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The Human Rights Crisis in Sri Lanka: Its Background and Possible Solutions

Keywords

Human Rights Law, Rule of Law

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I. INTRODUCTION

This report is concerned with the grave human rights abuses which are taking place in Sri Lanka against certain political and cultural elements of its society. An examination of the current human rights situation in Sri Lanka is set forth and subsequently, the applicable international human rights standards are discussed. In the process of arriving at a possible explanation of these abuses in Sri Lanka, special attention is paid to particular policies promulgated or sanctioned by the government. In an attempt to avoid what might otherwise appear to be a description of a hopeless situation, certain alternatives are suggested by the authors as a means by which the government might adequately and effectively come to terms with the violence in Sri Lanka. Finally, some cursory conclusions are made in an attempt to illustrate the pressing need for changes in Sri Lanka.

A. *Factual Background to the Current Problem*

Ethnic conflict in Sri Lanka is not an entirely new phenomenon,¹ but the recent increase in political and cultural unrest in this small island country has added new dimensions to the effective resolution of such conflict.

It would probably be impossible and of no particular value to determine how or by whom the current cycle of violence was started. A signifi-

* This report was prepared by Barbara Cashman, Jeanette Laffoon and Ved P. Nanda as a project of the 1986 Human Rights Advocacy Clinic at the University of Denver College of Law. The authors would like to thank Laurie Wiseburg of the Human Rights Internet at Harvard Law School for her assistance in providing valuable research information.

1. The Sinhalese and the Tamils are two separate and distinct races, so it is not surprising that their nineteenth century coexistence on the island has not always been peaceful. The predominantly Buddhist Sinhala race is of Aryan origin, and is believed to have been founded by an exiled prince from northern India in the fifth century B.C.. The predominantly Hindu Tamil race is Dravidian, and has its roots in southern India. There are actually two separate Tamil groups in Sri Lanka. The "Ceylon Tamils" arrived in Sri Lanka as invaders during the first century A.D., and eventually established their own independent kingdom in the north. The "Indian Tamils" were brought to the country by the British during the 19th century to work as laborers on tea and rubber plantations. The Ceylon Tamils are generally wealthier and more educated than the Indian Tamils, who still live in extremely impoverished conditions. The Indian Tamils have much closer ties with India than their wealthier cousins, due to their relatively recent arrival and the fact that they were disenfranchised by the Sri Lankan government in 1956. Both Tamil groups, however, share the same ethnic origin and language, which provides a bond that does not exist between either Tamil group and the Sinhalese.

cant factor contributing to its continuation, however, has been the response of the government. The current government is predominantly of the Sinhalese majority, and many of its policies directly reflect the majority orientation and the tragic consequences which can stem from an intransigence based on a perceived minority threat to its current form of existence. The Ceylon Tamils as well as certain other groups view such policies as further steps to entrench the dominance of the majority Sinhalese, thus supplying their often violent separatist cause with a readily available *raison d'être*.

The determination of whether there is in fact a recognizable trend that may be identified as state terrorism provides useful insights into analyzing the human rights crisis in Sri Lanka. The government of Sri Lanka is engaging in a policy of what otherwise appears to be systematized coercion and violence against the Tamils.² This policy is met by the Tamil call for a separate and independent state,³ which in turn perpetuates governmental actions resulting in gross violations of human rights.

Much of the current turmoil in the political climate can be identified as stemming from the particular form of government and from the efficacy of localized governmental control. A large part of the problem arises from a fundamental discontinuity which exists between the national administration of government and the treatment of local and more regionalized concerns. Claims to secede, based on an asserted right to self-determination, threaten governmental unity, and provide a focus for government over-reaching. To illustrate the gravity of the human rights violations which are sanctioned by the Sri Lankan government, violations of international human rights standards, particular actions and policies of the government, as well as the reaction of the government against terrorist insurgents will be examined below.

2. In recent years a number of reports from such reputable human rights organizations as Amnesty International and the International Commission of Jurists have documented such incidents. See generally, *Sri Lanka: Reports of Recent Violations of Human Rights and Amnesty International's Opposition to Refoulement of the Tamil Community to Sri Lanka*, Amnesty International (Jan. 1985); "Disappearances" in *Sri Lanka: A Summary*, Amnesty International (June 1986); AMNESTY INTERNATIONAL REPORT 1985, *Sri Lanka*, at 242-246 (1986); *Sri Lanka: Allegations of Extrajudicial Killings by Army Personnel: Details of Some Cases Reported During December 1984 and January 1984*, Amnesty International (Apr. 1985); *Sri Lanka: Current Human Rights Concerns and Evidence of Extrajudicial Killings by the Security Forces, July 1983-April 1984*, Amnesty International (1985); *Sri Lanka: A Mounting Tragedy of Errors*, International Commission of Jurists (British Section) (Mar. 1984). See also references to publications by other groups in 10 HUM. RTS. INTERNET REP. 244-246 (Sept.-Dec. 1984); 10 HUM. RTS. INTERNET REP. 393-396 (Jan.-Apr. 1985); 10 HUM. RTS. INTERNET REP. 704-707 (May-Aug. 1985).

3. The separatist movement is especially popular among students, but the political expression of these sentiments is well-organized and well-funded. Many of the Tamil separatist sympathizers are located in countries other than Sri Lanka (most notably in the United Kingdom) and engage in very successful publicity efforts. For the titles of some of their published literature, see *infra* notes 24 and 46.

