what so ever can the weapon be used because you cannot destroy other countries of the world to preserve your own. In that situation where we were divided seven and seven the President had a casting vote and the President cast his vote with the other seven and that is how it becomes the opinion of the court. As far as the nuclear weapon is concerned I very clearly indicated that nuclear powers are not people who can be in a position of policemen telling other countries not to manufacture or use it when they are doing the very thing that they are trying to prevent. I made that very point that you have made and after that I am now the President of the International Body of Lawyers known as the International Association of Lawyers Against Nuclear Arms and we hold conferences all over the world trying to get the attention of the big states to this. In fact the Nuclear Nonproliferation Treaty was under discussion in New York last month and I sent a little booklet, a thousand copies of that booklet so that every delegate would have it, showing 15 reasons why the danger of a nuclear war is growing day by day. So all that is what we are trying to do, but we can do only what we can and we are trying to reach the maximum audience possible.

**AVM Elmo Perera:** *Sir, the recent judgment on Kosovo's independence does not seem to be having universal acceptance. Do you think the general public per-se in the world may concede that there is a power block bias in such judgments? For example Russia I don't think accepts the verdict of Kosovo's independence.*

**Lecturer:** I must say I have not studied that judgment in detail but certainly it would have gone into the pros and cons but whether it was a judgment that the world would accept I don't know. Sorry I cannot make a comment on that because I have not read it very carefully.

**Mr. Shanil Perera (Overseas Student):** *With your experience in the International Court of Justice what do you think is the best global system for maintaining*

*and sustaining peace; a bipolar, tri-polar, multi-polar; hegemonic, uni-polar system in your opinion?*

**Lecturer:** By system what do you mean?

**Mr. Shanil Perera:** *As in like a bipolar world looking back at the cold war how the US and the USSR or as we are right now with the US as hegemonic, what do you think in your opinion for sustaining international peace would be the best.*

**Lecturer:** Well there are so many fronts on which you have to work. You have to work on the peace education front which I have been talking about, you have to work on the nuclear front, you have to work on the environmental front and there are so many areas where science and technology are taking control and the law is unable to keep technology in check. So there are heaps of areas, all of which needs attention and the sad feature of the world today is that none of these areas are getting the attention it requires. Here I blame the legal profession because legal professions all over the world are very concerned with their day to day business and they are not giving that overall leadership with regard to these great issues which the world has the right to expect from them. So there are so many fronts on which one has to work and one is the front of cross cultural understanding. People don't realize that all the religions are basically giving the same teachings. I have just written a book on what five religions teach, about our duties to future generations and our duties towards the environment. It's called "Tread Lightly on the Earth, Religion, the Environment and the Human Future" and I look at Hinduism, Judaism, Buddhism, Christianity and Islam and show that every one of them gives the same teaching in regard to our duties to future generations and we all profess to be following these religions but we do exactly the opposite. Its is very sad but that is how it is and that is because there is not sufficient attention to this in the education system.

**Vote of Thanks proposed by AVM Duncan Dissanayake:** The Acting President of ARFRO, General Daluwatte, our most honoured Guest Speaker Lankabimanya Justice Weeramantri, our Founder President Deshamanya Denis Perera, Fellow Members of ARFRO and serving officers of the armed services who are here today, Ladies and Gentlemen; I consider it a rare privilege that we have been able to listen today to one of the most eminent world acclaimed Jurists and someone who has been a Lawyer, Jurist, Judge and he has contributed so much particularly as a Jurist and as

he traced for us his thinking, his philosophy of Peace Education, this is something new to us because when we consider ourselves armed services personnel I think our role revolves round bringing order out of chaos. So it involves the use of force. After the last war I recall President Franklin Roosevelt say "even peace like war one needs the will to enforce it and it needs to be enforced". But the philosophy that I think our eminent speaker Justice Weeramantri has propounded drawing as he did from a wide range of history going back to Cicero and Erasmus, Hugo Grotius as he said, tracing it all along and his thinking greatly influenced by the values enshrining the great religions of the world; I am referring to the religions he referred to Judaism, Hinduism, Islam, Buddhism, Christianity, they all convey a single message and there is a golden thread in that message, but unfortunately it is not acceptable. That was his message to us. So it would be a long time before peace Education is accepted in the world, may be it will be accepted in the times of generations unborn but Justice Weeramantri will go down in the annals of world history as someone who has propounded this theory and is the messenger who carried this around the world which is an admirable task. He also spoke about how difficult it is to find a place in the schools curriculum to introduce this concept of peace education

for peace. It is necessary that children when they are at an impressionable stage they must be guarded from being influenced by ideas which might be obstacles in their future lives and in their leadership as leaders in the future. So there is this difficulty and we do sympathize with him but we have to make a start. As he said in the Weeramantri Institute he has made a start and I don't know whether like in Sri Lanka where we have a subject called Ethics, Peace Education could be introduced into that curriculum through the channel of Ethics. Anyway we are very grateful to you Sir for your voice of reason and you propounded today and we hope we can give you whatever help we can to carry this further from amongst us.

I would also like to take this opportunity and I would be failing if I do not thank the service Commanders for having permitted serving officers to attend this lecture today. I must also thank the Military Police for providing us this facility today. Its not only today but it has been provided for our monthly meeting as well. I would also like to thank the Signals Corps for giving us the electronic equipment through which this address was made possible. I also thank all of you for being present here today. Thank you and Good Night.

*With Best Wishes*

*From*

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Tel: +94 112688907 - 10 Fax: +94 112687503

[info@hayleysadvantis.com](mailto:info@hayleysadvantis.com)

[www.hayleysadvantis.com](http://www.hayleysadvantis.com)

# INTERNATIONAL LAW – SOME CONTEMPORARY DEBATES

By

PROF. ANTHONY ANGHIE

Samuel D Thurman Professor of Law University of Utah

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## **Introduction by: Air Chief Marshal D. Perera VSV President ARFRO**

*The Executive Committee and Members of ARFRO, Judge Weeramanthry of the International Court of Justice, Prof. Anthony Anghie our Guest Speaker, the Staff and Students of the Defense Services Staff College, the Serving Officers of the Armed Forces, Ladies and Gentlemen, Good Evening and a very warm welcome to this evenings talk on International Law which is the term commonly used for referring to laws that govern the conduct of independent nations in their relationships with one and other by becoming parties to international treaties. States assume obligations and duties under international law to respect, to protect and to fulfill human aspirations by consenting to agreements on humanitarian, industrial, finance, aviation, and trade to name a few. To talk to us on this very interesting and fascinating subject this evening on contemporary debates on International Law we are privileged to have with us Prof. Anthony Anghie. Incidentally, the Professor is the son of Captain Tony Anghie who was in the very first batch of trainees sent to the Royal Military Academy Sandhurst by the Ceylon Army in 1949. Prof. Anghie received his education at St. Thomas' Prep School Colombo and at St. Kevins' College Melbourne. He received his BA Hons. and LLB Hons. from Monash University and the Diploma from the Hague Academy of International Law. He completed Harvard Law School where he was awarded the Lailene Price for International Law; was a Senior Fellow and a Mercator Scholar. He worked at the IMF before joining the University of Utah in 1995 where he is a Samuel Thurman Professor of Law. He is on the Editorial Board of many international law journals and his seminal work, Imperialism, sovereignty and the making of international law was published by Cambridge University. He has been a visiting Professor at the Universities of Tokyo, Melbourne and Cornell and has lectured at the universities in the United States, Australia, New Zealand, Briton, Europe, the American University of Cairo and Guhan at the invitation of the Chinese Ministry of Foreign Affairs. He contributed to the introduction of International Trade Law into the curriculum of the Law College of Colombo. He delivered the 2010 Rotix Lecture at the opening of the American Society of International Law Meeting in Washington. I was just informed by Judge Weeramanthry that Prof. Anghie has been appointed the Professor of Law at the Harvard University. I have great pleasure in inviting Prof. Anghie to deliver his talk to us.*

Thank you very much Sir for that very generous and extended introduction. I feel very honoured to be here. There is finally peace in Sri Lanka. The war has gone on for something like 30 years and many felt like this war will never cease and yet thanks to all of you who have been serving and members of ARFRO we are now happy that peace has finally broken out in this country. I was in Trincomalee last week and it was wonderful to see school children by the sea, to see the people travelling towards Trincomalee, to see all the stalls that have been established for the tourists. This is an enormous achievement due to the sacrifice and dedication of all of you here. So that's one reason for

giving thanks and the second reason for giving thanks is in a more complicated background. As was mentioned my father Tony Anghie was a member of the Army and he departed from the Army it has to be said in somewhat controversial circumstances in the 1960s. Despite this of course, the Army has meant a huge amount to him. Somehow he was born to be in the Army, I feel and I am very grateful to everybody here who has extended their friendship to him over these many decades. I should also mention in fairness to my mother's side of the family that my Grand Father was Lt. Col. T R Jansen who was a member of the CMC and I think he was the Commander of the Volunteer force at one stage

and my Great Grand Father, Sidney Joseph also served in the Ceylon Light Infantry and was also a member of the CMC. So there has been a military tradition on both sides of the family but I must say that I am a teacher and I am following the footsteps of my Grand Father; my Father's Father who was a teacher at Royal and that is the tradition I am following. I also must say that I don't think much about Rugby which was another important tradition in the Anghie family. Let me also say how honoured I am that Judge Weeramanthry is here today. He is my teacher and he has been my inspiration. In my opinion he is the greatest Jurist that this country has produced and I sometimes feel if only he was a cricketer we would understand how famous he is internationally. He is an inspiration not only to me but to many hundreds of students around the world. So I am very honoured that he is here but also a little awkward that he is here because he is so much more knowledgeable about the topics that I am supposed to discuss than I am. I hope he will have an opportunity to address all of you as well at some stage. But I have already warned him that if in the course of discussion I am going to encounter difficulties I am going to call for reinforcements and I hope he will supply them. Let me finally end with an apology. As was mentioned I was visiting China and I did not realize at the time that I will be visiting China and that I would be asked to give this presentation. So I have not prepared as well as I would have liked. So I have to ask you to excuse me for some of the inadequacies of my presentation, perhaps some of my answers.

This is a very interesting time of course to be discussing International Law in Sri Lanka and I am looking forward to a lively discussion in the time that follows.

Let me begin with what seems I think to be something of a paradox. The question that we can simply ask is "can there be a law of war?" because one could claim that war is the ultimate and most extreme and violent form of human action. It is something that is resorted to in the most desperate circumstances. So if that is the case it seems almost paradoxical that such an extreme condition could ever be regulated by something like "Law". I think we might consider that issue because it's an issue that really emerges time and time again in terms of the whole question of how a war

should be conducted because a simple argument could be made that this is a desperate situation and therefore it is absurd to talk about any type of law being applicable to what is being done. Nevertheless, over the thousands of years there have developed a body of principles that we might call the law of war and we might look in the Western tradition to Iliad the famous poem whose author is supposed to be Homer the Greek Poet and we find even in the war between the Greeks and the Trojans there were certain principles observed between the parties and it is interesting as to why those principles were observed. In the case of international law of course the precursor of international law is religious teaching because religion promises to be universal. So most religions came to be universal in application and in that respect most religions share a characteristic with international law because international law too is supposed to be universal. So it is not entirely surprising that the first real teachers of international law in the Western tradition were Christian Priests. There is a very close connection between religion and international law and the greatest theorist in the Catholic tradition who wrestled with the question of the law of war was Saint Augustine in his great work "The City of God" and I must say his earlier work "The Confessions" are much more interesting but as far as international law is concerned it is his great work "The City of God" that we should focus on. Augustine was confronted with something of a complication. The complication, "Christianity is supposed to be a peaceful religion. This is what Jesus Christ preaches and so if it is inherently a peaceful religion how possibly could the violence of war be justified within the framework of that religion. So this is the problem that Augustine wrestled with and his answer to this was to formulate the doctrine of a "Just War". So he is the author of this phrase which is still a phrase that is extraordinarily powerful in our thinking about these issues today; the whole issue of a "Just War". It is very interesting if you look at other traditions or most of the great poems, great epics both in Asia and the West that have to do with a war. So we can think of the Mahabaratha which is centrally focused on a war and in fact as Judge Weeramanthry has pointed out in his decision, that even in the Mahabaratha we have certain principles being articulated as to the way in which a war should be conducted. The question that Judge Weeramanthry had to confront was the question of "is it ever legal to use nuclear weapons?". In my

...I normally say show of hands – who thinks ‘Yes’, who thinks ‘No’ but I won’t push you all in that regard and in his judgment, Judge Weeramanthry correctly in my opinion said “nuclear weapons are not legal in any circumstances”. They are illegal and they are illegal for a number of reasons having to do with human rights issues and to do with international humanitarian law as well. But the important thing about Judge Weeramanthry’s judgment was that he sited provisions for thinking what was outside the Western traditions. So he focused on the Mahabaratha. So in the Mahabaratha we have a principle stated where one of the people in the Mahabaratha says “you cannot use a weapon if the use of that weapon threatens the very existence of the entire world”. So if the risk exists of the use of this weapon resulting in the destruction of the whole world then that weapon is illegal and of course it is almost eerie that something that was articulated thousands of years ago should now suddenly be so relevant in 1996 when this decision was handed down.

Then of course we have the whole issue of holy wars which unfortunately is a feature of global history and the whole idea of wars of religion. So we have the Crusades in the name of religion and we have Jihad in the name of religion. So religion can be a source of peace and harmony but it can also be a source of a great deal of conflict. Let me just put out for your perusal here another very important passage that Judge Weeramanthry sites in his judgment in the Nuclear Weapons Case, because I have talked about Augustine and the Catholic tradition of a just war. But as Judge Weeramanthry points out, I think he sites Walpola Rahula’s work. Buddhism has a very different approach and let me just read that because I am not sure whether you at the back can read it, so let me just read what Walpola Rahula says “According to Buddhism there is nothing that can be called a Just War which is only a false term, coined and put into circulation to justify and excuse hatred, cruelty, violence and massacre. Who decides what is just and unjust. The mighty and victorious are just and the weak and defeated are unjust. Our war is always just and your war is always unjust. Buddhism does not accept this position”. Very interesting! So according to this passage from Walpola Rahula and I don’t know how well it connects with larger philosophy or religion, a just war is unacceptable and I think this passage, and I sight it very often both

in my classes and in my lectures because I think it is extraordinarily perceptive in actually identifying the whole problem of who is it that says a war is just or unjust and when we see President Bush and President Obama talking about just war I think of this passage and how accurately this passage identifies the problems inherent in using this term “just war”. Even in his Nobel Peace Prize, this is very ironic, President Obama in his Nobel Peace Prize speech talks about war. It was mainly about war and not about peace and he talks about Afghanistan being a just war but then I think of this passage and the implications of this passage.

My main interest is in the history of international law, I am not a very practical lawyer. So I won’t go through the history of international law but let me start with the United Nations because to the extent that there is a international constitution in existence, that constitution is the Charter of the United Nations and of course it is extraordinarily moving and almost emotional to read the Charter of the United Nations because we must remember that this Charter was created as a result of the massive destruction, I think something like sixty million people died in the Second World War and once again the feeling was we can’t allow this ever to happen again and we can see the preamble of the United Nations talking about the determination to save succeeding generations from the scourge of war and to reaffirm faith in fundamental human rights. So it is in the UN Charter that we have introduced into the international system this whole concept of human rights which of course has now acquired a special significance in our time. What I am trying to do is to outline some of the most important provisions of the UN Charter and please excuse me, I am sure that many of you are familiar with this. So I am repeating something that you are already very knowledgeable about, but for the sake of completeness let me just mention these things. Article 2.4 prevents the use of force, in other words it prevents violence between States. “All Members shall refrain in international relations from the threat or use of force”. Very interesting, not just the use of force but the threat of the use of force is illegal under the UN Charter against the territorial integrity or political independence of any state or in any other manner is inconsistent with the purposes of the United Nations. So we have a number of principles and concepts mentioned here. The whole idea of force and the whole idea of sovereignty and

territorial integrity – this is Article 2.4 which prohibits the use of the word “force” rather than “war” because of the problem about how war should be defined. So, force was regarded as the broader term that would hopefully encompass a number of situations which would be something like war.

Article 2.7 – Now this Article I gather, is now becoming quite prominent in discussions in Sri Lanka. “Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any State”. So here was the problem that the United Nations faced, on the one hand it was an international Organization and on the other hand the Members States of the United Nations were very concerned about the extent to which the United Nations could interfere with their sovereignty. This is one of the fundamental tensions of international law; relationships between international order and sovereignty. International Human Rights Law, as I said as a result of the tragedy of the Holocaust and the policies of the Nazis we had a realization that sovereignty could not be absolute, because if sovereignty was absolute no remedy could ever be given to the people that the Jews found themselves in, in Nazi Germany. The international law that existed prior to the UN Charter was helpless because of the focus on sovereignty. The basic argument about sovereignty is that “a state has absolute authority within its own territory in relation to its own citizens”. Now it was precisely because of that doctrine that the Nazis could claim that what they did to the Jews was entirely their own business and not the business of any body else and it was as a result of that tragedy that the United Nations said that we have to re-conceptualize sovereignty and we have to include doctrines of human rights within that and say that sovereignty is subject to these principles of human rights.

When then is it legal to go to war? That is the other question. So, Article 2.4 prohibits the use of force. However, there are certain circumstances when it is accepted under the UN Charter that states may use force. So in other words you have the rule and the exception. Article 51 is the famous Article that deals with Self Defense. Nothing in the present Charter shall impair that inherent right of individual or collective self defense if an armed attack occurs. So each of these

phrases has a great deal of significance and I won't labour this point, but what it basically recognizes is that inherent in the idea of sovereignty is the idea of the right to self defense. You can't be sovereign unless you have a right to self defense. That is you could say the fundamental right of sovereignty because you would cease the existence of sovereign if you did not possess that right of self defense. Interestingly if you look at the Charter further more you would see that this right is inherent. In other words it precedes the Charter; it is not granted by the Charter, it precedes the Charter, it is inherent in sovereignty itself. So that is one circumstance in which force may be used. The other circumstance when force may be used is under Chapter 7 of the UN Charter which is when the Security Council basically authorizes the use of force and the most classic example of the use of force in this context occurred during the Gulf War in 1991 when the UN Security Council actually authorized the use of force against Iraq. That was one of the few circumstances in which the UN Security Council actually passed the necessary resolution. Because for decades prior to that the problem of the deadlock between the East and the West during the Cold War prevented the Security Council from acting in a unanimous fashion. As you can see there is Article 39 which goes in stages; Article 39 deals with existence of a threat; Article 41 deals with sanctions; and finally Article 42 Action by Air, Sea and Land deals with the use of force.

Current Debates: I hope I have outlined the basic framework of the use of force and of course this framework has been profoundly challenged by terrorism and the events of 9/11. So the question that is being asked by many international lawyers is, is the Charter adequate to meet the challenges of an entirely different type of conflict. So the argument is that the UN Charter was created and framed to deal with a conflict between sovereign states. However, as the events of 9/11 dramatically illustrated it is not sovereign states alone that can engage in very violent action. Of course the irony here is that you here in Sri Lanka would know it too well because terrorism has been a feature of the country unfortunately for many years. But it took the attack on the United States for the world to wake-up to this issue almost as though this was the first time this was happening. Anyway, what are the consequences for the law of war that followed?