B. *Violations of International Human Rights Standards*

Under international law, states are prohibited from violating the human rights of individuals found within a nation's borders. Many documents provide clarification for this norm and also enumerate the more specific provisions relating to the rights and duties of states concerning their obligation to respect individual, as well as group human rights.⁴

Although it does not contain any specific references to the rights of persons belonging to minority groups, the United Nations Charter provides a basis for most of the treaties, conventions and other international instruments which figure importantly in the international promotion and protection of human rights.⁵ One of the most important of these instruments, the Covenant on Civil and Political Rights, prescribes particular obligations of states concerning the respect of individual human rights.⁶ The Covenant extends the protection of the various freedoms to all individuals, without regard to whether they are nationals of the High Contracting Parties.⁷ The most important include: the right to life (Art. 6), the right to be free from torture (Art. 7), the right to be free from arbitrary arrest and detention (Art. 9), the right to liberty of movement and freedom to choose one's residence (Art. 12), the right to a fair trial with the presumption of innocence (Art. 14), the right to the protection of the law against arbitrary interference with privacy, family and home (Art. 17), the right to freedom of thought, conscience and religion (Art. 18), the right to hold opinions without interference (Art. 19), and the right of association (Art. 22). Sri Lanka is a signatory to the Covenants on Civil and Political Rights, and on Economic, Social and Cultural Rights, and thus is bound by its terms and provisions.

4. See generally, A.H. ROBERTSON, *HUMAN RIGHTS IN THE WORLD* (1982); T. MERON, *HUMAN RIGHTS LAW MAKING IN THE U.N.*, 83-126 (1986); P. SIEGHART, *THE INTERNATIONAL LAW OF HUMAN RIGHTS*, 51-67 (1983).

5. Another important document in this context is the Universal Declaration of Human Rights. Particular provisions provide for both political and social rights of minority group members. For a broad and in-depth discussion of minority rights considerations under international law, see also F. CAPOTORTI, *STUDY ON THE RIGHTS OF PERSONS BELONGING TO ETHNIC, RELIGIOUS AND LINGUISTIC MINORITIES*, (U.N. Doc. E/CN.4/Sub.2/384/Rev.1 (1979) [hereinafter cited as CAPOTORTI]).

6. The basis of each state's obligations is expressed in Article 2(1) which reads:
Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, national or social origin, property, birth or other status.

For a discussion of this particular provision, see Buergenthal, *To Respect and to Ensure: State Obligations and Permissible Derogations*, in *THE INTERNATIONAL BILL OF RIGHTS* (L. Henkin ed., 1980).

7. For a discussion of international treaties concerning the protection of international human rights and how they interact with state sovereignty, see Geck, *International Protection of Fundamental Freedoms and National Sovereignty*, 21 *LAW AND STATE* 7 (1980). For a brief discussion of human rights and non-interference, see Bossuyt, *Human Rights and Non-Intervention in Domestic Matters*, *I.C.J. Rev.* 45 (Dec. 1985).

Article 27 of the Covenant states that "[i]n those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language." The principles enunciated in Article 27 of the Covenant provide for a variety of types of actions which would constitute a reasonable effort to discontinue and redress the grave human rights situation in Sri Lanka for which the government (perhaps not so much for its instigation as for its continuation) is primarily to blame.

1. The Concept of "Minority" Under International Law And Its Application To The Tamils of Sri Lanka⁸

A primary part of the alleged discriminatory practices of the Sri Lankan government against Tamils stems from the status of the Tamils as a minority within the Sri Lankan culture, society and government.⁹ Although the definition and description of the common elements shared may serve to identify some of the outer bounds of what is known as a minority, the concept itself is very problematic, particularly under international law. In a United Nations study of the rights of persons who belong to minorities, Francesco Capotorti provides a broad basis for analysis:

Despite the many references to minorities found in international legal instruments of all kinds (multilateral conventions, bilateral treaties and resolution of international organizations), there is no generally accepted definition of the term "minority." The preparation of a definition capable of being universally accepted has always proved a task of such difficulty and complexity that neither the experts in this field nor the organs of the international agencies have been able to accomplish it to date. The reason for this is the number of different aspects to be considered. Should the concept of a minority be based on the numerical ratio of the "minority" group to the population as a whole or is this quantitative aspect secondary or even unimportant? Is it necessary to limit the concept by introducing the idea of a minimum size? Should any objective criteria be taken into account. . .?¹⁰

The definition proposed by the the Subcommittee on the Prevention of Discrimination and Protection of Minorities (at its third, fourth and fifth sessions) encompassed six important elements which enabled the Sub-

8. For a discussion of the minority concept as it relates to U.N. bodies and international law, see CAPOTORTI, *supra* note 5.

9. For an historical look at the development of particular forms of resentment between the two groups, see generally A.J. WILSON, *POLITICS IN SRI LANKA 1947-1979* (2d. ed. 1979) [hereinafter cited as *POLITICS IN SRI LANKA*]; SRI LANKA: A SURVEY (K.M. de Silva ed. 1977) [hereinafter cited as *SRI LANKA: A SURVEY*]; MODERN SRI LANKA: A SOCIETY IN TRANSITION (T. Fernando & R.N. Kearney eds. 1979) [hereinafter cited as *MODERN SRI LANKA: A SOCIETY IN TRANSITION*].

10. CAPOTORTI, *supra* note 5 at 5.

Commission at its fifth session to draft a resolution concerning the definition of "minority." This definition was based primarily on the following elements: (i) the term minority includes only those non-dominant groups in a population which possess and wish to preserve stable ethnic, religious or linguistic traditions or characteristics markedly different from those of the rest of the population; (ii) such minorities should properly include a number of persons sufficient to preserve such traditions or characteristics; (iii) such minorities must be loyal to the State of which they are nationals.¹¹

While it may be difficult to concisely define a minority, it is equally difficult to conceive of the Tamil population in Sri Lanka as anything but a minority. The Tamils have their own ethnic, religious and linguistic traditions which are distinct from those of the Sinhalese, they make up almost 20% of the population of Sri Lanka, and at least the Ceylon Tamils are citizens, and thus enjoy the rights and privileges of citizenship, including loyalty to their country. As a minority, the Tamils must be afforded the protections specifically provided for and alluded to in international documents.

II. ACTIONS BY THE SRI LANKAN GOVERNMENT

In examining the allegations of serious human rights violations by the Sri Lankan government and determining the source of these violations (*i.e.*, whether a policy of gross violations of human rights is being pursued by the government), it is important to keep in mind the unique characteristics of state terror. The concept of state terror is a fairly recently recognized means through which a state itself comes to grips with a perceived internal or external terrorist threat. The methods of state terror may be either legal or extralegal, but the techniques employed in the pursuit of this activity are especially illuminating concerning the possible existence of a policy of state terror against a particular group within the country's boundaries. The state has some very powerful tools at its disposal to utilize in the effort to achieve its goals. It may employ discriminatory legislation, fail to provide protection against the crimes or terrorist acts of others, and may order arbitrary or mass arrests.¹²

There are various avenues available to the state which pursues the practice of terror against its inhabitants. Particular policies undertaken by the Sri Lankan government include the the anti-terrorist campaign which was begun intensively in 1978, the Prevention of Terrorism Act of 1979, and particular emergency regulations which have given rise to numerous reports of human rights abuse by government officials. Perhaps

11. See E/CN.4/Sub.2/119, para. 32; E/CN.4/Sub.2/140, annex I, draft resolution II; E/CN.4/Sub.2/149, para. 26.

12. For a discussion of the particular elements and types of character of state terror, see Lopez, *A Scheme for the Analysis of Government as Terrorist*, in *THE STATE AS TERRORIST: THE DYNAMICS OF GOVERNMENTAL VIOLENCE AND REPRESSION* (M. Stohl & G. Lopez eds. 1984) [hereinafter cited as *THE STATE AS TERRORIST*].

even more frightening are the grave human rights abuses perpetrated by individual members of the police and armed forces of Sri Lanka. Death by torture and unexplained disappearances are not formally condoned by the government, but these activities are, to varying degrees, state-sanctioned.¹³

In addition to the "state-sanctioned" human rights abuses, there is also a formidable element of backlash in the Sinhalese majority population which has been largely uncontrolled in the ranks of the military and in the civilian sector.¹⁴

A. *Legislation and Enforcement Policies*

1. *The 1948 Constitution*

Ceylon's first Constitution was drafted by Lord Soulbury in 1948, and remained in force until 1972. This Constitution provided for the rights of minorities; "No . . . law shall . . . make persons of any community or religion liable to disabilities or restrictions to which persons of other communities or religions are not made liable; or . . . confer on persons of any community or religion any privilege or advantage which is not conferred on persons of other communities or religions."¹⁵ Unfortunately this provision was ignored by the government when it adopted the Official Language Act of 1956.

2. *The Official Language Act of 1956*

While there has been a myriad of social and cultural differences between the Tamils and Sinhalese which may account for some of the ethnic conflicts since independence, the Official Language Act is to blame for much of the tension which led to early Tamil violence. Its existence continues to be a source of alienation between the various language groups in

13. A number of documents have illustrated these occurrences. *See supra* note 2 and accompanying text.

14. This lack of control has its roots in attitudes reflected by particular government officials, as illustrated in an article published in the *New York Times*:

The Tigers [referring to the separatist terrorist group] flourish because Mr. Jayewardene tolerates an undisciplined Home Guard force that rampages freely through Tamil villages. Killings, torture and "disappearances" are routine, according to an Amnesty International report. Yet as conditions worsen, the President presents himself as a pro-Western victim of unprovoked terrorism and now talks ominously of the "complete liquidation" of Tamil extremists.

The Peril in Sri Lanka, *N.Y. Times*, June 13, 1986, at 34, col. 1. *See also infra* notes (concerning the government's attitude toward the problem as evidenced by its publications relating to Tamil insurgency).

15. 1948 CONSTITUTION OF SRI LANKA, § 29. For a discussion of relevant sections of the Constitution, *see* V. A. LEARY, *ETHNIC CONFLICT AND VIOLENCE IN SRI LANKA: REPORT OF A MISSION TO SRI LANKA IN JULY AND AUGUST 1981* (on behalf of the International Commission of Jurists) (1983), at 11.

Sri Lanka.¹⁶ It was drafted and adopted by a Sinhalese majority government. Three provisions of the Act particularly angered the Tamils. First, it provided that "Sinhala only" would be the official language of Sri Lanka.¹⁷ This placed the Tamil language in an inferior position and provided a rationale for refusing Tamil-speaking people important civil service positions. Second, the Act deprived Indian Tamils of their Sri Lankan citizenship and disenfranchised them.¹⁸ This was a slap in the face to Indian Tamils, and also worked to decrease the official Tamil population in Sri Lanka. Finally, the Act created a quota and standardization program based on race for university admission. This provision effectively reduced and limited the number of Tamils who could be admitted to the universities.