Let me just deal with a few of them; Pre-emptive self-defense, and I will deal with that in greater detail. The question of humanitarian intervention, the question of drone attacks, this is something that is becoming more and more of an issue given that drone attacks are being deployed on a very frequent basis by the United States. Now, a lot of these has to do with the whole question of non-state actors. What is the status of non-state actors within the framework of international law? Because as was stated in the introduction international law is the law that governs relations amongst sovereign states. So then, how do non-state actors fit in within this framework? Ok, the whole idea of pre-emption; the whole question is if you remember Article 51 the right to self-defense is triggered by an armed attack. So once an armed attack occurs then you have the right to self-defense and many people say "well this is absurd, do we have to be attacked before we can take any action. We can see their military already deployed; do we have to wait until they actually attack us before we can do anything?". So, because of this international law has had to be practical and it has articulated a doctrine of what might be called "anticipatory self-defense" and I have mentioned what the elements of that self defense are; A necessity of self defense, instant, overwhelming, leaving no choice of means and no moment of deliberation. So in other words an attack is imminent. In those circumstances you can use force in self-defense.

President Bush however wanted to take this issue a step further. What he basically argued in the National Security Strategy of the United States in 2002 was the argument that we need an even more generous threshold to use force and what he said was that it was not just an imminent threat, but an emerging threat. So if there is an emerging threat, then it is permissible to use force. Now, this becomes quite complicated because how do we characterize an emerging threat; does the fact that another state is engaged in some kind of military buildup create an emerging threat? The other point I would make about this whole issue of course is that it is only the powerful states that can in effect utilize this doctrine. Because the less powerful states would never dare to even challenge the more powerful states because of the danger that they would be attacked as a result. So, we come to the case of Iraq because the simple fact was that Iraq did not fit into either of the

two exceptions to the use of force. America could not claim that Iraq under Saddam Hussain had in anyway attacked the United States. So, in other words Article 51 was not available to the United States; neither did the Security Council provide an explicit authorization for the use of force. Now there are a lot of complicated arguments whether the existing Security Council resolutions authorized the use of force. My own view is that they did not and I think that is the majority view of many international lawyers. In other words simply the war against Iraq was illegal, in my opinion and in the opinion I would say many of my colleagues. Many people in America were opposed to this war. But, the only type of argument that could be made in a way was that Iraq in some way posed some kind of an emerging threat. Even though this argument of preemption was embraced by a number of countries; Italy said "Yes, we believe in this doctrine; Australia, under John Howard said "Yes, we believe in this doctrine of preemption and in fact we are going to develop our own policy of preemption". Many of the European countries however, such as France, were completely opposed to this doctrine. So President Bush's approach actually split the West itself. So some Western Countries were for it and many Western Countries were against it. The question now is, what is the legal status of preemption as articulated by President Bush? I would argue that to the extent that the Bush doctrine talks about emerging threat being a justification for the use of force, this doctrine is not acceptable, it is not a part of international law. I would say that the Obama administration has repudiated this whole argument about emerging threat or pre-emption. But then, now there is the question of Iran and I think this poses a great danger to the international community because it seems almost as though; we can see the complications with this argument; Iran is saying something like "well, all these other countries are entitled to arm themselves in self defense, so why should not we, why can't we develop nuclear weapons after all these other countries have done so and nuclear weapons are important for us for self defense?". Now, of course I should make it explicit that Iran claims that their development of nuclear technology is purely for peaceful purposes. Let us assume that they are doing this for self defense, then I think there is still a strong argument that Iran can make, nuclear weapons because who are we to say that they have no right to develop their own weapons given

that all these other countries have developed their own weapons. We may not like their particular regime, but it's a mistake to say that because we don't like this regime we can subject them to a different set of rules. That would then violate a fundamental principle of international law which is the sovereign quality of all states. So, in other words if the Bush doctrine was in fact part of international law, then it is a doctrine of international law applicable to all States, at least in legal terms. We still don't know what is going to happen with Iran; that is something to be seen.

Let me then just talk about another very controversial issue in international law and this is Humanitarian Intervention. The basic argument here is that in a situation where we have massive human rights violations taking place and this in a situation where we have a number of international human rights instruments which have prohibited such human rights violations, then it will be open for other states to use force to enter the state which is engaged in these types of violations. Now, I would say that the classical view in international law is that humanitarian intervention is illegal. It is illegal because it is a violation of Article 2.4 and if we look at the background to this, it was regarded as illegal particularly because Developing Countries felt that they were always the subject of intervention and that intervention would be an excuse for imperialism. So as a result of that when the Developing Countries became sovereign states in the period after colonization, in that period they took a very strong position about the protection of sovereignty and for completely understandable reasons, they had been deprived and denied their sovereignty and once they found their sovereignty restored they were intent on protecting their sovereignty as best they could. So we have to understand their historical background. However, we then have the very complicated case of Kosovo. Here, the argument was that the Serbs were engaged in massive human rights violations of the people of Kosovo. So, the argument was that this amounted to genocide which is the ultimate crime in international human rights law and surely some kind of remedy had to be provided by the international community in the face of such enormous crime. So, the problem with this was that it was clear and there was no dispute about it that the NATO action against Kosovo was illegal. Now, this too was a case that came

up before Judge Weeramanthry who was actually the President of the International Court of Justice, when the case was brought up by Yugoslavia against all the NATO Countries alleging that the NATO Countries had violated international law and in particular Article 2.4. However, it must be noted that humanitarian intervention is not entirely excluded from international law because if the Security Council acting under Chapter 7 passes a resolution authorizing the use of force, then that would enable force to be used legally against any state that is engaged in these human rights violations. However, in the case of Kosovo there was no such Security Council resolution authorizing the use of force. So, we have this complicated situation where on the one hand the argument was that the Kosovo war was entirely justifiable, morally and at the same time it was clearly illegal. So we have this tension between what is regarded as the moral character of the international community and the strictures of international law. This is another topic which I gather somewhat you could say is discussed in Sri Lanka. In fact I spoke to a friend of the Attorney General to get authorization in order to do this. What we can see is that with Kosovo the argument was this is illegal but it should be made legal. So we have to come up with some kind of doctrine that would prevent genocide and which would be legal under international law and the international community in these circumstances thought not only about Kosovo but also Rwanda. In Rwanda we had a situation where genocide was taking place. The United Nations was there on the ground and yet did nothing. There is a famous Canadian General Romero Dallaire who was completely traumatized by this because he saw the killing about to take place. He was a soldier and he could do nothing. This has haunted him for years after that. So it is because of Rwanda and Kosovo that an attempt has been made in the form of the doctrine of R2P to come up with some sort of way of authorizing humanitarian intervention. So the basic purpose of R2P is to in a way separate that which is good about intervention; protecting human rights while at the same time preventing its abuse in the form of imperialism. It's a very complicated balance.

These are some of the basic principles of R2P. R2P actually makes a very interesting argument and I have to say I have some sympathy with this argument. The basic argument is that sovereignty is not an end in itself.

Sovereignty is only a value if it is actually exercised in the interests of the people of the country over which that sovereign governs. I am sympathetic to this argument and I feel that many of us if we think individually would understand the value of this argument. I am not an expert on Sri Lankan affairs because I have only been here only for two weeks but already I get the impression that people are extraordinarily grateful for the peace and now that peace is there the argument is to make progress. In other words there is a next step that has to be taken; the creation, the maintenance and establishment of a just peace and so R2P to that extent is an appealing idea that you can see that it is fairly broadly phrased; where a population is suffering serious harm as a result of internal war, insurgency, repression or state failure. Very complicated term 'state failure' I won't deal with that and the starting question is unwilling or unable to halt or avert it. The principle of non-intervention yields to the international responsibility to protect. The fundamental principle is non-intervention but if a sovereign state somehow fails to discharge its duties towards its people then the international community can intervene. That is the basic argument of R2P. I think what the authors of R2P don't really understand is the anxiety of Developing Countries in relation to this issue, because in many cases if we look at the history of international law it is precisely the Non-European countries which have been characterized as irresponsible. So they have always been the victims of the argument that irresponsible sovereigns should in some way actually be overthrown by the international community. In fact if you read the Kandyan Convention of 1815 that's a very early example of this whole idea of irresponsible sovereigns. So within the history of Sri Lanka itself we have some experience of this idea being used. So the good part of R2P is to say we have to protect human rights. The bad part of R2P is that it can be used for imperial purposes. So for that reason the authors of R2P have come up with what they call "precautionary principles". So there has to be right intention which sounds almost Buddhist, it has to be a measure of last resort; in other words after all other possible opportunities have been exhausted, it has to be proportional; so this is a very important aspect of humanitarian law; the whole idea of proportionality and there has to be reasonable prospect of success - in other words if your intervention is only going to make everything worse then it is not an intervention that can

be justified under R2P. Now, that is the doctrine; what is the legal status of this doctrine? I would argue that R2P at this point of time is not a part of international law; in other words it does not meet the criteria that have to be satisfied in order for this principle to be regarded as binding international law. I would say it is much more of a policy that is being promoted in various ways but it is not binding international law. Let me also say that there are a number of scholars in the West including my colleagues who are very worried about the implications of R2P. On the other hand many African Countries, precisely because they have suffered civil wars have gone towards endorsing R2P to a very large extent. So many African Countries are in favour of this doctrine even though they are nervous about this doctrine being abused. So there is some division even among the Non-European Countries about the status of this doctrine. But at least as far as international law is concerned, my own opinion is that it is not a part of international law or binding international law as yet.

Drone Attacks: This is something I am not very familiar with but I felt I should mention because it is something that is becoming very topical in the United States because this is now becoming one of the major tactics which is used by the Obama Administration in the war against terror. One question is; the whole idea of armed attack; it is an armed attack which actually justifies the use of force. So then there was an argument about what happens if the armed attack is not conducted by a State but by a non-state actor, is it still an armed attack? In the case of Al-Qaeda, the violence used by Al-Qaeda does that fall within the legal definition of armed attack? I would say now international law has evolved to a point where it is accepted generally that non-state actors can engage in an armed attack that will be recognized under the laws of war. The whole complication of drone attacks of course is that these attacks are taking place outside the official boundaries of the states in which this war is being conducted. So the United States is not at war with Pakistan and yet these drone attacks are taking place in Pakistan. There are arguments made by some scholars saying "yes it is taking place in Pakistan but it is still legal because these people are combatants and they are fleeing across the boarder in order to protect themselves but the right of self defense is so powerful that it transcends the rights of the sovereign states, in this case Pakistan. There are

also human rights issues involved about drone attacks in a number of different ways because in many of these attacks civilians are killed as well and there are sovereignty issues. It might seem very attractive to say we can pursue a terrorist in the country of another state with which we are not at war but I feel very nervous or reluctant to endorse that doctrine because it will undermine sovereignty in very significant respects and again in effect it will be the powerful states I would argue that would remove this doctrine, less powerful states are particularly keen on pursuing terrorists. For example, a small state I don't think will engage in a drone attack in a large state precisely because of the political repercussions of such an action. So I think the issue of drone attacks is highly problematic and I don't myself accept at this point of time that it is legal. This is my own view and I have not had the time to research this problem but I don't believe it is legal and I don't believe that it should be accepted as legal.

So these are some of the major debates that are taking place but to me the real interesting question as a scholar of international law is how does the laws of war develop; who makes the laws of war? So officially the international law is made by the following sources; by treaty, for example by the United Nations Charter, by customary law in other words through the whole process of state practice, in other words if a state engages continuously in a consistent pattern of behavior then the argument is that this gives rise to custom and it is the same argument that can be made in a domestic setting because in a domestic setting we have the argument that amongst a particular group of people a tribe or a particular community there is a particular set of practices that are continuously engaged in and when they are continuously engaged in they give rise to expectation of compliance. So something like that also exist in international law.

General Principles of Law: I won't go into that in detail. Finally, Judicial Decisions such as the judgments of Judge Weeramanthry and the International Court of Justice and the teachings of highly qualified publicists has subsidiary means. I will try and articulate some of the complications I see with the laws of war. One of the problems is this; to change the laws of war to meet these new circumstances by treaty would mean renegotiating these fundamental treaties such as the

UN Charter or the Geneva Convention. The whole process of treaty making is extraordinarily complex and this will take years to do. Many of these treaties take decades to come into force. So a treaty is not really a technique that is being used in a very prominent way to deal with this issue of what should be the new laws of war given these different circumstances. So then the question is at the same time international law needs to adapt, it can't be what it used to be in 1948. I hope I identified what the problem is. There is a need to adapt and yet the official mechanisms of change in international law are very slow. So the question is how does these adaptations take place and of course this adaptation is necessary. So we come to another interesting issue about changes that take place in international law. In other words we have established international law and then we have an event and that event could be characterized, for example; Kosovo, that even could be characterized as a violation of international law or it can be characterized as being a development of international law and this makes a huge difference because if it is a violation then of course the particular country involved would be subject to international scrutiny and other international sanctions. However, if this departure represents not a violation but a development, then it establishes itself as a precedent. Again, I hope I have tried to identify the analytical and conceptual problem involved here. We have the law, is the departure from the law a violation of the law or is it the evolution of the law creating a precedent. Let me take the case of Afghanistan, now I would argue that under the traditional international law that existed in 2000, the war in Afghanistan is illegal. Let us consider the possibilities. I have said that war is legal in two circumstances; in self defense and if that war is authorized by the Security Council. Now, in the case of self defense it cannot really be claimed that the State of Afghanistan attacked the United States. It was Al-Quida that attacked the United States, not Afghanistan. Of course Al-Quida took refuge in Afghanistan but that is not to say that the actions of Al-Quida should be attributed to the State of Afghanistan. Further more, as far as the United States is concerned the United Nations passed a number of resolutions immediately after 9/11 which basically established a framework for the war against terror but the United Nations in no way explicitly authorized the use of force against Afghanistan. That's my position. It is not seen

...circumstances, it is seen as giving rise to a precedent which establishes a very important principle. The important principle was articulated immediately after 9/11 by President Bush. President Bush said "we will make no distinction between states that attack us and states that harbour terrorists". I did not put it very well, what he basically said is "we will make no distinction between terrorists and the states that harbour terrorists". In other words if you harbour terrorists, then you too would be a legitimate target for the use of force. That step is very profound and somehow that step appears now to have been accepted as part of international law. So, under the old international law articulated by the International Court of Justice the fact that some entity within a state attacks another state does not in itself give the attacked state the right to take action against the state from which the attack emerged. There has to be a closer connection. However, after the Afghan war the principle now seems to be accepted that a state that harbours terrorists can be legitimately attacked under the law of the United Nations. So this is an example of a deviation being regarded as precedent rather than a violation. In the case of Kosovo we have a situation where many people argue that this war is illegal but is legitimate. So this is very complicated and it created a great deal of confusion because what does it mean to say that something is illegal but yet legitimate, because it seems a complete paradox. But what they were basically trying to get was the idea that even though it was strictly illegal it was still in some broader sense morally justifiable. The interesting thing as I said on the basis of R2P, the basic point is that even though the war in Kosovo was illegal, the international community seems to have accepted it in some form. So it is a very interesting question; in what circumstances are actions and war and the use of force that are illegal and somehow are accepted and legitimized later by the international community. We also have a very complicated situation in the case of Kosovo because NATO engaged in aerial attacks and one of the most prominent aspects of the Kosovo campaign was that President Clinton did not want to introduce ground troops. So the whole campaign was conducted through aerial bombing. Aerial bombing is not accurate especially from the heights that the bombing took place from. So then, human rights activists said that NATO itself had violated human rights. So, this is the irony, on one hand the human rights people wanted action

taken against Kosovo because of the violation of human rights committed by the Serbs, but then when the bombing campaign took place civilians were hit and the argument was "well this is the violation of international humanitarian law" and yet the Yugoslav Tribunal said that they do not have enough evidence to look into this question in any greater detail. So, they did not inquire into this. So it's an interesting question of in what circumstances do strictly illegal actions become acceptable to the international community. We also have the International Court of Justice decision in the NATO case and as I mentioned Judge Weeramanthry was presiding at the Court and I was there watching the whole proceeding taking place and it was very interesting because it was almost as if the lawyers were telling the International Court of Justice if you make a decision in favor of Yugoslavia, you are endorsing genocide. So, we find Kosovo war creating a kind of precedent which is then becoming legalized. This is a term that one of my teachers has used and I am not sure whether you have come across it before. The whole purpose of an institution such as the forces is to engage in warfare but he said (this is an international lawyer) "warfare is actually inherently and intimately connected with what he calls "law fare". In other words law is part of the battle field and so if that is the case, if that is the metaphor, the question is what sort of weapon is the law and do we have the best weaponry available and how should that weaponry be deployed because it is very interesting how certain action taken by some of the Western States are immaculately justified legally by some very interesting arguments that have been made by lawyers, I am sorry to say usually educated at Yale and Harvard. These are the people who actually make these interesting arguments which I find highly problematic. So, if we see "law fare" as being an inherent part of the battle field, then the question is how do we prepare for this type of battle? That is a question that might be thought of as an interesting one. Let me use another metaphor for dealing with law. We can see law not only in terms of being a weapon but also law in terms of political economy. We are familiar with a political colonial economy; in a political colonial economy, raw materials are sent to the colonial centre. Sri Lanka would send rubber to the United Kingdom and the finished products are sent back to us for our consumption and of course the real value involved in the production of that particular item would be acquired

by the West. So, then if we see law itself as a commodity, the question I would like to ask is "are we consumers of law, in other words other people make the law and we just have to apply it, or are we makers of law, are we producers of law?". As I mentioned, I was a guest of the Chinese Ministry of Foreign Affairs and they are taking this question very seriously because the gap between the powerful and the powerless can be expressed in a number of different ways; it can be expressed in political terms, in economic terms and so forth, but it can also be expressed in legal terms and the Chinese say "what we need is theory" We do not have the technology to be producers of law at this point of time we are just consumers of law. So attempts that are taking place in many countries is to establish centers of excellence in international law. In China there are about thousand universities. They can't all teach international law at the same level of proficiency. So the basic argument is that we got to create centers of excellence where international law can be taught in the most advanced way. This has to do with the question of state practice. If you look at state practice, whose state practice creates a precedent? I would argue that international law is dominated by the state practice of Western States. There isn't very much attention given to state practice of non Western States and that is an issue that needs to be remedied and again we need intellectual technology in order to do that and it is of special importance because of the role of publicists. I mentioned that publicists play a very important part in the articulation of the law. International law in many ways is hopeless. I remember I was flying into Australia once and at Immigration in Australia the customs officer asked me what I did in America and so I said I am a teacher and he said what do you teach and I said that I teach international law and he said "well that is pretty hopeless isn't it as it serves no useful purpose". So this is the general idea of international law. I was told to say "you are the person who enforces international law, the customs officer" because what he is doing is he is enforcing the treaties which make our passports acceptable as a means of getting entry into these other states. So this is what I mean by a kind of contradiction about international law.