3. *The 1972 Constitution*

The second Constitution severed legal ties with England and declared Sri Lanka a republic. The protection of minorities found in section 29 of the first Constitution was eliminated, and the statutory "Sinhala only" language policy was enshrined as a Constitutional provision. The Tamil party refused to support this new Constitution, and boycotted the Constituent Assembly that drafted it. Express discrimination against the Tamil language and the absence of protective provisions for minorities were the bases for the boycott.¹⁹

4. *The 1977 Constitution*

Sri Lanka's third Constitution was drafted by the United National Party (UNP) when it came to power in 1977. The UNP, like the Sri Lankan Freedom Party (the previous ruling party), is predominantly Sinhalese. The UNP, however, was more sympathetic to the plight of the Tamils, and it was hoped that the new Constitution would be responsive to their grievances. It did declare that Sinhala and Tamil both be recognized as national languages of Sri Lanka, but Sinhala remained the sole

16. The English language, prior to the enactment of the Official Language Act, had provided an important bridge between these groups.

. . . Government policies, especially the Official Language Act of 1956 by which Sinhala replaced English as the official tongue, split residents along ethnic lines and eroded the linguistic link that might have made the separation less complete. With 80 percent of the population ethnic Sinhalese, the effect of this and other laws, Tamils say, was to eclipse their language and to ghettoize their people, who then suffered further discrimination at work and in school.

Crossette, *Sri Lankans Lament Loss of a Linguistic Bridge*, N.Y. Times, June 11, 1986, at 2, col. 3.

17. See LEARY, *supra* note 16 at 12 for a discussion of the "Sinhala only" Act.

18. See *id.*

19. The framework for the Soulbury Constitution was disregarded by the Constituent Assembly which formulated and adopted the 1972 constitution. The provision in § 29 of the 1948 Constitution protecting certain Tamil rights (especially those relating to language and culture) was dropped entirely in the 1972 constitution. See *id.* at 13.

official language. Official documents must be published in both languages, both languages may be used in Parliament, and students may be taught and examined in the language of their choice. Government service, however may still be dependent on a working knowledge of the official language.²⁰ The new Constitution dropped the requirement of standardization of examination scores for university entrance, but maintained the quota system that limits the number of Tamils that may be admitted.²¹ Some very important additions to the 1977 Constitution are provisions guaranteeing fundamental rights. These provisions are unfortunately diluted by article 15 which permits curtailment of these rights in certain circumstances, such as during a state of emergency. Attempts were obviously made to placate the Tamils in the 1977 Constitution, but they were disappointingly inadequate. As in 1972, the Tamil parties refused to endorse the new Constitution.

5. *The Prevention of Terrorism (Temporary Provisions) Act, No. 48 of 1979*

The Prevention of Terrorism Act (PTA) was enacted by the government of Sri Lanka as a temporary measure in 1979, as a response to the increasing terrorist activity in the northern regions of the country. Section 29 provided that "[t]he provisions of this Act shall be in operation for a period of three years from the date of its commencement." The Prevention of Terrorism (Temporary Provisions)(Amendment) Act, No. 10 of 1982, however, repealed this section, making the PTA a permanent part of Sri Lankan law. This was a frightening development which makes the many human rights complaints lodged particularly against the PTA even more serious.

The Official Language Act of 1956 and the Constitutions of 1972 and 1977 effectively placed the language, culture, and educational and employment opportunities of the Tamil minority in an inferior position. It is reprehensible, but not surprising, that certain members of the minority reacted with violence. There were no effective legal or political means available for redressing their grievances. It is of interest to note that the Tamil United Liberation Front (TULF, the minority political party that primarily represents the interests of the northern Ceylon Tamils) did not ratify either of the Constitutions. The PTA, designed to alleviate the terrorist activities, effectively legitimized the government's use of violence in its efforts to bring "peace" to the island. Rather than quelling the terrorist activities, it provided a focus for Tamil anger. The clarity of hindsight has shown that these legislative policies have fueled the violence and ter-

20. A distinction is drawn between the "official" language of Sinhala and the "national" languages of Sinhala and Tamil. Persons taking the official examination required for government service may be required to learn the official language (Sinhala) within a reasonable time if they do not already have a sufficient working knowledge of Sinhala. No such requirement exists for knowledge of Tamil. *See id.* at 36-37.

21. *Id.* at 37.

rorist activity in Sri Lanka.²²

There are a number of techniques available to the state which is interested in bringing a particular group more closely under the government's control. Many of these techniques stem from the PTA, but others employed are based on a broader rhetoric aimed at the preservation of national unity through the eradication of the internal terrorist threat. Law enforcement techniques²³ are probably the single most effective means of achieving these ends. Apart from a lack of protection against the terrorist crimes of other citizens,²⁴ violence is the primary means for the Sri Lankan government to attempt to meet or react to the Tamil groups' demands for a separate state. Some of these uses of violence are arbitrary arrest and detention,²⁵ which often result in or are associated with disappearances and extrajudicial killings.²⁶ Allegations of torture have also been made as examples of serious human rights abuses by the government of Sri Lanka.²⁷

22. For a more in-depth examination of the effect of these early legislation policies, see LEARY, *supra* note 16.

23. For a detailed description of actions, either "legal" or "extralegal" by the government, and in particular the armed forces, see *Genocide Sri Lanka - Report for November and December 1985*, 3 TRANSATLANTIC TAMIL TIMES 11 (Jan.-Feb. 1985).

24. This lack of protection may be experienced by civilians who are victims of violence by militant pro-government groups, and also those being detained in jails under the Prevention of Terrorism Act. See LAWASIA at 46-47 (Oct. 1985).

25. The gross violations of human rights include not only the "preventive" means of arbitrary arrest, but the conditions under which the suspected terrorists are held. For a description of activities carried out under Emergency Regulation 15A, which permits security forces to cremate or bury a dead body without a post-mortem, see *Violence and Gross Violations of Human Rights in Sri Lanka*, 9 HUMAN RIGHTS INTERNET REPORTER 144-146 (Sept.-Nov. 1983).