At least by way of compensation Scholars have a very important role to play in articulating international law. They are not allowed to create international

law but sometimes the distinction between creating international law and articulating international law is a very fine one. So prominent scholars have a significant role to play in articulating international law and ironically what we need to focus is not only practice alone but also on theory because it is theory which provides the technological sophistication that would enable countries to become producers of international law and not consumers of international law. What is of special importance in this regard, and this is where Judge Weeramanthy has done more than any other Jurist I would say in the world; what we need to do is to bring other traditions and other principles of other societies into the international arena. So the reason I quoted that passage about Buddhism from Judge Weeramanthy is that I would argue that passage because it is quoted in the judgment actually and has a legal status. It is the first time I know of that some kind of a Buddhist teaching is actually included in the Jury's Prudence of the International Court of Justice, because otherwise most of international law has a Western basis. So the whole question of dealing with international problems; we are facing many complex international problems including not just war but human rights and the environment; you can see the huge mess taking place in the United States. We need to develop principles that would enable us to deal with those problems. So the greater the number of ideas that we can identify that might help us address this, the better off we would be. If the culture of Asian States becomes a part of the international system then there is a much more intimate connection between the people and the law. We would recognize that law as our own law and somehow commensurate with our own culture and that would make it more legitimate in the eyes of most of us. I think this is something we can understand without too much complication.

TWAIL: This is the group I belong to - Third World Approaches the International Law and we have been inspired by people such as Judge Weeramanthy. Our basic purpose is to actually focus on the imbalance that exists in the international system between the power of the Eurocentric International Law and the condition of the Third World. So the question is to try and create an international law that is sensitive to the needs of the people of the Third World rather than the traditional international law which has been made by the powerful

...of the West. That is what we are trying to do. I am going to Paris hopefully tomorrow as part of this conference dealing with these issues because now I am happy to say that even the French acknowledge that perhaps there is something to be learnt from what WWII is saying.

The other Organization where I am connected with is the Asian Society of International Law and there again the purpose of that society is to actually bring to the forefront what is happening in Asian Countries and to create an international law that is sensitive to the needs of the Asian Countries.

Now, in concluding I should make it explicit that I am not advocating a completely anti-western point of view because I think that would be damaging and self-destructive and impossible. We have to take what is best from the West and we have to take what is best from the many other cultures and traditions, all the richness that those traditions have to offer. After all, the West, we cannot avoid it, we are intimately linked with it and whatever else the British might have done, they gave us the game of Cricket and now Cricket is the ultimate Colonial game and yet it is an inherent part of the Sri Lankan identity. I can't imagine Sri Lanka without Cricket and so we see there a situation in which in fact Sri Lanka has taken a British tradition and plays it on the whole, except for the last 20x20 match. Sri Lanka plays it better than the English and that is what we need to do to understand those other traditions to actually then become experts in those traditions and use those traditions even better than those who are native. England got kicked out of the World Cup literally, England is after all the author of Soccer but it is the other countries which have taken over the game. So, that is what I mean when I say we have to be open to all these different sources.

I think I will stop there because I have gone on for much longer than I intended. This is the problem with teachers. I cannot promise to give you any answers but I am happy to listen to your questions and engage in a discussion.

Thank you very much!

## Discussion:

**AVM Brenden Sosa:** *Two questions. One is you mentioned that nuclear weapons are illegal. You get weapons that can destroy very large areas as well as something that can be fired from an artillery gun, so you will have limited casualties. So where would you draw the line saying it is illegal? My second question is on international law; when you have a law it has to be enforceable. If someone murders a person he is sent to gallows. In international law where can you enforce anything? For example you mentioned that the American invasion of Iraq was illegal. So where do you go from there?*

**Lecturer:** Let me thank the AVM for two very powerful questions. On the question of nuclear weapons you are quite right, in the sense that I did not mean to say that nuclear weapons are illegal, that was decided by the court. In fact the court was divided and the court in the end said something like "we can't decide this question because it all depends on the particular circumstances. So in fact the court was sensitive to the issue you raised and the court said "well there might be circumstances when it's a submarine in the Pacific and nuclear weapons used against that type of a target would not violate the laws of war and it would not cause damage that would extend to civilian casualties and so forth. So it's a very good question because that's precisely is the uncertainty that led the court to decide that we can't actually say whether nuclear weapons are legal or illegal. The court said it all depends. My own view and I have been persuaded by Judge Weeramanthry's decision, is that the risk is just too much because the one thing we know about war is that it is entirely unpredictable and we have a famous expression for this called the "fog of war". We just don't know what happens once the war starts. America was so confident going into Iraq and look at what happened. So I think the judges who said; - half the judges said nuclear weapons are illegal in all circumstances and the reason they said that was "we just can't take this risk. It might be a small weapon but who knows what the consequences could be". So you are quite right and that's what led to the court splitting and it was because of that uncertainty. So in the end happily the court did not have any definitive decision about the legality or illegality of nuclear weapons.

Now Judge Weeramanthry is an expert on this issue and he works with many organizations dealing with these issues and comments he will make on this issue will be worthwhile.

The issue about enforceability; this is a major issue of international law. I am wondering whether the same claim can't be made against the domestic systems. Now, just driving from home to here I was wondering about the number of road rules that have been violated by the trishaw drivers, by the private bus drivers etc., etc., Now this is something that enrages my father and even though I tell him that he needs to accept that this is Sri Lanka and that's the way things happen at least on the road. But we can think of many cases in which even national law is continuously violated especially violated by powerful people and when they are violated by powerful people just as when they are violated by powerful states, enforceability becomes a problem. I don't know what the situation is like here in Sri Lanka but I can say in America there is a very clear perception now that there is one law for the powerful and another law for the less powerful. We can see this in the way that the financial crisis has been handled. All those irresponsible financiers and bankers have been rewarded and the innocent people whose lives have been destroyed have no recourse. So, I would say Sir, that you are quite right, there is a problem of enforceability but there are similar problems that exist in the national system and perhaps the other point I would make is that we might see law as independent of enforceability and that is not very satisfactory because then, why is it law but that's the best we can do at this point of time. The other thing that I would say about international law now is that international law is powerful not just because of its legal status but it is powerful because it shames perceptions. So here in Sri Lanka we get some sense of this when all these arguments about human rights, genocide and responsibility to protect are being made, what we are doing is using international law concepts all the time. So in other words international law has a function in shaping perceptions about who is right and who is wrong and I would humbly submit that this is something that we in Sri Lanka are experiencing in quite a powerful way because all these doctrines or arguments about international law are being used in understanding what is happening in Sri Lanka. So this is why the term "law fare" has a meaning even in this other context.

**Major Gen. Kamal Fernand:** *It's a fairly simple question and I hope you can give me a fairly reasonable answer. What is the definition of the international community because there are something like 176 nations representing the United Nations but they talk of the international community all the time. Is it a reference to the West and also to a few nations or does it cover the whole world?*

**Lecturer :** Thank you Major General, that's an excellent question. Let me begin by saying that there is no legal definition of international community. This term does not exist as far as a legal vocabulary is concerned. But the term is used in a political way to basically say something like "what you have done is something that everybody else opposes". As the Major General points out to the extent that there is an international community the best place to identify that international community is the General Assembly of the United Nations which was devised especially for this purpose, because every Member Nation of the United Nations has a seat in the General Assembly. I would say that a resolution passed by the General Assembly justifiably be called the expression of an opinion of the international community. But in these circumstances it seems that the term is used in all sorts of complicated ways, some of which are not particularly credible and I do accept the thrust of your criticism within your question which is "it seems it is the people, those countries which have the best methods of articulating their position, it is those countries which have those communicatory resources available to them, they present themselves as being the world, instead of we are the world type of argument". It's a good question which I have raised in other circumstances. One of the interesting things is that in the 1970s the General Assembly was very active and it passed a number of important resolutions. However the West did not particularly like those resolutions because it was against those Western interests but now sadly the General Assembly has become very dormant and it does not participate in any significant way it seems to me in international discussions and I think it's a pity because it leaves open this possibility of particularly powerful states presenting themselves as the international community and I think one of the things that has to be done by these other states of Asia and Africa is to organize themselves better to coordinate and negotiate and present their position. That's another

concern that I have about the current international system. All the major initiatives in international law originate in the West. If you look at R2P, if you look at the International Criminal Court, if you look at the World Trade Organization all those initiatives are really in many significant ways and respects are Western initiatives. The Third World which was very active in promoting various initiatives in the 1960s and the 1970s is now fragmented and it does not present itself as being a coherent entity that can articulate an international position and that's something that some of the societies that I belong to is concerned about and we are trying to see different ways in which that old unity might be restored. It seems to me that the problem with the Third World is that it is being only reactive. It is reacting to the initiatives taken by other states rather than saying these are the initiatives that further the cause of international justice.

**AVM Lal Perera :** *This is a question of those causing terror in one scenario being referred to as a freedom fighter and a terrorist in another. How does international law and the international community understand these two aspects when they accept the interpretation of one group as freedom fighters in one country and the other as terrorists in another country?*

**Lecturer:** Thank you very much AVM. Another very interesting and impossible question. Let me say again, in international law the definition of terrorism has been so problematic that even though this issue has been debated time and time again within the United Nations, no satisfactory definition which has a kind of legal consequence has been decided. I believe Sri Lanka at the time of the drafting of the International Criminal Court tried to introduce this whole aspect of terrorism into the International Criminal Court and the statute of the International Criminal Court but because there could not be any clear determination about who a terrorist is, Sri Lanka did not succeed. But let me say that one approach that is acquiring some currency is not talk so much about a terrorist but look at the action that they engage in. For example if they use violence which is deliberately intended to cause terror, focusing on especially sensitive targets like the World Trade Center or like Anuradhapura, its all directed towards a kind of symbolic violence as much as anything else.

So, in those sorts of circumstances it can be clearly argued that this is terrorism and that's perhaps is the best we can do at this stage.

**AVM Brenden Sosa:** *You mentioned that as far as the international affairs of a country are concerned the UN should not be interfering as per international law. If that is so what's your opinion about Secretary General Ban Ki Moon appointing his panel of experts to inquire into an internal affair in Sri Lanka*

**Lecturer:** I would welcome Judge Weeramantry's contribution to answer this question because it's a very difficult question. 2:7 that's the Article. What is happening is that the meaning of internal affairs has been continuously evolving. So, that is the argument. We have the language internal affairs but as a result of developments that has taken place in the international system over the last fifty years our understanding of what is "internal" has also evolved and interestingly enough it was the Third World which actually argued against Article 2:7 and international affairs. This is the great irony and again Judge Weeramanthy is an expert on this, because what happened was that in the 1950s and 1960s we had a system of Apartheid, (of course it went on in the 1980s and 90s) in South Africa. The General Assembly passed a number of resolutions condemning Apartheid. South Africa, then said, you have no business passing any of these resolutions or imposing sanctions on South Africa because Apartheid is a strictly internal matter and you are prohibited by Article 2:7 for interfering in internal matters. So, we can see the irony of it and in fact it was India, the leading Non-Aligned State and many other such states which argued against the definition of internal affairs. So, the whole idea of what internal affairs is continuously changing. I will try to answer your question about the Secretary General. I have not been able to do much research on this issue because I have been traveling, but I am not sure whether there is any precedence to what the Secretary General is doing and I am not sure whether he has ever done something like this before. So that then raises a Constitutional question under the UN Charter, it seems to me as to whether the Secretary General has the Constitutional Authority under the UN Charter to take such action. The next legal question would be if there is a Constitutional issue how can this be raised, or where will this be raised? Let me say at

the outset that I do not want to be here advising Sri Lanka. I think you must be tired of all these foreign experts flying in here giving you lectures of what to do. So I don't want to be one of them. But it seems to be that Sri Lanka is a very important test case for certain constituencies in the international community. Remember I was talking about the situation where we have to decide whether a particular event should be regarded as a violation of international law or a development of international law. I think that analysis could be applied to Sri Lanka and there is great concern in the human rights community that Sri Lanka would be seen as a precedent, that the Sri Lankan model would be embraced by many countries facing this type of an issue. If that happened as far as the human rights community is concerned, this would be a very problematic development. It is very interesting in that regard; I find myself in conferences where Sri Lanka is being raised again and again in this type of context. So, that is one issue and the other issue of course is, that this is much more complicated and I am not making any comment about the Sri Lankan situation and let me make that very clear. There is a very good film called the "Fog of War" and I may suggest that it might be shown to your Organization because it is all about Robert McNamara who was the Defense Secretary to the United States during the time of the Vietnam War and he was also involved in the Second World War. He has a very interesting background, he was a Harvard Graduate and he got a MBA and his question was how can I contribute to the war, and his contribution to the war was to work out the most efficient way of dropping the largest number of bombs on Japan. So, you need business management skills in order to work this out. So in that film there is a very interesting situation where McNamara says of one instance where the fire bombing of Tokyo caused the death of 40,000 people in one night. And he says "was that a war crime"? Of course that was, but we had to win this war. So the interesting question is where does this leave us? This returns to my original question are there laws in a time of war? I think McNamara's comment is quite disturbing in that regard because I would like to think that there are laws and they have to be applicable but it is very interesting how certain violations are simply forgotten. That's the other interesting thing about Sri Lanka it seems to me because now its like "we can't allow that to continue and we have to take a stand"

and Sri Lanka is the place where the stand is to be taken. So, that's just my guess! I would say even the Nuremberg Trials were not strictly legal and to me the Nuremberg Trials were retrospective justice and yet the international community was of the view that this principle is so important that even though it is illegal it should be embraced and it should be legalized. So that is how the international law develops and this is why Sri Lanka is in a very interesting position because it could be a test case for so many important doctrines and principles of international law.

**Lt. Col. K. Ekanayake – SLLI:** *My question refers to anarchistic situations. In your lecture you said that intervention in Afghanistan was not legal or legitimate. We find special spots in the World map that is if you take Somalia now, it is an anarchistic situation and I can remember that when it came for action of the World Body Afghanistan was also in an anarchistic situation. So don't you think that the international community or the UN or somebody should have intervened and establish order? What's your view on that?*

**Lecturer:** That's another very good question. It takes us back to the issue that I was trying to avoid which was the issue of failed states. So the basic argument, and I think this is what the Colonel refers to is a situation where there is no sovereignty, where there is anarchy because in that situation the argument is that sovereignty does not exist, there is no central authority controlling what happens in a territory and in those circumstances, in that anarchical situation this territory is a danger to everybody. So this is the basis of intervention and that is an argument that has been made and there is a lot in writing now about failed states and that is exactly one of the reasons why R2P has been devised because R2P can apply to those circumstances and the argument would be that under R2P there is no sovereign in place to manage the affairs of the state and therefore the entity is not sovereign and therefore the international community should intervene. That is exactly the purpose of R2P. You might also understand why there is some complication about who is to determine whether a state is a failed state or an anarchical state. That is one of the complications. The other complication might be "if it is anarchist who is to intervene. If there is a responsibility to protect on whom does this responsibility devolve and if they

do not act will they then be acting illegally, in other words if you are under obligation to intervene and you don't intervene, are you in some way in violation of responsibility to protect. So what I can say is that it is a very complex problem and R2P is an attempt to deal with this problem but R2P itself has these issues about who is to decide. Now the old international law would say that the Security Council acting under Chapter 7 that should decide these issues. So the Security Council has passed a number of resolutions in relation to a number of these problematic areas. So one response would be to say that in fact even under the UN Charter there is at least some mechanism in place to enable action to be taken and that is under Chapter 7 of the UN Charter.

**Waj. General Kamal Fernando:** *There is a school of thought that the Twin Towers were destroyed by the Bush Administration. In fact over 1000 engineers and architects are now arguing on the 9/11 truth as to how 200,000 tons of steel collapsed in eleven seconds. Can it happen by just two or three aircrafts hitting the building? Also there has been enough evidence brought out that several people who gave evidence have lost their lives; they have supposed to have committed suicide, especially the pilot who piloted the chopper taking photographs; he is supposed to have committed suicide. Then the unknown Bush, Marvin Bush whose body after was crushed to death by her own car in William Bush's house. So several people are asking the question "what did she know?" So is there any truth in this because there is a lot of doubt as to whether Al-Qaida itself did it or Al-Quida, Saudi Arabia and the United States got together and destroyed the Twin Towers?*

**Lecturer:** I have heard of this story and I have to say that I don't believe this theory and I don't have evidence to refute whatever these conspiracy theories have to present but to me it just seems extraordinarily unlikely but I have to say that I cannot comment in a particularly expert way. America does have these conspiracy theories and the internet complicates things even further and I think it is very unlikely.

#### **Vote of Thanks proposed by AVM Brenden Soysa:**

AVM Dick Perera, Prof. Anghie, thank you very much for spending time with us and speaking to us very frankly on a very topical subject. In fact international law is now being debated very much in Sri Lanka, every second person thinks that he is an international lawyer and each one has a different opinion and I am quite happy that you bated frankly you seem to be very fond of cricket. You bated very confidently right throughout, depending on the questions that were asked. You mentioned that your grandfather was in the Army but one thing that you did not mention was that your father, Tony Anghie was very much involved in good governance and the rule of law. In fact he and I belonged to an Association called the Citizens Movement for Good Governance and we meet once a week. He is very much interested in International Law and I am sure you would have had a lot of discussions with him. You mentioned Robert McNamara and much later on there was Mandline Albright who was asked about the Slaughter of infants in Iraq and she said very confidently that it was justified. So, it's a question of "might being right".

The other thing that I would like to touch upon is that you travel the globe as per the introduction given by ACM Perera and actually traverse quite a lot within the short span of 45 minutes and you covered it extremely well and all of us are very thankful to you for having taken the time to spend with us.

Finally, I thank you very much and we are also honored with the presence of Justice Weeramanthry and we look forward to seeing you Sir, sometime in the future to have a discussion of this sort with us.

I also thank the three Service Commanders for releasing the serving officers, the Signals Corps for giving us all the facilities and all of you Ladies and Gentlemen for your presence.

Thank you.