26. Amnesty International has issued a number of reports concerning disappearances in Sri Lanka. See generally, *Sri Lanka: Reports of Disappearances in the Eastern Province* (May, 1985); *Updated Statement of Amnesty International's Position on Refoulement of Tamils to Sri Lanka* (May, 1985); *Sri Lanka: Allegations of Extrajudicial Executions and "Disappearances" in May 1985* (Oct., 1985); *"Disappearances" in Sri Lanka: A Summary* (June, 1986) [hereinafter cited as *"Disappearances" in Sri Lanka: A Summary*]. An extract from the last document is particularly illustrative:

In many cases officials deny knowledge of their arrest or detention. In others, officials have stated that they were released. As of early 1986, AI had received reports, often accompanied by eye-witness accounts of the arrest, of 194 people who had "disappeared" between June 1984 and November 1985. All these reports concern members of the Tamil community who were reportedly arrested in the north and east but Amnesty International also received one report of a Sinhalese who "disappeared" in July 1983 in the capital Colombo allegedly in connection with his political activities as a member of the Sri Lankan Freedom Party at the height of the communal disturbances when a curfew was in force and when the police had a free hand to operate. Fears have been expressed that some of the "disappeared" may have died in custody, by having been shot by security forces personnel or as a result of injuries received under torture. *"Disappearances" in Sri Lanka, A Summary*, at 23.

27. Human rights organizations in Sri Lanka, and in particular the Civil Rights Movement (CRM), are concerned with these allegations of torture, especially as they stem pri-

B. *The Ideological Underpinnings of State Terror*

What are referred to here as "ideological underpinnings" provide the rationale and policy justifications for pursuing the particular course of action the government has chosen. These are important to mention as they provide insight into both the pattern and character of state terror, and also determine the parameters of how far the state might go in its pursuit of such policies.

The particular "form" of government, not in its theoretical or ideological sense, but rather in response to the form into which it has evolved (especially regarding participation, representation in government) is the focal point for discussion concerning any speculation on why the Sri Lankan government is pursuing this particular policy. The primary problems which stem from the administration of the Sri Lankan government relate primarily to the pluralistic nature of the nation itself. Beneath the political machinations, economic considerations have played and continue to play a very important role.²⁸

In post-colonial Sri Lanka, political processes have taken on a variety of characters. This development has in turn provided a rationale and a causal connection for the politically-based grievances expressed by certain groups in contemporary Sri Lanka, namely the Tamils.²⁹

The situation characterized by either minority or majority group in Sri Lanka at present is the result of the process of evolutionary development which has been affected by a number of concerns. These concerns have often been conflicting, and through the course of development of its political institutions, any identifiable "balance" which may have once existed with regard to the influence of particular groups has become a shifting balance³⁰ (or perhaps more appropriately termed, a shifting *imbalance*). By 1978, the Sinhalese Buddhists had had the balance more than redressed in their favor by successive governments in the post-1956 phase. This has especially been evident in the employment, educational and commercial sectors.³¹ These concerns continue to be of critical impor-

marily from other serious human rights violations, most notably mass arrests and incommunicado detention (conducted under particular Emergency Regulations). See 10 HUMAN RIGHTS INTERNET REPORTER 393-395 (Jan.-Apr. 1985); 10 HUMAN RIGHTS INTERNET REPORTER 704-707 (May-Aug. 1985).

28. For a discussion of the interplay between the variety of economic and cultural factors which have played important roles in the development of Sri Lankan political culture, see de Silva, *Historical Survey*, in SRI LANKA: A SURVEY, *supra* note 9 at 31-85.

29. The mosaic that comprises Sri Lanka's multiracial society has presented two pressing problems since independence. The Sinhalese Buddhist majority (Low Country and Kandyan) have had more specific grievances against the leading ethnic majority, the Ceylon and Indian Tamils, than the other principal religious grouping the Roman Catholics in particular, as well as the Protestants (comprising Sinhalese, Tamils, and Burghers). D. Smith, *Religion, Politics, and the Myth of Reconquest* in MODERN SRI LANKA: A SOCIETY IN TRANSITION 83 (T. Fernando & R. Kearney, eds. 1979).

30. See generally, *id.*

31. See POLITICS IN SRI LANKA *supra* note 9 at 10-51 for a discussion of economic fac-

tance not only with respect to the continuation of violence and counter-violence, but will also remain important factors in any possible peaceful solutions to the problems.

When seen in an historical light, the political climate and what has up to the present time developed, can be examined as indications of changes which have affected the political efficacy of the government.³² What may simply have developed in the 1950's as a concern with sectarian politics and later became a major concern of continuing governments, has in large part delineated the ideological course of the governments headed by members of the Sinhalese majority.³³ As the Sinhalese moved to make Sinhala the only official language and institute a quota system for university admissions,³⁴ it became quite apparent that the Sinhalese were attempting to consolidate their own power in terms of predominance over rivals in the educational and ethnic fields. These preferences later found expression in government policies in the 1960's and 1970's and also in the constitution of 1972 (and 1978) in its stated preference for fostering and protecting the place of Buddhism.³⁵

The minority-majority conflict is a recurring theme in any discussion of Tamil dissatisfaction since the time of independence. State policies relating to religion, language, education, colonization, and police and army occupation all seem to deny the separate cultural identity of the Tamil people. The predominantly Sinhalese government refuses to consider an independent Tamil State, and claims that Sri Lanka is a united country for Tamils and Sinhalese alike. Yet the Tamils are expected to speak Sinhala, tolerate a Constitution that elevates Buddhism, accept discriminatory education barriers, and obey Sinhalese police and army officials.

Since 1976 there has been increasing support among the Tamil population for a separate state of Tamil Eelam.³⁶ Many Tamils consider themselves to be an identifiable people with a defined territory and an internationally protected right of self-determination. Some argue that when ties were broken with Great Britain in 1972, the Tamil sovereignty that had existed before colonization was restored. The Tamil boycott of the 1972 and 1977 Constitutions was an indication that they never consented to Sinhalese sovereignty, and thus the independent Tamil nation remained intact.³⁷ The validity of the self-determination claim is not the issue at

tors in interracial disputes.

32. See, e.g., Samaraweera, *The Evolution of a Plural Society*, in SRI LANKA: A SURVEY, *supra* note 9 at 86-107.

33. See POLITICS IN SRI LANKA, *supra* note 9, at 14.

34. *Id.* at 15.

35. The current constitution provides that Buddhism shall occupy the foremost place relative to other religions (which are not mentioned), and establishes a duty on the part of the government to protect and foster the Buddhist faith. The constitutionally-established pre-eminence of Buddhism may be attributed to a "minority complex" which the Sinhalese Buddhists since they are a minority in Asia. See LEARY, *supra* note 16 at 9-10.

36. *Id.* at 14.

37. *Id.* at 15.

the moment. The point is that many Tamils ascribe to it, and that belief has added to the tension and the conflict. The Sinhalese and the Tamils may all be citizens of the same country, but they are also two distinct races with different cultures. Somehow this distinction has been ignored and the consequence was an inevitable escalation of racial tension and violence.

C. The Action-Reaction Nexus of Violence in the Perpetuation of Violence

Many of the counter-terrorist policies have been extreme, and have had very harmful effects on the civil and human rights of all Sri Lankans. Some of these government actions amount to "terror-tactics" which are designed to subjugate the rights of those at whom certain actions are aimed (primarily Ceylon Tamils in the North and Eastern districts).³⁸ Government actions which effectively amount to state terror-tactics include mass arrests, arbitrary detention of suspected terrorists, unexplained disappearances, and excesses, ill-treatment, and torture by armed forces and police. Amnesty International has extensively documented a variety of these actions.³⁹

One observer of the situation in Sri Lanka⁴⁰ has classified the violence as three different types. Each type of violence has a different underlying basis, and requires a different approach in the search for a solution. "Communal violence" occurs when the individuals of one ethnic group attack members of another ethnic group.⁴¹ In Sri Lanka there have been four major outbreaks of communal violence between the Sinhalese and the Tamils, which occurred in 1958, 1977, 1981, and 1983.⁴² The widespread acts of communal violence have for the most part been attacks against the Tamil people and their property. Much of it appeared to have been sparked by the terrorist activities in the North against police and army personnel. Although these activities are perpetrated primarily by a small group of Tamil militants, the entire race has been implicated in the minds of many. There is also evidence that the Sinhalese have been in-

38. Concerns of Amnesty International in Sri Lanka have encompassed a broad spectrum of human rights violation. A report of substantial importance which concerned disappearances was published in June of 1986 and noted that:

Although some reports of "disappearances" were received during 1983 and the first half of 1984, a pattern of these human rights violations began to converge in late 1984, when "disappearances" were reported with increasing frequency: for example, on one day, 2 December 1984, 99 persons were reportedly taken away by security forces personnel and have "disappeared."

"Disappearances" in Sri Lanka: A Summary, *supra* note 27 at 7.

39. See generally, Amnesty International publications at *supra* notes 2, 27.

40. See Leary, *supra* note 16.

41. For an expansion on the definition of "communal violence" and a detailed examination of the events that occurred during these outbreaks of violence in 1958, 1977, 1981, and 1983, see LEARY, *supra* note 16, at 18.

42. *Id.* at 24.

cited to mindless discriminatory anger through speeches made by government officials, aided by anti-Tamil slogans and posters.⁴³

The second type of violence can be labelled "political violence," or "terrorism." This form of violence, perpetrated by Tamil youths, began substantially in 1977,⁴⁴ and has continued unabated to this day. There are four major active Tamil "liberation" groups: the Liberation Tigers of Tamil Eelam (LTTE); the Tamil Eelam Liberation Organization (TELO); the Eelam Revolutionary Organization of Students (EROS); and the Eelam People's Revolutionary Liberation Front (EPRLF).⁴⁵ A fifth group, the People's Liberation Organization of Tamileelam (PLOT), appears to be more moderate, but it has been known to attack police stations.⁴⁶

The third recognizable form of violence in Sri Lanka is "state terrorism," or violence by police and security forces. This type of violence has been a recurring theme since 1974,⁴⁷ but has tended to grow in intensity along with the increase in political violence. State terrorism is especially reprehensible, as many aspects of it are strictly forbidden under the international law of human rights. Terrorism is generally thought to be an activity engaged in by individuals or groups (*i.e.*, non-state actors), but as the phenomenon of terrorism has become a major concern in the area of international relations, the study of terrorism by scholars who are interested in its causes, effects and seemingly different varieties has significantly increased.⁴⁸ Through the application of a relatively broad "defini-

43. *Id.* at 25.

44. Another significant element of violence which is an offshoot of this political violence is the result of inter-group rivalry. This rivalry has often been bloody, and its impact is felt not only in the domestic environment, but also has important geopolitical implications as it has related to the type of support which Prime Minister Gandhi has been willing to provide. See, *Sri Lanka Discovers Bombs as Peace Talks Begin* [EROS claimed responsibility for the planting of two large bombs in Colombo at the time Gandhi was arriving to negotiate with the government], *N.Y. Times*, Dec. 18, 1986, at 19, col. 1; *25 Die as Sri Lanka Rebels Clash*, *N.Y. Times*, Dec. 15, 1986, at 6, col. 3. See also *infra* note 53.