# HOW POLICY IS MADE IN THE US, OUR LARGER INDIA STRATEGY AND OTHER THEMES FROM ARMING WITHOUT AIMING: INDIA'S MILITARY MODERNIZATION

By

PROF. STEPHEN P COHEN

Senior Fellow, Foreign Policy, 21st Century Defence Initiative,

Brookings Institution USA

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**Introduction by: Air Chief Marshal D. Perera VSV President ARFRO**

*The Executive Committee and Members of ARFRO, the Staff and Students of the Defense Services Staff College, the Serving Officers of the Armed Forces, Ladies and Gentlemen; Good Evening and a very warm welcome to this evening's Lecture on "How Policy is Made in the US with particular reference to India and the latter's military modernization. It is a pleasure today to introduce to you Prof. Stephen Cohen, considered an authority on South Asian policy and security matters. Prof. Stephen Cohen obtained his BA and his MA at the University of Chicago and he obtained his Doctorate from the University of Wisconsin. Prof. Cohen's past positions include Prof. of Policy, Science and History, Founder Director of the Programme in Arms Control, Disarmament and International Security at the University of Illinois. He was a Member of the Policy Planning Staff of the United States State Department. He is a Scholar In Residence at the Ford Foundation New Delhi. Presently, Prof. Stephen is a Senior Fellow, Foreign Policy 21st Century Defense Initiative at the Brookings Institution. He has submitted over 23 Research Papers and lengthy commentaries on South Asian Countries particularly on Nuclear Matters, Foreign Policy; Strategic Relationships between the USA, India and Pakistan and their impact on the vital security considerations in South Asia. May I now call upon Prof. Cohen to deliver his lecture.*

Thank you very much Sir for that thoughtful introduction. Let me say that I am delighted to be back in Sri Lanka. I have been coming here off and on since the mid 1980s and have had many Sri Lankan friends over the years and I would say that I contributed to the creation of the Regional Center for Strategic Studies which is in Colombo which we designed to be the SAARC Security Studies Programme and for a number of years I participated actively in ICRC activities. I have been watching Sri Lanka, particularly as an Indian expert and I must say that it taught me a great deal. When I came here the conflict was deep and all pervasive and I learnt from watching what was going on here that it was almost an unique kind of conflict and that on both sides, the Tamil side and the Sinhala side, there was a sense of being threatened and surrounded for reasons you know better than I know. I thought that this reminded me of the Israeli, Palestinian issue. We have two sides, the Israeli's and the Palestinians. Each side believes that it is surrounded and threatened by the other side and the Israeli's are obviously surrounded by a huge mass of Arab population and the Arabs regard Israel as the sphere point for Western imperialism

and in a sense I developed a theory of permanent conflict, where these things feed on themselves, each side feeling more unsure than the other side. To my delight and pleasure, its hard to take pleasure on these things, I was delighted to see this war here pretty much ended. The difficult part is yet to come forging a peace accommodation between the communities and support, but clearly I always felt that Prabhakaran and his crew; were interested in any normalization process and I thought it had to come this way. The other day I spoke to the students of Staff College and as an outsider I congratulated them on the job and you as veterans really did much of the work to get Sri Lanka to the point where it is now. We can look forward to a normal society, where rights are protected on all sides, freedom of speech and freedom of movement are allowed, politics returns to normalcy and I am optimistic that this is the path that Sri Lanka is on. I know you have your critics and I am also a critic of the United States but really I think a magnificent accomplishment has taken place and we might talk about this in the Q&A session. As I was thinking about what happened here in a sense you can have almost a check list of things to do right

and also some things to do wrong and I like to see that point, the American engagement in Afghanistan where a lot has gone wrong and perhaps even more are going wrong. So let's keep that also for the Q&A Session because I am still formulating my ideas.

Let me begin by saying that I am here as a private individual. I served for two brief years working for George Shultz who was Secretary of State and in the American System even though I was a Democrat I worked in a Republican administration and there are a lot of people who do this; come in and go out. So I did not agree with the Republican Agenda but I certainly was pleased to work for George Schultz as he was a superb Secretary of State. He told me once something that I will never forget about policy because I was on the policy planning stand and he said to me and some of the other colleagues "Hope is not a policy" and I thought that was very wise. Recently when I was in Pakistan and a Pakistani diplomat also said to me after I said about what George Schultz said to me "Despair is not a policy either" and I think that the Sri Lankan case indicates that despair need not be a policy. Somehow you put together the right combination, weapons, allies, strategy, tactics and finished the job although the difficult part is reconciliation, social and political reconciliation. Let me also add that whilst I am in Government, I am here as a private citizen, I work at Brookings which is an independent think chain and my presence in Sri Lanka as well as the rest of South Asia is due to the American Center and the American Embassy, occasionally they bringing people who are either new to the region or old timers such as myself to give us the experience of travelling and visiting. So it has been a great trip although I am only half way through. So my comments are only my private comments and they do not reflect in any way the policies of the US Government. Some cases I agree and in some cases I do not agree.

What I want to do today is to really summarize for you where this administration is heading; what its major foreign policy problem is, what its policy problems are and how its likely to deal with it. This traces back to President Obama's campaign for the Presidency. One thing that's clear is that as he ran for the Presidency he knew very little about foreign policy. There are a few good biographies of Obama but his own autobiography is probably the best, a short one and I urge you to read it because he is a remarkable man,

very cool, very intelligent, very restrained, but without much experience in foreign policy. Yes, he was running for the Presidency and the President's job among other things is to keep the economy on track and to keep us out of trouble abroad. His predecessor, President Bush, I think he ruined the economy and he got us in deep trouble abroad. We are critical of many of Bush's both domestic policy and foreign policy. I was an Obama fan but I thought there were three people who were capable of being President. John McCain I thought would have been a good President, Hilary Clinton also would have been a good President, but Obama was the most likely person to be the President who would also do the job but his one area of weakness was in foreign policy. He had no experience in foreign policy whatsoever. During the campaign he distinguished himself from other Democratic candidates and then in the debates with John McCain by coming out with a more assertive policy on Afghanistan. Obama's argument was basically that we are fighting the wrong war, that we should have not gone into Iraq and that we should have cleaned up the mess in Afghanistan before we did anything else. I agree with that because the Iraqi invasion was premature. I had no sympathy for Saddam Hussain but I was not persuaded that arguments about nuclear weapons was credible and even if it was we had plenty of time to deal with Saddam. But I thought from the beginning probably as a South Asia expert that we had an unique chance to put Afghanistan back on its feet, get rid of the Taliban and put it on the path to normalcy. But what we have instead is I think America's longest war ever, it is something like in its 9th year now and my colleague Michael Hanley at Brookings talks about it being there for another five or six years with substantial American military commitment. I don't think that's what Obama was interested in. He wanted to clean up the war in Iraq, get us out of there, which he has done partly because of General Petraeus's strategy, to then apply that strategy to Afghanistan. I have great reservations whether that is going to work in Afghanistan. But I think what is important is the differing American perspectives on Afghanistan. i.e. the President has one view, Congress has another view, US military has another view and some of the President's supports have a totally different view on Afghanistan. So what we lack on Afghanistan is political coherence. There is great disagreement among Americans on what to do in Afghanistan. It is agreed however that Afghanistan has to be fixed and that is a foreign policy problem.

So let me go through these different positions and we can see the problem the President faces. The first Americans to be concerned about Afghanistan was the US Military. They were the under equipped in building up for war in Iraq facing the Taliban and the Taliban was being trained, equipped and armed in Pakistan. So there was grave discontent among the American military about the Afghan war. (A) They don't have the Resources, (B) There were two parties; the Taliban and the Pakistan Government. This concern spread into Congress and in 2005, 2006, 2007 a lot of Senators and Congressmen made a decision and they were more active than the administration. The administration looked away when it came to Pakistan resulting around Afghanistan. Out of this came the realization by some Senators and Congressmen that the real problem for America was not really Afghanistan with a sort of rag tag Taliban and a shattered society which couldn't threaten anybody except its own people, but that Pakistan was a potential problem and Pakistan was a potential threat and Pakistan was becoming the source of international terrorism. Al-Qaida had fled to Pakistan, Al-Qaida operated out of Pakistan. New groups in Pakistan, some supported by the Government like Lashkar-e-Taiba, emulated the Al-Qaida. So I think in the Congress there was great unhappiness with the Bush administration's focus on Iraq and the focus in Congress being Pakistan. But there was still another wheel on American politicians of people's power in South Asia, i.e. India which I would probably agree myself. Some Americans felt that in the long run India was a far more important country than any other South Asian Country. I think this was probably President Bush's strategy, i.e. we develop a close relationship with India, an alliance with India of sorts, natural or otherwise to balance China. So they saw South Asia in strategic terms not in terms of the little war in Afghanistan. Therefore the US, India nuclear area and the assumption was that we would use India to help contain a rising China. The assumption of their view of this policy was that a rising China might invariably be a hostile China and that's why I parted company with that position. I felt that rising China might be hostile, might not be hostile. We will have to wait and see till it arise. I think India could be a hostile state if it arose otherwise I don't think it would be. But in any case this was a balanced power approach to South Asia; classic balance of power to balance a rising power with another rising power. The problem was that the Indians did not and do not want to be America's balance power against

China. Indians are concerned about their own relationship with China and China is their largest trading partner. India is militarily inferior to China but both countries have nuclear weapons. So they have military competition. I think if there is border competition between India and China or even a competition at sea pretty soon you will see the nuclear weapons of both groups and the whole thing will come crashing down to normalcy. Nuclear weapons generally have the effect of calming disputes between nuclear weapon states. So I think that the Bush policy, when the Obama people came in they saw the major foreign policy problem facing America, not just dealing with rising China, they wanted to accommodate and negotiate with hostile China but deal with the situation in Afghanistan. A minority of them including President Bush thought and still think that the situation in Pakistan is more important than Afghanistan. I tend to hold that view myself because Pakistan is far more critical to American interests than Afghanistan. The Result has been a confusion of policy and again I don't want to draw parallel examples but clearly your singleness of purpose here in recent years is a lesion I think for the United States because we are all over the place in terms of what we think is the major problem and how we address that problem. Result has been pursuing several strategies at the same time. In the one hand we are trying to rebuild Afghanistan a country that has been shattered by 40 years of war and we are trying to build a credible Afghan army which I always thought was the key to the whole situation and of course it is not happening. The data seem to show that the Afghan Army cannot be trusted. My first work was with the British Indian Army the Pakistan Army and I think it takes several generations to build an army, and I think we don't have the time for that in Afghanistan. So my view is that the policy of developing an Afghan Army as a coherent instrument to control the State is probably doomed to defeat, partly because there is no Afghan political system that seems to work. President Karzai has his problems, a lot of it is laid out very clearly in the book by Bob Woodward called "Obama's Words". The Americans are deeply uncertain about what to do with Hameed Karzai. The lesson of Vietnam was "you don't change the leadership", its tempting but you don't change leadership but in the case of Afghanistan the leadership seems to be incompetent and self-destructive. So the war is going on but the Obama supporters are actually divided. Some of his supports on the liberal end of the Democratic Party

really want to see the word "prosecuted". I was at a meeting in the White House about a year ago and there were experts on one side of the table and on the other side of the table were Obama's political supporters and they were divided into two groups. One group did not like any war under any circumstances. The other group was made up of individuals who were concerned about the fate of the Afghan women and the nature of the Taliban. Their view was that this war was not a bad one, it was a good one. It was a good one as it would protect Afghan society and Afghan women from the Taliban. So actually they argued among each other. So the lesson was that Obama's political supporters in the Democratic Party were divided. We probably could pursue the war for another year or two without serious consequences and may be get re-nominated for the Presidency and presumably that's what he is interested in doing. But there is no unanimous support in the United States. On the Republican side of course they don't mind seeing Obama trapped in a complicated war which is not going anywhere. One of the facts is that General Petraeus is a remarkable and charismatic officer and he is a registered Republican and you can imagine the scenario if the war goes badly with further changes in the personnel; and if Petraeus resigns and runs for the Presidency and says that "I would have won the war had you given me the resources". It's a sure conjuncture but it's a possibility and it's something that Democrats are concerned about. So they got to put up a good show in Afghanistan if they are to show progress, but I think the President has probably decided again, he is the only one who knows that if things don't go well within a year, they will set a deadline; June or July next year to pull out. Then there is going to be an American retreat from Afghanistan. I wouldn't mind that because I think the critical country is Pakistan. I think Pakistan with a 180 million people, without effective leadership, with nuclear weapons, with an economy that's totally stagnating, with sectarian violence, regional separatism growing, I think its a country in deep trouble. In the Brookings website there is a series of papers, and I am going to put my own paper up there called the "Brookings Bellagio Pakistan Papers". There was a meeting in Bellagio, so they called it the Bellagio Pakistan Papers. All of them are very pessimistic, looking ahead five years. So I think I personally would not mind getting out of Afghanistan, which would mean unhappiness for the Afghan people, but again the question is what Pakistan would do, whether Pakistan would enter Afghanistan as the

dominant power. The likely outcome that everybody agrees will be if the Americans pull out, the Taliban, supported by Pakistan will fill the Southern part of the country and the Northern alliance would be recreated by Iran and India and may be the Russians. So again they will end up with another civil war in Afghanistan. Some people like Barn Blackwar, the former US Ambassador to India, argues that this is the best outcome that we can get and the Americans supporting the Indians and even the Iranians in the North and the Pakistanis in the South, but I think that is not my favored outcome. My own preferences are that they go back to the Barn Agreement which called for a collation of the major powers around Afghanistan including India, the Americans, the Russians, the Pakistanis and the Chinese and make Afghanistan a mutual state with everybody helping but nobody using Afghanistan as a jumping off point to attack another state. I think that the real dilemma for the Pakistanis and the Indians because each one is afraid that the other will get a possession of the damage in Afghanistan. Therefore, each pursues its own interests, but to the detriment of the Afghan people. This is also true of the Americans and the Iranians. We are afraid of the Iranian influence in Afghanistan and the Iranians are very concerned about the American influence on Afghanistan. So I think somebody has to blow the whistle and say "pull back, let's leave the Afghans to Afghanistan, provide them with enough economic and military support to sustain themselves but don't use Afghanistan as a jumping off point to undercut other countries. That may be neigh and idealistic but it was in fact the strategy of the Barn Agreement. Why the US Administration does not go back to that I am not sure at all. Instead they are focused on this concept of AF-PAK. I do not know who invented the term but it is a bad term for a worse idea. A friend of mine who has been involved in these things says "it is one half of a good idea and one half of a bad idea" The good idea is that AF-PAK links Afghanistan and Pakistan. It is true that Afghanistan and Pakistan are inter linked; no doubt about it. The fate of Pakistan and the fate of Afghanistan are tied together but its also true that India has a role in Afghanistan. So there has to be India -Pakistan cooperation in Afghanistan. I suspect that in less than a year we will probably see major personnel change with some senior American officials retiring.

Let me say a few words about the rest of America. In a sense a larger approach to South Asia. My guess

...that the Obama visit which beings on November 16, 2009 would be a moderate success because the Indians understand that he is not going to bring anything major. There would be some arms deals, some sales to the United States and by the United States to India, there may be some major trade agreements between the two countries, but I do not see any major breakthrough agreements on the lines of the Indian US Nuclear deal. Even on that deal, the Indians have been reluctant to carry out their part of the bargain. There is a lot of unhappiness in Washington especially among the American businessmen and corporations that the Indians have not passed certain legislation which protect American Companies from liabilities against lawsuits. On the other hand we don't understand the industrial accidents faced by the Indians, typically the Bhopal Gas catastrophe about 15 or 20 years ago which was an American Company in India. So I don't expect a great deal to come out of the visit. Obama is likely to go to Afghanistan quickly just to stop by to say 'hello' to the troops there and he is likely to stop over in Pakistan for a short period of time. Its hard to imagine that he would fly over Pakistan between Afghanistan and India, a country that had the second largest catastrophe in its history; the floods. When I was in Pakistan last month it was quite clear that this was a major event in its history and it was all negative and whether Pakistan can recover from that is an open question. So I think that the visit would be less than what some people hope it to be. But the basic structure of US Indian relationship is pretty good compared with 10 or 15 years ago. I think we have a realistic understanding of the limits of Indian power. We don't want India to be a major world power. We expect India to be a good neighbor to other South Asian Countries. I know there is a lot of anguish here with your relations with India but I think for the most part India has pretty much behaved itself. Its rise has been important and significant and I have just finished a book on this subject.

India's rise has been recognized by pretty much everybody as banal not aggressive or assertive and even its military rearmaments which has been modest so far, they have a hundred million dollars to spend probably will not be too threatening. They are going to acquire additional capabilities in air, land and sea, they may expand their nuclear arsenal a little bit, but for the most part I don't think you can say that Indian military modernization has been threatening. However, the Indians have failed in one critical way and that is they

have been unable to persuade one power; Pakistan that India's rise is banal. The Pakistanis are obsessed with India's new military power and they believe that its all directed against Pakistan. So in a sense India's diplomacy has failed to persuade Pakistanis of the banality or the normality of India's rise. I think the Pakistanis instead are moving in the direction of China and I have told my Indian friends that they have conceded Pakistan to China and the Chinese are very powerful there and the Pakistanis see the Chinese far more supportive than the Americans. The Pakistanis are persuaded that the US India nuclear agreement is also the same as the US India Strategic Alliance directed against Pakistan. So we don't come out well in South East Asia. I think that Indian diplomacy has its task in that it has to reassure the smaller countries of its banal attitude but also to reassure Pakistan that the military significance in their country is not directed against Pakistan, even though it is.

Let me say a few words about the book as I got some copies here. Its coming out in the Indian paper back edition soon and its called "Arming without Aiming". The title reflects the argument of the book where India would be buying hundred billion dollars worth of military equipment but my co-author and I don't see a particular direction of the Indian rearmament. The service is to purchase things independently by the Air Force, the Army and the Navy and none of this is connected to each other and very little of this is connected to the Indian Government. In a sense what you have here and in India today is a result of an agreement between the Indian Military as in the 1940s where the civilians were kept out of military management including weapons acquisition and the military will keep out of politics. My very first book, my dissertation was on this subject but I only saw the civil military relationship from a political point of view but I didn't see it in the strategic point of view and clearly Indian strategy as a whole suffers because there is very little expert military advice provided to politicians.

Let me thank you for your patience and I am prepared to respond to your questions and comments and particularly things that I might have not touched upon. Thank you!

## Discussion:

**AVM Vijitha Tennekoon:** *Dr. Cohen, thank you very much for a very interesting presentation. Elsewhere you have stated that South Asia is critically important to the US and that these interests must be defended with force. You went on to say that US Regional interests will not decrease but rather increase. This was in 2005. You also suggested developing a new strategic relationship with India. Now, China is a fast emerging global power and would perhaps challenge the US for global leadership. If the US could engage in an arms race there is a possibility that China could go the way that the Soviet Union did with the Star Wars Strategy of President Regan. Although the US has engaged India, the Indian policy has not bitten the carrot; I think in your book that you just spoke of you have suggested that Pakistan remains in a tinderbox relationship with India, civilian control of the military, failure of India's arms research then of course "Arming without Aiming" as your book suggests restricting defense expenditure to about 2% of GDP, technology free from military strategic objective, military research lacking proper oversight, the growing missile Gap with Pakistan, the credibility of the nuclear deterrent and finally you had indicated that vulcanization of the military, a disconnect between the different arms of the Indian military forces which was suggested just now. Also there is no central military leadership within the Indian military and of course the inability to move away from Russian Weaponry. Now my question really is, what you have identified as suggested, isn't it the perfect blueprint to get China into an arms race which would only serve the US global interests in the region?*

**Lecturer:** Good! That's an impressive statement and an important question. Let me respond to the statement by clarifying my own views on American Interests in South Asia. I think we have about five or six different interests and I don't think any of them are supreme or over powering, but all are important. In a sense they are all more important than they were 15 or 20 years ago. I think first of all there is a new US interest in India in particular and perhaps even in Sri Lanka in terms of its economic relationship with us. India has been a 'basket case' from the word 'go' but now it's a major economic power. One of my Sons used to work for 'Charter' and another Son sells software to India, my Daughter is in New Delhi, setting up a branch of her company's business. So there

is an enormous economic interaction between us and India. Now India is not China, it does not have that spectacular growth. India is fifteen years behind China and fifteen years from now India is going to look like what China looks now. So I think first of all there is a major Indian economic Development and growth and this is expressed particularly by some major American Corporations, Microsoft, Boeing, Intel; all the major modern American companies are trying to do business in India. General Electric has a major Research Center in India. So I think that economic relationship based on India's economic reforms and growth began fifteen years after China. That is the bed rock of America's relationship. I think there is a ballast in the US Indian relationship but flowing out of that one of the dimensions of this is that we hope to make arms sales to India and I think in his forthcoming Presidential visit to India you will see a number of weapon sales announced in India; ships, airplanes, technology etc. The difference there of-course is that the Indians want the technology, we want to sell the hardware. So it won't be a satisfactory deal but there will be some military trade between us and the Indians. Thirdly, there is a strong concern about Nuclear proliferation in South Asia. Even though the Indians and the Pakistanis are not in a state of crisis, that could happen any day. So I think that's a residual American interest which did not exist 30 years ago. There is also interest in some Americans but it's not universal that India play a game in the balance of power against China. I don't think however that it's secure to any American strategies that I know of, any responsible person, who says that there is an analogy between the Soviet Unions War and China. I don't think that the Chinese are going to do the foolish things that the Soviets did. The Chinese have the last of the four modernizations which was military power all the others were economic and educational. So I think the Chinese understand that they watch the Soviet experience carefully and they don't want to be in a position where they waste a huge amount of money on military hardware, especially when they are dealing with nuclear rivals and can't use the hardware. So I would disagree with you on your point that there are Americans who believe that they can spread the Chinese on the ground. I don't think that's the case and I don't think that the Chinese feel that either. So let that stand I guess is the response to your comment.

**Lt. Col. Asad Issadeen SLAC:** *My question is Sir, now you said that the US strategy for Afghanistan*

involved in the US itself and then again you said even in other areas US interests are in conflict relationships. Then again this entire issue of fighting in Afghanistan and having conflicts in other areas of interest to the US has not brought any solution neither to you in the US nor to the Region. So as an individual who gives clear policy decisions in this kind of situations should not America clear its doubt before embarking on such journeys. Will that happen in the future or will it be in a time to come by which time the regions one after another will be involved in bigger conflicts?

**Lecturer:** I think that the American position is so badly weakened by economic problems that you are going to see may be half a generation of American inactivity. In the Bush Administration before the roof fell in there was a lot of confidence that we could become a Central Asian power, we could use Afghanistan as a jumping off point and establish ourselves in Central Asia and outplaying the Chinese and the Russians. But as far as I can tell that is all gone. Without the economic power to back it up it doesn't make any sense at all. What I would like to see however is that America gets actively involved even in a military fashion around the world where our presence is desired and useful. I can see an American presence in South East Asia, North East Asia, not for active military engagement but really to demonstrate that we have strategic and long term alliances and friends; Japan, South Korea and a number of states are formal alliances of the United States. I don't see us in any way abandoning that relationship at all. In South Asia I think the relationship with Pakistan is very complex because the alliances part of it is kind of superficial in a sense it extends to Afghanistan. But the Pakistanis are fighting on both sides of that war. The real American interest in Pakistan is the stability of the State of Pakistan and not its political role and of course also avoiding conflict with India. So I see the American engagement around the world, in Asia, particularly South East Asia, South Asia, East Asia limited to supporting our friends, providing military and technical assistance and also using our power to strengthen regional democracy; I think Sri Lanka is a great case for that, but when it comes to regional disputes, say between India and Sri Lanka, between India and Pakistan of course is a nuclear dispute and not a regional dispute. I don't think you will see any American engagement in Pakistan after the Kashmir issue, but you might see American engagement and the whole principle of regional accommodation because that

would be my own preference. But the administration is so deeply messed in Afghanistan, its like a Vietnam all over again its in deep obsession with American people even though there aren't many soldiers fighting there. I guess to respond to your question we will be active in Asia, we will especially be active with strong allies such as the Japanese and the South Koreans and others. They see us as the balance against the Chinese, against the Japanese, they want the Indians in there also as a balancer. I could see Asia peacefully going into the next 40 years with a number of outside powers playing a useful role in disaster management and so forth, but really not contesting for dominance because those days are gone. I don't think the Indians want to be dominant, I don't think the Chinese want to be dominant, they want a share of the economic tide. On those grounds I think American companies would compete with the Indian, European and Chinese Companies. From the point of view of Sri Lanka and other smaller countries, I understand you have a great opportunity to balance everybody off. Play the Americans off against the Chinese, against the Indians and so forth and I think that is one the advantages you have in your possession.

**Mr. Jagath Senaratne (A social Scientist and Researcher in Military History):** *I have two questions Prof. Cohen. One is could you comment on American Counter-Insurgency Doctrine. This has been evolving from the 1950s and during the Vietnam War there was a great deal of rethinking and after the war tremendous amount of thinking and certain amount of texts have emerged, then we have Gen. Petraeus and his document in 2005. Then we have the Americans going into Iraq and Afghanistan and saying that they are conducting counter insurgency operations. I am going to ask a fundamental question as to whether actually they are facing an insurgency there and whether counter insurgency is the reason. I am raising the question about the doctrine and why the American system is in crisis; I have been reading American militarily generated texts from 1950s onwards is there a problem in American Doctrine.*

*My second question is related to Indian Military capabilities. I look forward to reading your book but its about a very small aspect of the Indian Air Force. A Scholar named Chris Smith has written on the Indian Military System and he criticized the Indians as being all over the place and so on and he criticized the Indian Air Force acquiring the Illusion IL76 which was for*

*strategic transport. Just a couple of years later there was an attempted coupe in Male and the Maldivian Government requested the Indian Government for assistance and the Indian Air Force was able to react in about five to six hours and the troops were taken into Male and the situation was brought under control quickly. Later on analysis went into it and they realized that IL76s took the Indian Troops into Male and they played a great role. Now my point is this, when the IL76s were bought the Indian Air Force had no idea about this kind of operational requirement would arise and had not trained with the Il 76. If there was no training. The Indian Air Force could not have responded to the Male Government's request. I read about Indian acquisitions etc and I know there is a great deal of incoherence but I just thought I should mention this second point and my first question is actually the more important that is about American Counter Insurgency Doctrine.*

**Lecturer:** Let me answer you briefly to the second question. When the Indians landed in Male, the Miscreants I guess, that's a British term and they escaped in a ship and the Indian Navy was docketed to that Ship by the US Navy. The American Navy was tracking all of this and we steered the Indian Navy to intercept the bad guys which was unheralded but was an important contribution. You are right about the Indian intervention in Male, fantastic, wonderful thing. Were they in Mumbai? The failure of the Indian Air Force, the Indian Special Forces to do anything in Mumbai till it was over, was astonishing and there were a couple of Indian reports about this and Mumbai had a huge amounts of evidence but they did not learn anything. Mumbai Police, didn't learn anything, the Maharashtra State Police didn't learn anything, Indian Navy had a special forces unit in Mumbai and it didn't do anything. So one of our core arguments is that Indian's, not just Indians but a lot of people, tend to think that military modernization as buying more hardware, in fact the most difficult and important part is getting your organization together, having people organized and planning for the next event. In the case of low intensity conflict, the American military have a habit of remembering and then forgetting. We have to re-learn this every time we are engaged in a low intensity war or a guerilla war. I think that one quality of the American military system is that we don't learn from others, except the British. I think the Sri Lankan case should be studied carefully in Washington because I think it shows the unity of purpose, how you divide the opposition and so on.

But you are right I think we are not very good at it. The Brookings have organized a workshop and its on their website with the Pakistan Army or the National Defense University of Pakistan and the language that the Americans use was totally different to the language that the Pakistanis use. The Americans approaches counter insurgency to protect the people you provide shelter and good governance and so on. The Pakistani approach was first to send the Air Force, you bomb them, then you send the artillery, you shell them, then you send the tanks, you run them over and finally the infantry goes in and you mop up and after a while they pull out. They are learning that when you pull out the bad guys go back in again and I don't know enough about your experience, but probably this was the case here. So the dilemma as an Army is that there is a weak civil authority in Pakistan from top to bottom and I told my Pakistani Army friends that Pakistan is a country that is hopping along on one strong leg; the Army and you need two legs; you need a strong civil leadership and a political system to make up for what the army can't do. I think there is an American tendency to not pay attention to what other countries are doing and learn from our own mistakes after we made them. I find that unacceptable. Actually, the Indians are pretty good at countering insurgency. They have a lot of experience on this and they are fighting two or three of them right now.

**ACM Dick Perera:** *Since we are now focused on India isn't it rather a sad situation now that India is incurring the wrath of the neighboring countries due to Her domineering attitude towards them. Foreign policies of these countries have to have at least placid concurrence by India, even with the current China phobia that India is wrestling with; should not India completely rethink and readjust Her foreign policy altogether if She were to have sort of more consideration given to Her than at the moment. Your comments on this please Professor.*

**Lecturer:** I wrote about that in a book I wrote in 2001 called "India Emerging Power" and in that book I described India's relations with its neighbors, all five or six of them and clearly the perception from New Delhi of the behavior of the neighbors is quite different from the perception of the neighbors of New Delhi. I won't go into details but all large countries, great or not great or big countries have this problem. We have this problem in Central and Latin America. The Russians

and the Soviets have this and the Chinese probably have it, in a sense when you are that big you take for granted your neighbors and I have had many conversations here with Nepal, Bangladesh, Male recently and of course Pakistan which is obsessed with India where clearly the Indian behavior is regarded as simply wrong and impolite and aggressive and assertive. But I think you have to look at it from the Indian point of view where there is a peculiar situation in South Asia i.e. every one of India's neighbors has an overlap with India in terms of its ethnic politics. So in every case domestic politics becomes India's foreign policy and vice versa. Whether its Tamils, whether its Bengalese, whether its Nepalese, whether its Kashmirees, Punjabis. The only country in South Asia that doesn't have this ethnic overlap with India is Male, there is zero overlap between citizens of the Maldives in India. So there is no ethnic minority there at all. But this complicated politics, where it complicates our politics with Mexico and Central and Latin American Countries. On top of that you get Indian businessmen kind of assertive and once I was at a negotiation between Indian Businessman and a Bangladesh Defense Secretary, and it was incredible how the Businessman was trying to push all kinds of things on him and I was there because the Bangladeshi wanted to be protected against this over assertive Indian. So I think if you recognize that this is a problem, its not necessarily intentional by the Indian party, but big countries behave in that way. But occasionally small countries have to retaliate, in a sense Nepal, Bangladesh and Sri Lanka all balance their relationship with other countries and that's healthy up to a certain point but when the Indians suspect that you have been sucked into a Chinese way of influence, then that creates problems and clearly misperception about what is going on becomes effective, so it's a very delicate balancing act.

**Major Gen. Lalin Fernando:** *I was very interested in what you said about India. Something that came up here about Maldives and the fact that the Americans also helped the Indian Navy to come in but actually the RAW was in Colombo and the part that RAW played of what happened in the Maldives island should be looked at. In your talk you did not look into the religious or a cultural aspect. As far as I am concerned and I am sure there would be some people here who would agree; that the problems that are happening in the world today have something to do with Christianity and Islam. The next point that I would*

*like you to comment on is the culture of our people. It is not in the culture of the Chinese to go to war although they like from time to time, probably when they want to flex their muscles to teach people around them a couple of lessons. There are some countries that have a culture of going and involving themselves in war and I think the United States is one of them. Now India, the reason that the Indians don't appear to be aggressive is due to their culture and religion; they have the Yuban's, they have over a hundred million Muslims there and they have Kashmire. Would you like comment on these two; the religious and the cultural aspects in this area?*

**Lecturer:** That's a very good question. I can't claim to be an expert, but I guess I am an armature as we all are, but I think you made some important points which I probably agree with. We look at the Indian system and we think that there is a policy of strategic restraint, whether its culture or whether its based on poverty, its not quite clear. It could be based on the fact that Indian politics is becoming regionalized and the politicians in the regions whether its North, South, East or West really don't care much about foreign policy, they care about economic development and relations. For them the enemy is the center not just any country. In the case of the United States, we have a cowboy culture; that's true, but also I think Americans try to do the right thing most of the time even though sometimes it's a disaster. I think that what is probably a greater factor now in these deep cultural ruts, whether it's Islam, Christianity and so forth; I see two factors, may be even three. One is that States everywhere are becoming weaker. i.e. the authority of a State over its own people is weaker than it used to be and what is rising is the power of ethnicity and religion as more important factors than in the past. Part of this is due to the end of the cold war, the disperse of ideology, communism, capitalism and so on. So when ethnicity and religion become organizing principles for people, especially unhappy people, then the State has to figure out how to deal with that. The other factor is the rise of the media. Information is transformed in the world completely and people who are disconnected from the modern world are now tightly connected by television and the cell phones. So the notion of back-wards out of the way people is gone. Everybody is linked to everybody else. In dealing with foreign policy issues, its easy to generate a superficial crisis instantly over the internet and I have seen this happen in the case of Male, India and China where there is a newspaper

article may be planted by an intelligence agency and it is picked up by people in other countries. I have noticed over the years that the Hawkish Indians read what the Hawkish Pakistanis write and the two have a conversation of Hawkishness. So its hard for normal diplomacy or business to flow in when people get excited over these issues. So I think that we are living in a time where information is spreading faster than we can understand it and what is happening is that ethnic groups and religious groups are organizing people rather than the States. I think I have recognized that the Maldives is really a State that is under siege from the outside world. It's a very weak State. The danger of course is that you get a powerful dictatorship that will simply run over peoples rights and China has been both. China has been a weak State and a strong a State and a too strong State and I think the Chinese are looking for a way to collaborating the power of the State vs the rights and freedom of the individual and that's a huge experiment that's going to go on for years and that's a fascinating experience.

**AVM Lal Perera:** *I would like to ask a question more pertinent back home. As you said we had 25 to 30 years of an internal conflict in our country. The United States right throughout this conflict proposed a political solution up front rather than the way we solved it. I think we did it the other way round where we found a military solution first and I think we are right now trying to push a political solution. Having done this we were subjected to many, many issues of human rights which actually has strained relation with the United States and many statesmen in the United States even today make statements of the so called violations which happened during the heat of battle in the last stages of the war. We have a forum of many military officers who have been in this conflict long enough and their conscious says what they did was to get out of this situation and to be what we are today. As an independent spokesman what is your opinion having studied our conflict, having known what was happening here how would you view it and what is your opinion in this regard Sir?*

**Lecturer:** I am not a Sri Lankan expert and Ambassador Shafer was the Ambassador here who is a good friend of mine and I turned to Ambassador Shafer for all advise about Sri Lanka and I knew a few other Ambassadors here and they were the professionals. So my view is a bit of an amatures view and not as a Sri

Lankan specialist or a human rights specialist. I went for a press conference and I think it was the Sri Lankan Foreign Minister, I am not sure; the first question, the second question, the third question, the fourth question, the fifth question, the sixth question and all the questions were about human rights violations and it was the same question over and over again; why did you do this, why did you do that and some of them were like "you still beat your wife Mr. Minister". Even if there were human rights violations I thought it was inappropriate because in a sense human rights issues are important to Sri Lanka. So were a lot of other issues, in a sense the Government should not have had to defend itself only on that one point. So my impression was that he really was getting a bad deal and that the human rights lobby in Washington for its own reasons was looking backwards instead of forward. I will be most interested if there will be a collaborated month by month chart as to how things are going in Sri Lanka. But the notion of only dwelling on the past, and that one issue struck me as amateurish and not professional.

**ACM Dick Perera:** *With the so called String of Pearls consisting of countries like Myanmar through Bangladesh, Sri Lanka, Pakistan, East and West of Africa visibly unnerving India do you see rivalry between India, China, the United States, Russia, and Japan, in the Indian Ocean asserting themselves to the point of perhaps confrontation in the future.*

**Lecturer:** All of those countries have a common interest i.e. to keep the oil going and I guess some of it goes right off your shores, a few miles from Sri Lanka. So I don't see why in the world any one of those countries should start interfering with the flow of oil and energy and goods as it strikes me as insane. This is a common good that is pursued by everybody to know that this might create problems strikes me as inappropriate. The String of Pearls is primarily an intervention of some American Scholar and I think it's a mystery game of clue; pearls are not a good murder weapon. So the notion that somehow China will embed itself in all of these places; reminds me of the great conflict of Collin Stations in the 19th Century after the sail gave way to steam and then access for oil. Now oil is not used simply for ships but for powering civilization. So it is important. It is important to the Japanese, it is important to the Chinese, it is important to the Americans and it is important to everybody. How and why this gets to be a point of strategy rather than

lead baffles me. Everybody wants the oil producing states to remain stable and produce the oil and I think this is one of the great common interests we have with each other, the Americans and all the other countries and the Japanese in particular.

Note of Thanks Proposed by Major General Susil Chandrapala: Prof. Cohen, Senior Officers, Ladies and Gentlemen: You would agree that the Professor was trying to tackle a intrastate task; this topic is something you cannot discuss in 70 to 80 minutes. I am grateful to you Sir for coming here and educating us on this subject. All of us present here have learnt a great deal in this short period of time. So let me thank you on behalf of ARFRO for taking time off and coming here and talking to us. I must also mention those institutions and the individuals who have assisted the ARFRO

to carry on with this project of having guest lectures once a month and I must particularly thank the three Service Commanders who have been kind enough to send their officers to participate in these lectures, particularly the Army Commander who has allowed us the use of the facility of these premises. I must make a special mention about the colonel Commandant of the Sri Lanka Military Police Headquarters for giving us the best facilities here to carry out our activities and today we are in a place where we took a lot of effort to renovate and air condition this hall in time for our lecture. Thank you very much. Then we have the Sri Lanka Signals Corps who provides us the PA Equipment for these lectures and finally I thank all senior officers and all officers, Ladies and Gentlemen from the three Services and our Guest for being with us tonight. Thank you very much!

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## WALK YOUR WAY TO FITNESS

Staying trim, wherever you live, doesn't have to involve expensive equipment or lengthy gym contracts. Walk off those pounds instead for a fitter, happier expat lifestyle.

Walking is probably one of the most underrated exercise activities. For most of us, it's simply a way of getting from A to B, but done at the right intensity it can be used as part of a fat-loss regime.

Of course, if you are training for a sporting event then you'll need to do something more specific, probably at a higher intensity but walking is enough to give you major health benefits. As a weight-bearing exercise, walking can help maintain bone density. It can also help cut the risk of many types of cancer, reduce blood pressure and decrease your risk of heart disease and stroke.

As well as all these physiological benefits, a good stroll can ease anxiety and stress and through the release of endorphins (our "feel-good" hormone), promote a feeling of well-being.

As a low-impact exercise, your joints don't take so much of a battering as they perhaps would with a higher impact activity such as running leaving you less vulnerable to injury. On the other hand, if you have an existing injury or joint problems, walking can be the perfect way to maintain your fitness as you recover.

Still not convinced? Take note of these other great advantages of walking.

It's free and it can be done anywhere. How many times have you talked yourself out of exercising because you "haven't got the time"? Well, for starters, walking

feels less like exercise. Once you're out in the fresh air you'll be taking in the scenery, your mind will start to wander and before you know it you're finished.