45. 1 TAMIL INFORMATION, Issue No.8, (May 15, 1985), at 21.

46. LEARY, *supra* note 16, at 30.

47. See, *e.g.*, THE STATE AS TERRORIST, *supra* note 13.

48. As a result of U.N. studies on terrorism, and in particular, state-sanctioned terror, much of the debate regarding terrorism has focused on the role of the rule of law in formulating a response of international organizations to terrorist activity. Three particular legal claims have been identified in United Nations discussions regarding the nature and scope of terrorism. Stohl and Lopez have identified these three sources of stalemate concerning the expression of an idea which would express a working definition of terrorism.

1. The position that *terrorism* is defined and constituted by the "criminal acts" taken against governments by individuals or groups. This position was supported by most of the advanced industrial Western states and some Latin governments.

2. The position that *terrorism* should be defined by acts, but in a broader context than 1. above so as to include acts of governmental groups that violate human rights and reinforce policies such as apartheid. This position was advanced primarily by the African states.

3. The position that the definition of *terrorism* resides in the motivation of the actor and the context of the act. This argument claims that to consider terror-

tion" of terrorism, "state terrorism" has emerged as a variation of the more broadly recognized concept of terrorism.⁴⁹ These three typologies of violence in Sri Lanka help further to shed light on the need for fundamental changes in the political processes. They serve to identify the action and reaction elements of violence, as well as the contexts in which both are expressed.

From the emphasis on non-state actors as terrorists emerged a concern on the part of some observers that the role of state actors in terrorist activities was being neglected.⁵⁰ Based on such fundamental tenets of international relations as national sovereignty and national security, some have viewed the role of state actors in the perpetration of terrorism as evidence of employing a "cloak" to disguise the true nature or purpose of the particular governmental policy.⁵¹ One author has stated that the use of terror tactics "is common in international relations and [that] the state has been and remains a more likely employer of terrorism within the international system than insurgents and with much greater effect. The state is as much a user of terror in its international affairs as in its domestic activities."⁵²

Terrorism in Sri Lanka is thus recognizable on two levels: that perpetrated by the Tamil groups, as well as the policies promulgated and sanc-

ism narrowly, outside of national liberation movements, is to label inappropriately a freedom fighter as a "terrorist." A variety of developing nations and Arab states held this view.

Stohl & Lopez, *Introduction*, in *THE STATE AS TERRORIST*, *supra* note 13 at 4.

49. For an excellent treatment of the background to this analysis, as well as a description of sources available for the study of state terror as evidenced by political history, *see id.*

50. These policies may be observed in terms of their behavior toward particular groups in the domestic political context, without regard to the "moral" considerations which the actors may be pursuing on what they perceive to be a large scale. Stohl, *International Dimensions of State Terrorism*, in *THE STATE AS TERRORIST*, *supra* note 13 at 44. Stohl goes on to describe three broad categories of state terrorism in international relations: coercive diplomacy, covert behavior, and surrogate terrorism. *Id.*

51. *Id.* at 43.

52. With regard to the variety of internal pressures which a state may be faced with, whether they are internally or externally generated, the government must respond to the pressures. One author has identified particularly certain factors which can be attributed to the government's attempts to maintain an adequate hold on its power, in particular through the use of repressive means and serious curtailment of civil rights and increased use of the military to implement the coercion.

Of all types of dynamic changes in the "state" of the state, this pattern is the most pervasive in the recent political history of Second and Third World states. It leads to questions concerning the particular political, legal, or extra-legal mechanisms that actualize these alterations in governance and of the ideologies of symbolic constructs that spark and legitimize them. This form of rule has clearly emerged as a reaction to pressure for internal change of either government policies and/or social structure. The government response has been to withstand such pressure via new methods of persuasion, enforcement, and coercive rule called "state terror."

Lopez, *A Scheme for the Analysis of Government as Terrorist*, in *THE STATE AS TERRORIST*, *supra* note 13 at 61.

tioned by the government designed primarily to act as "counterterrorism" measures. These two levels are recognizable in that their perpetrators are employing different means available to either group, as well as in the different ends sought by either group. Both types of terrorism play an essential role in the continuation of violence.

III. THE NATURE OF THE PROBLEM AS AN INTERNATIONAL HUMAN RIGHTS CONCERN

While it is true that the government of Sri Lanka faces a grave threat to its national security and national unity from the Tamil terrorist groups, it must respect human rights in its attempt to defeat that threat. This involves more than merely balancing the damage due to terrorism against the "relative value" of human rights. Protection of human rights has been elevated as an elemental concern among international scholars and policy makers, and as such must be respected at all costs. The government of Sri Lanka may not take action that defies the basic human rights of its inhabitants, even though the very valid goal of this action is the purported attainment of peace.

The political climate of Sri Lanka is especially illustrative with regard to the promotion of certain repressive policies, and these more repressive policies can be traced to the particular evolutionary patterns of some of the government's institutions.⁵³ The political climate of Sri Lanka, involving both the actors and the setting in which they operate is of crucial importance to any evaluation of counter-terrorist policies. The use of repressive policies to counter the real or imagined terrorist threat has had serious consequences for human rights in Sri Lanka. For this reason, it will be illustrated below by identifying the relevant policies, that the government is employing terror tactics violative of international human rights standards in pursuit of its policy of state terrorism against Tamil separatists and other groups.