Also, as it can be done anywhere it's easy to fit it into your day. Taking a brisk stroll at lunchtime is a great way to escape your desk and refresh your mind. By grabbing the kids or your partner and going for a wander after work you'll feel invigorated at the end of your day rather than the usual early evening slump.

So, how about walking to lose fat? Well, sure, you'll burn more calories after a 30 minute hard sweaty workout at the gym than you would walking for half an hour but consider this – an 11-stone woman can burn up to 400 calories walking at a brisk pace (3.5 miles an hour) for 90 minutes. If you don't have time to go to the gym or find the thought of it terrifying then get your trainers on and get out in the fresh air instead.

You can easily vary the intensity for a greater fat-burning effect. Go off-road and power up some hills to burn more calories and really get your heart and lungs working. An uneven terrain will recruit more muscles and fire up your core as you try to keep your balance.

This all goes towards a greater calorie expenditure and a faster metabolism.

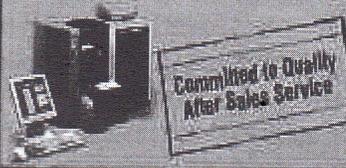
If you're still not convinced then give it a go. Try a brisk hour-long walk three times a week and (providing your diet remains unchanged) you'll start to see a difference in your shape after a few weeks. Add to this the health benefits you'll get and you'll wonder why you've not done it sooner.

*Johnnie Walker*

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## AN OBITUARY PRINTED IN THE LONDON TIMES

Today we mourn the passing of a beloved old friend, Common Sense, who has been with us for many years. No one knows for sure how old he was, since his birth records were long ago lost in bureaucratic red tape.

He will be remembered as having cultivated such valuable lessons as:

Knowing when to come in out of the rain;

Why the early bird gets the worm;

Life isn't always fair; and maybe it was my fault.

Common Sense lived by simple, sound financial policies (don't spend more than you can earn) and reliable strategies (adults, not children, are in charge).

His health began to deteriorate rapidly when well-intentioned but overbearing regulations were set in place. Reports of a 6 year-old boy charged with sexual harassment for kissing a classmate; teens suspended from school for using mouthwash after lunch; and a teacher fired for reprimanding an unruly student, only worsened his condition.

Common Sense lost ground when parents attacked teachers for doing the job that they themselves had failed to do in disciplining their unruly children. It

declined even further when schools were required to get parental consent to administer sun lotion or an aspirin to a student; but could not inform parents when a student became pregnant and wanted to have an abortion.

Common Sense lost the will to live as the religious organizations became business; and criminals received better treatment than their victims. Common Sense took a beating when you couldn't defend yourself from a burglar in your own home and the burglar could sue you for assault.

Common Sense finally gave up the will to live, after a woman failed to realize that a steaming cup of coffee was hot. She spilled a little in her lap, and was promptly awarded a huge settlement. Common Sense was preceded in death, by his parents, Truth and Trust, by his spouse, Discretion, by his daughter, Responsibility, and by his son, Reason.

He is survived by his 4 stepbrothers;

I Know My rights,  
I Want It Now, Someone Else Is to Blame, and  
I'm A Victim

Not many attended his funeral because so few realized he was gone. If you still remember him pass this on. If not, join the majority and do nothing.



# UNIVERSAL PRINCIPLES FOR JUDICIAL ETHICS AND INTEGRITY

By

LANKABIMANYA JUSTICE C. G. WEERAMANTRY  
Former Vice President of the international Court of Justice

It was my privilege to work with one of the world's most eminent jurists Michael Kirby for some years on the Judicial Integrity Group, which consisted of Chief Justices and judges from various countries. We sat in many cities and received a vast range of materials bearing on this matter from different jurisdictions and legal systems. The experience and the thoroughness which Michael brought to bear upon this work were of considerable importance to us in achieving a universal code, which is now gaining wide acceptance, and has been adopted already as a model in several countries.

Kirby's mastery of every detail and the way in which he marshaled all this information was quite remarkable. We are pleased also that ECOSOC has recommended it to all member states of the UN for adoption in their countries and that United Nations tribunals are already following it. If we have achieved such results, Michael Kirby has made a great contribution towards this end. It also gives me special pleasure to speak on this occasion in association with Michael Kirby because we have known each other for decades and shared the same interests in the development of the law. We have both sought hard to use the principles of international law to enrich and fertilize domestic law, to expand the frontiers of the law, to make law more relevant to social needs, and to explore neglected areas, such as the interface between science and the law. Indeed in the latter area, Kirby gave the Australian Law Reform Commission a position of world leadership, and he also provided a foreword to a book I wrote on the subject, titled the *Slumbering Sentinels: Law and Human Rights in the Wake of Technology*.

It must be remembered that in attempting to draft a universal code of judicial ethics, we had to bridge the differences that existed between various jurisdictions and in particular the gulf between the two great legal systems prevalent in the world today, the common law system and the civil law system. These two systems take a very different view regarding the position of the judge in the hierarchy of the law. While the common law system places the judge on a pedestal with lawyers and jurists far behind. The civil law system puts the jurists even ahead of the judge in the hierarchy of the legal fraternity. Following from this difference in approach

various differences result regarding the conduct and responsibilities of the judge. We were able, perhaps for the first time in legal history, to bridge this difference and achieve a universally accepted set of principles.

I do not need to go into the various details concerning the matters Michael has mentioned. These principles have also been elaborated upon in extensive commentaries on our draft, dealing with the principles of independence, impartiality, integrity, propriety, equality, competence and diligence, on which the draft is based. I would like, however, to add a few comments indicating how principles of judicial integrity and rectitude have been honoured from the very commencement of civilization.

As early as 1,500 BC the Pharaohs are recorded as having issued instructions to their chief justices, regarding the integrity of conduct expected of them. The instructions of King Thutmose III to Chief Justice Rekhmire are worth noting in this connection. Some of the observations made by the king to the judge are: that they should be mindful that the court is the support of the whole land, that it is an abomination of God to show partiality and that the judge was under the duty to act alike to those that are known and unknown.

Other ancient systems record the same principles. For example Kautilya in his famous treatise on the art of government (*Arthashastra*) noted the following principles required of judges in their conduct of cases. These were:

The judge should not threaten, browbeat or unjustifiably silence those who appear before him.

He should not inquire into irrelevant matters.

He should not unnecessarily delay discharging his duties.

He should not unnecessarily postpone matters before him.

\* He should not give clues to witnesses deposing before him.

It is remarkable how relevant these observations are, even in modern times. All this of course, goes back to the laws of Manu (circa 200 BC). A famous commentary on the laws of Manu is Narada's around the 2nd century AD, in which he states that members of a royal court of Justice must be:

Thoroughly acquainted with the law  
Men of prudence  
Truthful  
Impartial towards friend and foe

The commentary goes on to make the telling observation that a fair opinion should be delivered, or the court of justice must not be entered at all. The judge who delivers an opinion contrary to justice is a sinner. And it is the duty of the judge to extract the dart of iniquity from the wound of the suitor that comes before him, failing which, the judge is a sinner. These ancient references provide a telling indication of the fact that the principle of the integrity of the judge is coeval with civilization itself. Whenever ancient people organized themselves into settled societies these principles emerged and were deeply respected, if not venerated.

In Christianity, we often lose sight of Christ's very specific teaching in regard to the law. He spoke very strongly against excessive legalism, teaching that concentration on the letter of the law should not obscure one's vision of the principles behind the law. This is a factor which judges would do well to bear in mind. Christ's words to lawyers, that they have "omitted the weightier matters of the law, judgment, mercy, and faith" (Matthew 23:23), are particularly relevant to judges.

In Islam again, we have wonderful illustrations of the judge's duty of impartiality. A famous episode in this context is that relating to the Caliph Omar, who had lent a suit of armour to a subject who was not returning it. The king rather than taking it back by force had to file an action against this subject for the recovery of the suit of armour. When the king entered the court as a litigant for this purpose, the judge in deference to the sovereign rose from his seat. The king thereupon decided that the judge was not discharging his judicial duties impartially because he was showing special deference to one litigant when both litigants should be treated fairly and equally. Such was the high standard of impartiality which was expected of judges.

The Islamic system even went into minute psychological details regarding the judge's mental

attitude to their work, even stipulating that it was blameworthy for a judge to deliver a judgment when he was angry or hungry or in a physical state likely to trouble his mind.

It was also laid down that the pomp and glory of the state official should not be permitted to overawe the judge and that impartiality was one of the pillars on which the dignity of the judge depended.

I come now to Buddhism. The noble eight fold path of Buddhism identifies eight principles which need to be followed in all human conduct. This is particularly useful when considering the judicial function, because each one of these has profound implications for the judicial process. I will take them in the following order:

\*Right thought. This is relevant to the judicial function, because judges must have the right frame of mind in approaching the matter before them. They must not be swayed by prejudice or thought of self advancement and must bring the requisite knowledge and learning to bear on their task.

Right speech. Judges must be extremely careful, both in the way they address witnesses, parties and lawyers and in the way they phrase their judgment. Carelessness in this regard can damage the dignity and impartiality of their office.

Right action. Both in court and in the judgment itself the judge needs to take the correct action. Throwing one's weight around in court, scolding witnesses and other unseemly behaviour would be excluded by this. The judgment itself would need to be carefully worded, paying due regard to every word used and its implications.

Right livelihood. Judges must remember that the position they hold constitutes their livelihood and it must be protected and maintained with the utmost integrity. If the judge were to depart however slightly, from the principles of integrity required in discharging the duties of its judicial office, the judge would be deviating from the principles or right livelihood.

Right effort. This means that the judge must put the necessary effort into his or her judicial work. Careful study of the evidence, of the relevant law on procedure and deep deliberation regarding the issues involved are all part of this effort.

Right concentration. The judge must concentrate

... on the immediate matter in hand, and all its  
... and implications. Writing a judgment is a  
... of great concentration.

**Right-mindedness.** Concentration on the immediate  
... on hand is not sufficient. There must also be a  
... of the effect the judgment would have on  
... affected by it. The judge, in writing a judgment,  
... be mindful of the impact of the judgment upon  
... parties as well as those who are closely affected.

**Right vision.** Moving beyond concentration on the  
... judgment and its impact on those it affects,  
... judge must also consider the long term effects of  
... he or she decides. A judgment written today will  
... effect for decades to come, and the judge should  
... be mindful of the long term consequences.

Here in a nutshell are eight aspects of judicial  
duties, all of them having an intimate bearing on  
judicial ethics. These are a few religious and cultural  
perspectives in relation to the judicial process which  
it would be useful for us all to keep in mind. They  
show the universality and timelessness of the concern  
for complete integrity in the discharge of the judicial  
function.

These may be a useful supplement to Michael  
Kirby's analysis of the Universal Principles of Judicial  
Integrity. It has given me much pleasure to make these  
observations as a sequel to the address you have been  
privileged to hear from one of the world's outstanding  
judges and jurists.

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# ECONOMICS INCREASINGLY DRIVING POLITICS IN ASIA

By

LYNN OCKERSZ

Interstate wars are an increasingly distant prospect in Asia – the reason being the dramatic improvement in economic ties among the continent's foremost states. Nowhere is the evidence in support of this proposition found more abundantly than in the sphere of Sino-Indian relations.

'Economics drives politics' – this is a belief of our neo-liberal times. Although recent developments on the Korean peninsula and in the South China Sea, featuring Japan and China, may subject this thesis to some strain, the possibility of these tensions degenerating into full-scale armed confrontation is remote. The reason for this is the stepped-up economic interaction among these principal actors on the Asian stage. The gains from such interaction are tremendous and it would be in the interests of these countries to keep the peace and to reap them on a collaborative basis, than to keep differences among them simmering.

Moreover, the major powers of the West would go the extra mile to defuse these tensions. For these powers, economic gain is of paramount interest and it is East Asia in particular that shows the most promise currently, from this viewpoint. Prolonged, inter-state armed confrontations in this 'theatre' could undermine the Western powers' ability to get the most out of the region, economically, and this consideration would compel the West to ensure that international peace is maintained in the Asian region.

The states to watch from the perspective of how economics positively impacts politics, are China and India. Not so long ago, the two countries' territorial border squabble trammled their efforts to normalize inter-state ties. Not any longer. Currently, both countries are actively seeking to strengthen economic relations and this pursuit seems to be thrusting the territorial dispute to the 'backburner'. Said Chinese Prime Minister Wen Jiabao on his last visit to India. 'My current visit is aimed at promoting friendship, expanding cooperation, building on our past achievements and opening up new dimensions for mutual benefit and common development of the two countries. China-India relations face major opportunities and enjoy broad prospects.'

A message of this tenor and meaning would not have been possible two decades ago. But with

economic globalization becoming a hard reality and neo-liberalism increasingly spreading its appeal, the emphasis now in international relations is economic gain or financial profit. To this end, international relations have been adapting themselves from the nineties of the last century. These revolutionary changes in economic policy are now sweeping Asia unprecedentedly and it should not come as a surprise if Sino-Indian ties too are remoulding themselves in the wake of these changes, in a positive direction.

All this does not mean that old interstate antagonisms would soon be no more and that these countries would coexist peacefully ever after. This would amount to being naïve and unrealistic in the study of international relations. While differences could not be expected to be swiftly swept under the carpet, what one could expect in these interstate ties, is a comparative willingness to work cooperatively towards mutually-beneficial economic relations. This collaborative exercise could help in defusing thorny political differences and make the latter less important. This process is underway in Sino-Indian relations and only time would reveal the degree to which economics would drive politics.

China, India and Indonesia-these are the countries to be watched because they are the fastest-growing among Asia's economies. Being highly populous states, besides being exceptionally dynamic, economically, they offer economic prospects to the world outside cannot be glossed-over or overlooked. This is one of the reasons why the foremost political leaders of both Britain and the US considered it opportune to visit South Asia in the past few months, with an unprecedented focus of India.

In fact, it was crucial that US President Barack Obama spoke very supportively of India's bid to win membership of the UN security Council. The geo-political consideration of counterbalancing the growing economic and political influence of China in Asia, could very well have influenced this decision by the US, but no less important is India's tremendous 'business potential'. Both the British Premier and the US President arrived in India with scores of their business leaders and inter-country business deals to the tune of billions of dollars were very quickly sewn-up between the countries.

Despite the current 'currency wars' between the West and China, 'business' between the two would be sought to be sustained but India, with its burgeoning middle class market, is no less important for the West. If the West's economic fortunes are to pick-up, the Indian consumer goods market would need to be exploited and this is why India would need to be increasingly viewed in the future. Economic partners make good political partners and this too accounts for the US' strong backing for India's efforts to win UN Security Council membership.

The strengthening of the West's economic links with India, would run parallel to Sino-Indian efforts to restore their economic relations and the resultant strengthening of the Indian economy could brighten the economic prospects of the SAARC region as a whole, provided the rest of the SAARC countries work with India towards exploiting the economic opportunities that India would begin to offer.

All this does not mean that the vast deprived sections of South Asia 's teeming millions would automatically, as it were stand to gain by these ground-breaking economic developments. The 'trickle-down' theory which most Asian governments seem to be depending on, would need to prove right and effective, if the peoples of South Asia too are to emerge winners from these springs of economic virility. If not, wealth would remain concentrated in the hands of a few in this region and virtually nothing would have been gained in terms of development.

But any reductions in inter-state political tensions in this region need to be welcomed. Hopefully, this would transpire in Indo-Pakistani ties. However, successful fence-mending by China and India could yield huge dividends too.

*With Best Wishes*

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150/3, Ward Place, Colombo 7.

# BANNING LANDMINES IN SRI LANKA COULD PAVE THE WAY TO A GREENER NATION

By

VIDYA ABHAYAGUNAWARDENA

Since independence in 1948, the island nation of Sri Lanka has faced two types of internally originated human destruction and debacle, which were the Southern insurgencies (in 1971 and 1988) and the nearly three decade long North East conflict which ended in 2009.

**Sri Lanka could have avoided both conflicts with a political will and with the correct mechanism to address the root causes for the conflicts that in time led to strife.** After 1948 no country from the outside world had tried to invade or take control of Sri Lanka. But in today's world, many countries engage in different scales of protracted wars and conflicts and are taking control of territories illegally by using lethal weapons to destroy humans, animals, nature and properties in an unaccounted for and unprecedented way. We are lucky enough to be devoid of present day international conflicts and wars.

Sri Lanka is now entering into a new era after the internal strife and is attempting to address many issued and related root causes for the conflicts, socially, economically and politically. As the country grapples with the issues of the post conflict situation, it is necessary to look at the legacies left behind by the conflicts and the lessons to be learnt. **Sri Lanka should emerge with a new hope and a guaranteed concrete solution for future generations ensuring that the scale of conflicts will never happen again in the island. All concerned parties should work towards a permanent peace.**

One possible positive step is to "Ban Landmines in Sri Lanka" by acceding to the "Mine Ban Treaty". With this we can ensure that land will never again be contaminated with antipersonnel landmines, that the rights of present victims of landmines respected and their needs fully addressed, and stockpiles of landmines destroyed. The ultimate goal is that innocent civilians will no longer lose their lives or limbs to this hidden killer.

The war is over but Sri Lanka is now busy fighting a new type of war to unearth hundreds of thousands of landmines, unexploded and abandoned ordnance and improvised explosive devices (IEDs) scattered all over the war ravaged North and East Provinces. The two provinces are not yet safe to live in and people

eke out economic and development activities. The situation on the ground reflects the brutality of the war. The danger and viciousness of victim activated landmines when compared with other weapons is that their destructiveness is indiscriminate and they last for longer periods.

Landmines and explosive remnants of war kill humans and animals alike or can make them permanently disabled and pose a threat to the environment. Landmines ultimately bring only human misery. This issue can be looked at from a religious point of view and being a Buddhist country and with other religions it is all the more imperative for Sri Lanka to accede to the Treaty. Further; to what extent can religions tolerate and allow the use of landmines as a weapon without considering human and animal lives, and socio-economic and environmental consequences?

The Government of Sri Lanka with the support of the international community in 2002 began a large scale humanitarian demining programme with the goal of creating a mine and explosive remnants of war (ERW) free environment in support of resettlement and development programmes. It has targeted a mine-threat free Sri Lanka in 2020 and this means it will take at least another ten years to clear the land. The Official Government News of Sri Lanka has reported that over 640 villages have been affected by the mines. In September 2010 The National Strategy for Mine Action in Sri Lanka was shared among mine action stakeholders by the government. According to an estimation done by the Sri Lankan Army 1.6 million landmines have been laid in Sri Lanka of which 366,870 mines have been cleared through military de-mining and humanitarian de-mining. Further; this leaves the country with an estimated number of 1.23 million mines still to be cleared. According to the UN Office for the Coordination of Humanitarian Affairs (OCHA) in Sri Lanka since January 2009, 309sqkm have been cleared in the North, while an estimated 396sqkm in all five Northern districts are still littered with mines. In the Eastern province approximately 552sqkm are to be cleared and the mapping survey is going on.

The government and the international community have spent millions of dollars so far for the mine action programme in Sri Lanka. In 2008 alone, US\$8,173,696 (in 2007 US\$7,586,350) support was provided for mine

action programme is Sri Lanka by the international community according to the Land Mine Monitor. Still, there is no correct figure as to how much money has been spent so far and how much money is to be spent in the future. We could thus figure out that an enormous amount of money is needed for this task and if during wartime nobody had used landmines the country could now use this money for other development purposes in these areas.

Since the 1980s, according to the International Campaign to Ban Landmines (ICBL) website (Landmine Monitor, Country Profile, October 18 2010) there were a total of 21,993 landmine casualties, including 1,419 civilian returnees. Ninety per cent of Sri Lanka's estimated 160,000 amputees, many disabled by landmines and explosions linked to the war, do not have proper artificial limbs according to the Sri Lanka School of Prosthetic and Orthotics, a project of Cambodia Trust. The country's health system and very few victim assistance programmes are in place for support for mine victims and others with disabilities and the majority of the victims are unable to fulfil their basic needs. This is due to inadequate financial resources, lack of human expertise in the field and inadequate institutional support.

According to the latest Landmine Monitor report of ICBL, "Sri Lanka's Government has voted in favour of the annual United Nations General Assembly (UNGA) Resolution calling for universalization of the Mine Ban Treaty, UNGA resolution 63/42, on December 2 2008, as it has at every annual apro-ban General Assembly resolution since 1996. Further, Sri Lanka provided a voluntary Article 7 report in 2005. It subsequently indicated it would provide an update, but has not yet done so. In December 2008, an official told the ICBL that due to the security situation and other priorities, the country was not in a position to provide an update, but would endeavour to submit a report, including information on stockpiles during 2009". According to the Mine Ban Treaty Sri Lanka will have many benefits such as extra funding support for the ongoing mine action programme which is much needed today and it has to be expedited due to many reasons mainly, safer human re-settlement, livelihood developments and victim assistance.

Since Sri Lanka is not a country that produces landmines and with the end of the conflict it does not need to use them, it is much easier to accede to the Mine Ban Treaty. When we are looking at countries that have not yet acceded to the Mine Ban Treaty they mainly do so because they still want to possess, use or produce them. As few as three countries may have

been producing anti-personal mines in 2008 (LM), namely, India, Pakistan and Myanmar, as well as some Non State Armed Groups.

For the sake of the future generation the island nation should ensure that its geographical territory is devoid of indiscriminate weapons hidden under the ground. Landmines pose particular danger for children. According to UNICEF, landmines and unexploded ordnance violate nearly all articles of the Convention of the Rights of the Child (CRC); a child's right to life, to a safer environment in which to play, to health, clean water, sanitary conditions and adequate education. A landmine is normally an outlawed weapon and should never be used again. Security forces know best how horrible the effects are as far too often they have been injured and killed from these hideous devices during wartime.

**There are a hundred and fifty six countries (States parties) in the world today who have acceded to the Mine Ban Treaty, including Iraq and Afghanistan. Only thirty nine countries (States not parties) including Sri Lanka remain outside the Treaty according to the ICBL.** The State parties to the Treaty put in place very sophisticated human security systems to protect civilians and boundaries without using landmines. **Now Sri Lanka needs to have a public debate on the ban of landmines because the war is over and there is no need to use mines or posses them either.**

Sri Lanka should be an example to the world; it needs to become a greener nation and a safe place to live anywhere in the country for humans and animals without the threat of landmines. The protracted deadly war is over and the time has come to join the club of Mine Ban countries and ensure the people that security is guaranteed without using anti-personal mines. In the meantime there is no need to have another weapon to replace landmines. The President of Sri Lanka and the Government should see the Treaty as an opportunity and make every effort towards acceding to the Mine Ban Treaty.

Sri Lanka is now working hard towards becoming an "Emerging Wonder of Asia". One step towards that definitely would be the accession to the Mine Ban Treaty. This will pave the way not only to become an "Emerging Wonder of Asia" but also beyond that to become a "Wonder of Asia" too.

*(The writer is a researcher who has worked in Colombo and overseas)*

# POLITICAL MORALITY

By

D BANDYOPADHYAY  
The Statesman/ANN

A few days ago, the Conservative Liberal Democrat coalition government in the United Kingdom unveiled a package of drastic austerity measures to restore what it described a structural balance" in the economy. The objective is to reduce the huge fiscal deficit to a manageable proportion. The net effect of these measures will be a severe cut in government spending and in every department except the National Health Service whose expenditure level will match the annual rate of inflation.

Most of the departments will have their annual expenditure budget reduced by 25 per cent for the next four years to create an overall savings of 90 billion pounds or US \$130 billion over the same time-span. It would also mean shrinkage of employment in government by almost half a million. Harsh measures indeed!

David Cameron's government has taken tremendous political and economic risk in announcing and effecting these grim measures. It has already resulted in strong public protests and the UK may face strikes and protests which France is witnessing currently. We are not here to discuss the merits or demerits of these harsh economic policies. The transport ministry of Britain, acting as the spokesperson of the government, told the BBC commentator that the time horizon of these measures would be only four years coterminus with the present term of Parliament. When specifically asked whether this time period was motivated by political or economic considerations, he was candid enough to reply that it was both. He pointed out that the Cameron government would absorb the political and economic fallout within the term of the present house of Commons and would not like to pass it onto the next government.

Here comes the whole question of political morality. They could have moderated or reduced the drastic impact by spreading these measures over the next 10 years; but they did not do so as that would be unfair to the next government. Our system of parliamentary government is largely based on the British model. Hence the political behaviour of political parties and political personalities in both places is fully justified.

Against the Cameron government's deliberate attempt to keep the time horizon of four years, the CPI-M government in West Bengal introduced reservation of 10 per cent of government jobs for the minorities only in the last year of its 34-year-rule when the general election to the Assembly will be held in a short while. The state government will not have the time to implement this policy. It is a highly partisan measure to gain some political advantage in the coming election, the consequences of which would be borne by the next government. This measure, according the constitutional Conventions of the UK, is highly immoral and "unconstitutional".

A word is required about the constitutional morality of modern England. The UK has a whole system of political morality, a whole code of precepts for the guidance of public personalities which will not be found in any page of either statute or the common law, but which are in practice held hardly less sacred than any principles embodied in the Great Charter or in the Petition of Rights. In short, by the side of written law, there has emerged an unwritten or conventional constitution. When an Englishman speaks of the conduct of a public figure as being constitutional or unconstitutional, he means some thing wholly different from what he means by conduct being legal or illegal. (Dicey, Law of the Constitution; Tenth Edition, Fifth Indian Reprint, Universal Law publishing Co Delhi, 2008, pages 418-19).

One can offer the specious argument that West Bengal is not Britain and the CPIM is not the Tory-Liberal coalition. Further, Britain has an unwritten Constitution whereas we have a bulky written Constitution. But one should not forget that morality often transcends the written law. And even with our written Constitution there are grey areas where conventions and not laws rule. It is a question of simple morality that any outgoing government which is facing a general election shortly, should not frame any policy or undertake any programme having significant financial commitment whose repercussions would be borne by the next government.

The law says nothing on this. Hence healthy conventions should take over.? It would be pertinent

to relate an anecdote to exemplify the level of political skulduggery the CPI-M is capable of stooping to. The Left Front government, in its early stages, had introduced government payscales for the non-government primary and secondary school teachers and employees of municipalities, panchayats and other local bodies. Subsequently, it faced financial problems. To meet the ways-and-means situation, it resorted to highly irregular private borrowing once its overdraft facilities with the Reserve Bank of India were exhausted.

My equation with the late Benoy Chaudhury, then the No. 2 in the government, was cordial. I once asked him:

“Wasn't it quite imprudent to provide the government pay-scale to the whole host of non-government employees?” He paused for a while and then smiled and replied:

“Who had thought that the electorate would return us to power again and again?” That was a mischievous move by the Left Front government to put the next government in a spot. The measure boomeranged on them. This highly populist measure helped them to get votes but was devoid of political ethics. It may be appropriate to discuss the British Crown's prerogative to dissolve parliament. There could be certain circumstances, according to Dicey, under which the Crown had a right to dismiss a ministry which commanded a parliamentary majority and to dissolve parliament which supports the ministry. This discretionary power of the crown to dissolve parliament could be exercised on occasions when there would be fair reason to suppose that the opinion of the House was not the opinion of the electors. A dissolution was in essence an appeal from the legal to the political sovereign i.e. the electorate (Dicey, *ibid* page 433).

The British crown's prerogative has been codified in our Constitution under Article 356 in respect of the state governments. President's Rule can be imposed by dismissing an elected government with or without dissolution of the Assembly. The Assembly can be kept in animated suspension or it could be dissolved. It ought to be dissolved where there is adequate evidence to show that the opinion of the legislature is not the general opinion of the electorate.

In West Bengal, the Left Front lost heavily in the panchayat elections in 2008. In the 2009 Lok Sabha election, it secured only 15 out of 42 seats from the state. In percentage terms it secured only 35.7 per cent of the seats, representing only 105 Assembly constituencies. This is far below the bare majority. Therefore, in Dicey's terminology the present West Bengal Assembly does not represent the majority of electors of the state. In 2010, the Left Front again lost badly in 81 municipal elections, including the Kolkata Municipal Corporation and the Bidhannagar municipality. Hence under constitutional ethics, the present West Bengal Assembly has no right to exist as it deserves to be dissolved. Besides, the CPI-M has unleashed a reign of terror throughout the state. It has been statistically estimated that between 1977 and 2009, the party had committed 55,408 political murders. The figure has gone up in 2010. It is almost a Kosovo-type political cleansing through rape, arson, mayhem and other forms of oppression and torture. Its political thugery has created a near civil war like situation in various districts. It has in fact lost its moral right to rule. The government in this state is not being run according to the Constitution and the law. For reasons unknown the Central government, which is bound to enforce the rule of law and the Constitution in this state, is looking the other way.

*By courtesy of the Island*

# WHAT WILL BE THE FATE OF THE SETHU CANAL?

By

WILLIE MENDIS

Professor Emeritus, University of Moratuwa

## **Palk Strait and the International Maritime Boundary Line**

The Palk Strait that divides the land masses of Sri Lanka and India has been a focus of much interest since the times when both countries became independent sovereign nations. This 26 – mile shallow waterway has been a smuggler's paradise when oversight on same was lax. It's fame as a route for illegal traffic of goods and people caused great concern to the Sri Lanka authorities. In addition, the conflict between the fishermen of both countries over fishing in the waterway became an added problem. These were compounded by the absence of a "line of demarcation" to formally establish a boundary which could define the parts of Palk Strait that belonged to each country. It is against such a backdrop that in 1974, the Prime Ministers of Sri Lanka and India met and agreed on an International Maritime Boundary Line (IMBL) defined by co-ordinates to overlay the waterway. This IMBL has however been a "bone of contention" between the Tamil Nadu State and Sri Lanka over the inclusion of Katchichativu Islet on Sri Lanka's side. Nevertheless, the protocol of the IMBL is now internationally recognized and cannot be contested.

Meanwhile, the overall traffic across the Palk Strait between the two nations had continued to flourish. The establishment of a ferry service between Talaimannar and Dhanushkodi (in India), led to formalized passenger and vehicular traffic, including the carriage of goods. The landing jetties at the two ends were connected to its respective main-lands of the two countries by a Rail line (over Pamban Bridge to Rameswaram in India), and from Talaimannar to Mannar. The growing impact of this lowcost connectivity had vast potential to exploit for the benefit of both countries. The latter heightened its importance when the United Nations (in its ESCAP Office) proposed the concept of the Asian Highway (AH) and the Trans Asian Railway (TAR) across Asia. In Lanka's AH roads were proposed to be connected to India's national highway network by a ferry service across the Palk Strait.

**Proposals to Transform the Palk Strait:** The earliest interest to transform the dormant Palk Strait arose at the time each nation was under colonial rule.

In one proposal, it was envisaged to build a rail bridge across it between Dhanushkodi and Talaimannar. In another, it was proposed to construct a navigable channel for the passage of much smaller break bulk cargo ships unlike the present containerized vessels. Its link to the development of the Tuticorin Port became a subsequent proposal. However, the channel nor the rail bridge had materialized at the time. Consequently, the Palk Strait had remained the virgin buffer zone between the two countries.

In more recent times, much has happened to change the face of global shipping, and also the rise of India as a formidable economic superpower. In contrast, Sri Lanka was embroiled in an ethnic conflict in its north and east that had the hallmarks of a geo-political nature. Its proponents had nurtured a movement calling itself the "Liberation Tigers of Tamil Eelam" (LTTE), seeking to establish a separate State enveloping the north and east of small Sri Lanka. Its armed capability grew in strength engaging in violent destructive activities. Consequently, it was labeled by several countries, including India, as an unlawful organization. During the more than two decades of conflict between the LTTE and the Government of Sri Lanka, the ferry service across the Palk Strait ceased due to the landing jetty at Talaimannar being destroyed. In May 2009, the conflict ended with the defeat of the LTTE.

The period of conflict had spasms of "Peacetimes" when a Ceasefire was brokered between the two parties by the international community. In this period, Sri Lanka proposed a Land Bridge across the Palk Strait with its benefits accruing to both countries. Its acceptance in principle by the Centre in India was negated by the Tamil Nadu State Government. The latter vehemently opposed it as a security risk for India due to the likely infiltration of the LTTE cadres who by then had acquired a ruthless reputation among the international community. Consequently, the Land Bridge went into "cold storage". On the other hand, India's defense establishment had revived the proposal to construct a navigable channel across the Palk Strait, on its side of the IMBL. Thus, in February 1999, the then Indian Minister of Defense inaugurated the Project to dredge the Palk Strait. Its stated aim was to reduce the travel time of ships going around the Indian peninsula,

which otherwise would have had to circumnavigate Sri Lanka. Since the project came under the Ministry of Defense, it had to be presumed that it was naval ships which it had foremost in mind. Thus it appeared that the project was to commence with a dredged canal to serve the naval objectives of India. It's initial thrust was to commission the Shipping Corporation of India to undertake a techno - economic feasibility study. The latter established that the project was viable. Meanwhile, an environmental study including an assessment of the ecological impact of the project was assigned to India's National Engineering and Environmental Research Institute (NEERI). At this time the then Indian government was defeated at the General Elections. The new coalition government which assumed office in May 2004 formulated a Common Minimum Programme which committed to expeditiously complete the Sethu Canal Project. It's responsibility however shifted from defense to shipping. The key proponent tasked with its implementation was a DMK member of the coalition government. His mission was to accelerate the various "clearances" required for the project to get off the ground. He achieved same in record time and even got approval to form a Special Purpose Vehicle (SPV), a company named Sethusamudram Corporation Ltd, to mobilize finance for project implementation on a time-bound basis. The excavation of the canal commenced on 2 July 2005 in the presence of a large number of dignitaries, including the Prime Minister of India.

#### **National Protests causing India's Supreme Court to issue Directive**

The Sethu Canal involved linking the Palk Strait and the Gulf of Mannar. The navigation route originated from the Tuticorin new harbour in the gulf of Mannar using the available depths upto south-east of Pamban Island and to pass through a canal created in Adam's Bridge within the IMBL. The canal design had two legs; one near Point Calimere called the Bay of Bengal channel, and the other across Adam's Bridge. The excavation commenced from near the Tuticorin harbour and had reached the point where dredging was to take place across Adam's Bridge also known-by its mythical origins as the Rama Sethu Bridge. The latter was sacred to millions of Hindus in India and elsewhere. Hence any damage to the Bridge simmered their anger. Consequently, the trail of court cases and protests on the project which had existed upon that point climaxed. It even galvanized the support of India's main Opposition political party. The latter filed a petition in India's Supreme Court against the government by claiming that the chosen canal route was harmful to the religious belief of Hindus as it

involved damage the Rama Sethu Bridge. The response of the Government came in the form of an Affidavit submitted by the Archaeological Survey of India that the Rama Sethu Bridge could not be attributed to a historically accurate artifact of religious importance. The public anger further grew on same.

It compelled the Government to withdraw the relevant parts of the Affidavit. The Court then counseled the Government to explore the prospect of an alternative route for the canal. Meanwhile, the Court directed that dredging across the Adam's Bridge be halted, and that no damage be caused to it.

The outcome of the verdict of the Court was for the Government to seek time to evaluate alternative proposals for the canal trace for it's consideration. Thus, the Government appointed a Committee of Experts to report on it. Their findings were however not made public. In the meantime, the duration of the Government's term of office had also ended.

Nonetheless, it was returned with a higher majority at the General Election. A significant feature in its new term was that it found no reason to have a Common Minimum Programme to be undertaken as a coalition. Nor was the former Minister of Shipping who was the key proponent of the Sethu Canal Project, included in the new cabinet of Ministers. The issue concerning the Court was made a broader remit by the Government's decision to review the entire Environmental Impact Assessment (E.I.A) done previously by NEERI. It's task was assigned to a group of experts under the chairmanship of Dr. Rajendra K. Pachauri, who formerly held the chair of the Intergovernmental Panel on Climate Change (IPCC), He reported recently that they will assess ocean current patterns as part of a year - long EIA study. His contention was that "only after E.I.A. was completed by the middle of 2011 will it be decided whether to continue the project or not". The latter has amounted to a vast contrast from the previously pronounced position on the project. In these circumstances, Sri Lanka has an opportunity to continue showing its interest. The dialogue held before with India on the Sethu Canal Project can be a basis for same.

#### **Inclusiveness of Sri Lanka in Transforming the Palk Strait**

The transformation of the Palk Strait from its natural state as a virgin buffer zone between India and Sri Lanka has proved difficult without the inclusiveness of both countries. One without the other has always been

firefighting exercise. The line of demarcation in the waterway has re-enforced the inter - locking nature of the relationship. It is for the later reason that Sri Lanka being the smaller partner must be more pro-active in its inclusive role. Thus, the more recent interest shown by Sri Lanka at the last meeting of the SAARC Transport Ministers held in Colombo, regarding the rail bridge across the Palk Strait, has to be integrally linked to the line of the Sethu Canal project.

Furthermore, the Asian Highway (AH) and the Trans-Asian Railway (TAR) can be more advantageous to Sri Lanka if its link to India's SH and TAR is a road/ rail land bridge across the waterway as had been earlier proposed, especially since the security risk from the LTTE has now receded to a non-event. In addition, the proposal to develop the Palk Bay area which was mentioned at the last meeting of the leadership of the two countries, necessarily involves an inclusive approach in transforming the Palk Strait. Moreover, the integrated strategy to develop the international airports, especially of Colombo and Hambantota, with the vast prospect of India's economic growth, have an inescapable connection across the Palk Strait.

It is in the above backdrop that Sri Lanka should not be caught off guard in mid 2011 when the fate of the Sethu Canal will be determined. On the previous occasion, much hype in the media and of the general public were what drove the Government into taking

even a delayed action on the controversial aspects of the project. Its limitations due to the north-east conflict compounded Governmental actions. Hence, the calming statement in Parliament by the late Lakshman Kadiragamar, Sri Lanka's then Minister of Foreign Affairs, has been the rock-hard assurance on which much can be built-upon in the future. An extract of what he said was that, "in any such situation as the Sethu Canal Project, the normal course of action between friendly countries would be to consult and cooperate in order to address common concerns and trans - boundary effects. We can also use these type of projects not as a hindrance or threat but as an opportunity for joint activity which could be economically beneficial to both countries. I'm of course duty bound to assure that Sri Lanka will take all the necessary steps to safeguard the wellbeing and the interests of our people and our country. We would naturally do this in a calibrated and graduated manner opting first for a cooperative and consultative approach".

The aforesaid extract of the policy statement made in Parliament in 2005 by the Foreign Minister, signals the relevance for a continuing dialogue with India. The previously mentioned strategic proposals for transforming the Palk Strait may hinge on the fate of the Sethu Canal Project. The time for continuing dialogue with India on the latter may be now. In contrast, Sri Lanka will otherwise have to be reactive if blind-sided on the project.

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# MALAY MERCENARIES IN THE MILITARY SERVICE OF KANDYAN KINGS

By

M. D. (TONY) SALDIN

Referred to as "Ja Minissu" by the Sinhalese, "Java Manasar" by the Tamils, "Malai Karar" by the Moors, and "Orang Melayu" & "Orang Java" by the Malays themselves, the Sri Lankan Malays are a pot pourri descending from Javanese, Madurese, Sumnapers, Bandanese, Buginese, Amboinese, Macassarese, Sumatrans, Balinese, Moulucans and people from Penang, Keddah, Johor, Melaka, Singapore and other islands in the Eastern archipelago. The present day Sri Lankan Malay community with roots in Indonesia and Malaysia and numbering around 60,000 are descendants of nobility, political exiles, soldiers, adventurers & mercenaries from the time of Dutch & subsequent British rule in Sri Lanka.

While the role played by the Malays who served the Malay Corps of the Dutch Army in Ceylon and the subsequent 1st Ceylon Regiment of the British Army & its successor the Ceylon Rifle Regiment (CRR) is well known, little is said about the role played by the Malays who were in the service of the Kandyan monarchs.

Who were these Malays who were in the Kandyan Kings service? Records indicate that during the Dutch-Kandyan war of 1765/66, the remnants of the Dutch Army commanded by Governor Baron Van Eck were left behind in the hill capital and these men probably joined the service of the Kandyan monarch. Others were former soldiers of the of the Dutch Malay Corps who deserted to the Kandyans, since they did not want to join the British after the Maritime Provinces were surrendered by the Dutch in 1796. There were also those Malay soldiers who had taken loans from their officers and being unable to pay back, melted away into the countryside and later joined the Kandyan King who was always on the lookout for trained soldiers for his army.

According to Hussainmiya writing in 1990, the Sinhalese Kings employed Malays for the defense of the interior, as well as palace guards, for immigration duties and for guarding the "Kadawatha" or passes into the Kandyan Kingdom. Their importance grew when the Nayakkar King Sri Wickrama Rajasinghe (1798-1815) looked for foreigners with no local blood ties, to serve as bodyguards to protect him from scheming

Kandyan nobility. These Malay soldiers were paid in cash for their services, while their counterparts received grants of land for their sustenance.

The inner circle of the King's personal bodyguard were Malays, Malabari's and Caffres (Africans of Mozambique origin). The "Appuhamis", a cadet corps of the sons of local nobility formed a further ring around the King. According to Ralph Pieris writing in 1956 this stipendiary corps of Malay soldiers (Sinhalese - Padikara Peruwu) was instituted during the reign of the Nayakkar King Kirthi Sri Rajasinghe (1747-1782). It then consisted of four companies. His successor Rajadhi Rajasinghe (1782-1798) increased it to seven companies which was later increased to 50. The last King Sri Wickrama Rajasinghe raised its strength to 22 companies with 32 men each. The Kandyan Malays normally resided in the Katukelle area which was one of the Southren "Kadawatha", or entry points into the city. They were armed with muskets of European make and wore their poisoned daggers or Kreese at their sides at all times.

The King also appointed Malays as "Java Muhandirams" or chief military officials to his court. Assana Kapitan, Creasy and Chief Kuppen were some of them.

A famous Kandyan Malay chief was Prince Sangunglo, (also referred to as "Sankelan" by Prof. Paul E Peiris) Captain of the Kandyan Kings Malay mercenaries, who led the Kandyan attack on the British garrison in Kandy on 24th June 1803.

After over-running the first line of defence and in the subsequent close quarter combat with the British, Sangunglo stabbed Quartermaster Brown with his Kreese, but, in the melee, he was bayoneted by Ensign Barry and the death blow was delivered by Major Davie with his sword. The first attack was repulsed but the Kandyans re-grouped and kept up a harrying musket fire at British positions. After a short resistance, Major-Davie raised the white flag and negotiated terms with Adigar Pilimatalauva for a withdrawal. Incidentally Sangunglo's half brothers' Captain Noordin Gowa and Captain Karaeng Sapinine both of the 1st Ceylon Regiment who were captured by the Kandyans, were executed by King Sri Wickrama Rajasinghe for their

refusal to sever their allegiance to the British. Even though brothers, they were on opposite camps with their loyalties to their respective masters. Their grandfather was Batara Gowa Amas Madina 11, the rebellious son of King of Gowa, Sulawesi exiled to Ceylon by the Dutch in 1767.

Another well known ex-soldier was Drum Major O'Deane, Malay non commissioned officer of the 1st Ceylon Regiment, who deserted to the Kandyan in the war of 1803. He was absorbed into the service of King Sri Wickrama Rajasinghe and provided with a Sinhalese girl as his wife. For over ten years he lived there contentedly and had three children. But the happy days were to end soon. The British invaded Kandy again, and this time they had the backing of several Kandyan Chiefs. When the Kingdom was captured by the British in 1815, O'Deane and his family were among those captured. He was arrested for his act of treason by deserting to the enemy, summarily court-martialed, and then sentenced to be shot.

However O'Deane had much information on his former Commanding Officer, Major Davie, whilst he was a captive of the Kandyan monarch. In addition, Governor Robert Brownrigg was impressed with the 'uniform good conduct' of the 1st Ceylon (Malay) Regiment. Taking these factors as mitigation,

O'Deane's sentence was subsequently commuted to "transportation to the Penal settlement of New South Wales in Australia". And so, O'Deane and family sailed away from Ceylon in Jan 1816 on board the "HMS Kangaroo". A chapter in his life ended and a new one began.

O'Deane was subsequently appointed as a Watchman, then Constable of the govt. domain and as Malay Interpreter for the Australian government until his retirement. He was stationed at Fort Wellington, Raffles Bay in the northern Territories and acted as interpreter with Indonesian (Maccasarese) fishermen who used the Australian coast to dry their harvest of sea cucumber. O'deane died on 23 May, 1860, after being resident for 44-years in Australia.

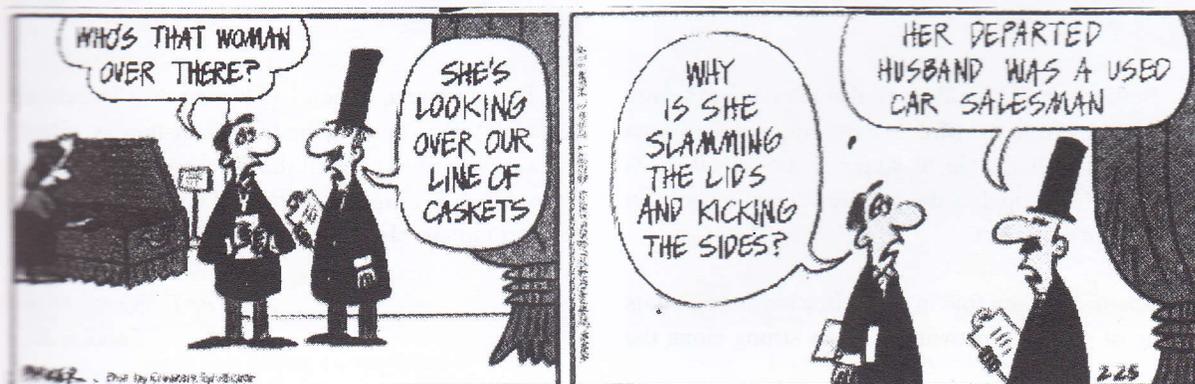
With the takeover of entire Ceylon by the British in 1815, the destiny of the Sri Lankan Malay community was sealed; to provide a regular source of military manpower to the Ceylon Rifle Regiment (CRR) which was the back-bone of the military establishment in Ceylon, until its disbandment in 1873.

All the Kandyan Malays too became subjects of Great Britain in the end, and the former mercenaries were gradually absorbed into the regular force of the CRR.

#### References:

- (1) Orang Regimen – The Malays of the Ceylon Rifle Regiment by Prof. B. A. Hussainmiya.
- (2) The Kandyan wars – The British Army in Ceylon 1803 – 1818 – by Colonel Geoffrey Powell.
- (3) "Tri Sinhala – by Professor Paul E Peiris (4) The First Ceylonese Family in Australia – by Glennys Ferguson in the "Ceylankan" Feb 2002 issue published by the Ceylon Society of Australia. ((The writer also has had personal communication with O'Deane's great-great-great-grand-daughter Glennys Ferguson, who lives in Sydney and who traced her ancestry to Sri Lanka).

(The writer is President of the Sri Lanka-Indonesia Friendship Association & Vice President, Social & Cultural Affairs of the Middle Malay Association).



# US to build £8bn super base on Pacific island of Guam

By

PRAVEEN SWAMI,  
(Diplomatic Editor)

The expansion will include a dock for a nuclear-powered aircraft carrier, a missile defence system, live-fire training sites and the expansion of the island's airbase. It will be the largest investment in a military base in the western Pacific since the Second World War, and the biggest spend on naval infrastructure in decades.

However, Guam residents fear the build-up could hurt their ecosystem and tourism-dependent economy.

Estimates suggest that the island's population will rise by almost 50 per cent from its current 173,000 at the peak of construction. It will eventually house 19,000 Marines who will be relocated from the Japanese island of Okinawa, where the US force has become unpopular.

The US's Environmental Protection Agency (EPA) has said that this could trigger serious water shortages. The EPA said that dredging the harbour to allow an aircraft carrier to berth would damage 71 acres of pristine coral reefs.

The EPA's report said the build-up would "Exacerbate existing substandard environmental conditions on Guam".

Local residents' concerns, however, have been sidelined by the US-China strategic competition. China has significantly expanded its fleet during the past decade, seeking to deter the US from intervening militarily in any future conflict over Taiwan, which Beijing claims as its own, and to project power across disputed territories in the gas and oil-rich South China Sea.

Beijing's naval build-up is also intended to secure the sea lanes from the Middle East, from where China will import an estimated 70-80 per cent of its oil needs by 2035 which supplies it fears the US could choke in the event of a conflict.

China has therefore invested in what are called its "string of pearls" a network of bases strung along the

Indian Ocean rim, like Hambantota in Sri Lanka and Gwadar in Pakistan and in developing a navy which can operate far from home.

Experts agree China does not currently have the capability to challenge US supremacy in the Pacific and Indian Ocean. "China has a large appetite", says Carl Ungerer, an analyst at the Australian Strategic Policy Institute, "But it hasn't got enough teeth".

But China clearly intends to add bite to its naval arsenal. The country has acquired several modern Russian-made submarines and destroyers. Its shipyards are building new nuclear-powered submarines, as well as an aircraft carrier. There have also been reports that China is planning to test a new type of ballistic missile, the Dong Feng 21D, which would effectively render US carriers defenseless.

"China's charm offensive is over", says Ian Storey, an expert at the Institute of Southeast Asian Studies in Singapore, "and its given way to what you might call an adolescent foreign policy. The country is flexing its muscles, letting us know it won't be pushed around".

The US is also investing another \$126 million on upgrading infrastructure at the British-owned Indian Ocean atoll of Diego Garcia, 700 miles south of Sri Lanka.

Key among the upgrades at Diego Garcia, which are due for completion in 2013, will be the capability to repair a nuclear-powered guided-missile submarine which can carry up to 154 cruise missiles striking power equivalent to that of an entire US aircraft carrier battle group.

Diego Garcia, which has served as a launch-pad for air strikes on Iraq and Afghanistan, is already home to one third of what the US navy calls its Afloat Prepositioned Force equipment kept on standby to support military deployment any where in the world.

@The Telegraph Group  
London 2010

# PROJECT REPORT

## RANAVIRU FAMILY COUNSELLING AND SUPPORT SERVICES (RFCSS)

### INTRODUCTION

1. The Ranaviru Family Counselling and Support Services (RFCSS) is an organization affiliated to the Association of Retired Flag Rank Officers (ARFRO). The Chairman of RFCSS at present is Major General (Dr.) K D P Perera USP. The membership of RFCSS consists of families of servicemen killed in action during the internal strife of over three decades that plagued Sri Lanka. Together, they are identified as 'Ranaviru families'. Presently, the RFCSS has a membership of over 3000 Ranaviru families. The Organisation has established six branches (a branch each in Anuradhapura, Kurunegala, Kandy, Colombo Galle and Matara.) As more Ranaviru families have requested membership, plans have been drawn to accommodate maximum numbers by establishing more branches across Sri Lanka.
2. The parent organisation, ARFRO, consists of Retired Flag Rank Officers of the three services in and above the rank of Brigadier/ Commodore/ and Air Commodore. Presently ARFRO is chaired by Air Chief Marshal D C Perera VSV, a former Commander of the Sri Lanka Air force. ARFRO is affiliated to the World Consultative Association of Retired Generals, Admirals & Air Marshals (WCARGAA). Please see [www.rfcss.org](http://www.rfcss.org) for more details.

### OBJECTIVES

1. The RFCSS was formed in 1998 with approval of the Ministry of Defence and the three Service Commanders. Its first Chairman was Late Air Chief Marshal Harry Goonethilleke VSV. It was formed to achieve the following objectives covering Economic, Social and Cultural needs of Ranaviru families.
  - a. To rebuild the confidence and morale of Ranaviru families.
  - b. Address their grievances and counsel them to find solutions in liaison with the three Services.
  - c. Look into and assist in the welfare and education of Ranaviru families.
  - d. To provide opportunities to interact with other Ranaviru families, share thoughts and experiences.

### ACTIVITIES

1. RFCSS is involved in the following activities to achieve the above objectives.
  - a. **Counselling:** Being a Counsellor to the needy. A team of Volunteers counsel the War Widows and their families periodically at Regional level to reinstate their morale and confidence.
  - b. **Education in self employment:** Provide education in self employment. Courses are conducted by experts who voluntarily train Ranaviru families on various self employment projects to earn additional income by utilizing their free time productively.
  - c. **Educational Scholarships:** Provide scholarships to Ranaviru children.  
Ranaviru Children who excel in studies are granted scholarships to further their higher education.
  - d. **Interaction with Ranaviru families across Sri Lanka:** Be a facilitator for Ranaviru family members to interact with other Ranaviru families across Sri Lanka. Visits to different parts of Sri Lanka are organized for Ranaviru families to meet their counterparts, share their thoughts and build inter personal relationships. Usually over 300 families participate at every one of these visits.
  - e. **Organizing workshops:** Quarterly workshops are organized to educate Ranaviru families on managing their family and Finances. Day to day problems, faced by them are discussed and solutions found by officers of respective service. Children are given opportunities to display their talents and advised how to improve on them.

## FUTURE PLANS

5. Due to an increase in the demand for RFCSS membership the following plans have been considered.
  - a. To establish branches in Polonnaruwa, Ratnapura, Gampaha and Kalutara.
  - b. Improve the data base of Ranaviru families and their needs.
  - c. Enhance welfare facilities & activities to cover a larger segment.
  - d. Provide more educational assistance to Ranaviru children.

## ADMINISTRATION

6. The three Services have been most supportive in assisting in the administration of the RFCSS. The staff provided by the Army attends to the day to day administration and organizes activities under the guidance of the Chairman. The other two services provide assistance as and when needed.

## FUNDING

7. Presently RFCSS activities are funded by contributions made by a few Donors and well-wishers. However, with the proposed plans to enhance activities in the future more funding will be essential. The estimated budget for year 2011 is as follows.
  - a. **Counselling: Rs. 100,000/-** The expected expenses are only for logistics, in providing transportation and meals for participants. Resource personnel provide their services free of charge.
  - b. **Education in self employment: Rs. 200,000/-** A minimum of one programme per branch has been planned for the year, making a total of 10 programmes. The expenses envisaged are for procuring necessities for each programme, which will be in the region of approximately Rs. 20,000/-
  - c. **Educational Scholarships to Ranaviru Children: Rs. 420,000/-** Two categories of Scholarships are proposed. Those children who pass GCE (O.L) with merit and qualify to do the A.L. will be provided with a purse of Rs. 750/- per month and those who qualify to enter universities or professional institutions after passing G.C.E (A.L) will be given Rs. 1000/- per month. A minimum of 20 x 750/- and 20 x 1000/- is envisaged by taking two students per branch initially.
  - d. **Interaction with Ranaviru families across Sri Lanka and workshops: Rs. 700,000/-** A field trip/workshop is planned once every quarter. The expenditure incurred will be only for meals for the participants as transport is provided by the three services. Accommodation is found in Schools or temples in the respective areas. As experienced so far, approximately 300 members participate in each Field trip/workshop.
  - e. Total estimated funds required for year 2011 is approximately **Rs. 1,420,000/-**

## HOW YOU COULD PARTICIPATE IN THIS PROGRAMME

8. We most earnestly request you to assist us by undertaking any of the following.
  - a. By participating in our counselling programmes and workshops as resource personnel.
  - b. By organizing training in self employment projects.
  - c. By undertaking to provide full or part scholarships.
  - d. By undertaking to sponsor meals at field visits/workshops.

\* Please visit [www.rfcss.org](http://www.rfcss.org) or contact Major General (Dr.) K D P Perera, the Chairman RFCSS by e-mail [dudley26@yahoo.com](mailto:dudley26@yahoo.com) for more details.

III. All contributions to be sent by account payee cheque drawn in favour of 'Ranaviru Family Counselling and support Services' to the following address.

Major General K D P Perera  
Chairman, Ranaviru Family Counselling & Support Services,  
C/o RHQ, Sri Lanka Corps of Military Police, (SLCMP)  
Army Camp,  
Kirulapone,  
Colombo. 6

III. The details of our Bank account are as follows:

- a. Name of the account: Ranaviru Family Counselling & Support Services
- b. Account No: 9673479
- c. Bank: Bank of Ceylon
- d. Branch: Borella
- e. Swift Code: BCEYLK LX

## CONCLUSION

12. RFCSS, during the past 12 years has done yeomen service towards the families of those fallen heroes. We feel that the well-being of these families is our responsibility, as those departed heroes have made the supreme sacrifice to usher peace to our motherland. We are committed to assist in whatever way possible to continue to look into their welfare and add a little comfort to their lives. Towards this end, we plan to develop the activities further, and widen our scope to include more and more families.

13. We remember with gratitude the assistance given by those patriotic friends, donors and well-wishers in the past. We seek your generous contributions and continued support in this noble endeavour.

**"The Peace and Freedom we enjoy today is due to their sacrifices yesterday. But their families will carry the loss of their loved one so long as they live. The contributions we make will only help those families to endure the loss and pain in a better frame of mind."**