A. Institutionalized Government Inflexibility and Overreaching

The government of Sri Lanka and the militant Tamil groups are caught up in a cycle of violence. The government is in the better position to break this cycle, and, we submit, is under an obligation to change the policies that perpetuate the violence and violate international standards of human rights. The PTA is a particularly reprehensible document, as it undermines the inalienable human rights of certain citizens of Sri Lanka, both on its face and in its application. The government has no valid interest in its continued application, since after eight years it has proven itself to be ineffective as a tool to curb terrorist activity. State terror is *not* an appropriate response to the violent activities perpetrated by certain groups in the country - it is illegal and counter-productive. The government must attempt to reformulate its anti-terrorist policies, rather than

53. See generally, AMNESTY INTERNATIONAL REPORT 1985, *supra* note 2 at 243.

inflexibly adhering to an inappropriate course of action chosen in the past.

1. *The Prevention of Terrorism (Temporary Provisions) Act, No. 48 of 1979*

The Prevention of Terrorism Act (PTA) was enacted by the government of Sri Lanka as a temporary measure in 1979, as a response to the increasing terrorist activity in the North. Section 29 provided that "[t]he provisions of this Act shall be in operation for a period of three years from the date of its commencement." The Prevention of Terrorism (Temporary Provisions)(Amendment) Act, No.10 of 1982, however, repealed this section, making the PTA a permanent part of Sri Lankan law.⁵⁴

(a) *Encouragement of improper interrogation techniques*

Part IV of the PTA permits trial under special procedures which curtail normal legal safeguards.⁵⁵ For example, section 16.(1) provides extremely liberal rules on the admissibility of certain statements made to the police, so that effectively anything a suspect mutters can be used as evidence in court. Under normal Sri Lankan law, this is not the case.⁵⁶ Section 7(3)(a) of the PTA gives police the authority to take any suspect "to any place for the purpose of interrogation and from place to place for the purposes of investigation." These two provisions, read together, provide both means and motive for obtaining confessions and statements under duress, and may encourage ill-treatment and torture during interrogation. While these provisions do not, on their face, violate standards of human rights, they have been included here because they are highly suspect in their effective administration.

(b) *Retroactivity of the PTA*

Sections 22, 23, and 31(i) of the PTA attempt to make that document and its provisions retroactive. The definition of "unlawful activity" under section 31 expressly includes "any act committed prior to the date of passing of this Act, which act would, if committed after such date, constitute an offence under this Act." Sections 22 and 23 include similar language. Such a provision is forbidden by both the Covenant on Civil and Political Rights and the Universal Declaration of Human Rights. Article 15 of the Covenant states that "[n]o one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed." Article 11(2) of the Universal Declaration also expressly prohibits retroac-

54. See generally, *supra* note 23.

55. See, e.g., *Sri Lanka: Current Human Rights Concerns and Evidence of Extrajudicial killings by the Security Forces*, *supra* note 2. See also, *supra* note 27 and accompanying text.

56. *Id.*

tive imposition of criminal sanctions on actions that were not criminal when committed. Thus the retroactive language of the PTA is invalid under international law.

B. Allegations of State Terrorism and Self-Determination Issues

Concerning the issue of legitimization of "nationhood" which a state is allowed to employ to effect its political goals (which may include engaging in terrorist activities), both in the domestic context and often more importantly, in the international context, Stohl has commented that "[t]he legitimacy of the national state is itself normally conceived as providing legitimacy to actions that would be condemned as terrorism if such behavior were executed by non-state actors."⁵⁷

1. The Use of "Terror Tactics" by the Sri Lankan Government

Some of these means are discriminatory legislation, lack of protection against the crimes and terrorist acts of other groups, and arbitrary or mass arrests. Beyond merely cloaking such actions in otherwise "legal" garb, the state as terrorist also may exercise extralegal activities and organizations for the goal of fulfilling other policies which may be too controversial for the state to otherwise acknowledge its association.

Repressive policies conducted by The Sri Lankan government have in many respects worked as a catalyst for the further escalation of violence and they have also fueled the desire on the part of many groups to demand self-determination (through the formation of an independent state). These actions by Tamil militants have in turn precipitated more violent and drastic measures by the government. The consequences are tragic in terms of the loss of lives and the human rights violations, but another result of this escalation is the further alienation of previously "neutral" groups, who are left with fewer options as a result of the heightened distrust and violence.⁵⁸

57. There also has been a continuation of inter-group rivalry among the Tamil separatists. These have often produced bloody confrontations, as well as increased fear on the part of moderates. Condemnation by Tamil groups of the violence perpetrated by the guerillas has not brought progress, as the government has been unswerving in its demand for what it deems "loyalty" on the part of its citizens. Moderates such as the TULF (Tamil United Liberation Front) have found their position between the government and the Tamil guerillas more difficult as they were driven out of Parliament after the group refused to take an oath supporting a unitary state. Crossette, *Sri Lanka Violence Said to Open Critical Stage*, N.Y. Times, May 11, 1986 §1, at 9, col. 1.

58. One of the highly controversial policies instituted recently (1956) by the government of Sri Lanka was the recognition of Sinhala as the official language of Sri Lanka. Although this might otherwise be seen as an act to exclude Tamils from official recognition, this action should also be considered in the particular light in which it was promoted. The declaration of Sinhala as the official language was designed and promulgated as a counter-imperialist effort, designed to effect the restoration of a basic form of national identity. See Smith, *supra* note 30, at 90. This original purpose of the Official Language Act, however, has proved to undermine the "national" identity it was meant to promote. See *supra* note 16.

2. *The Cycle of Violence*

The government of Sri Lanka faces a very grave challenge - the elimination of terrorist violence within its borders. It appears, however, that its efforts, in the guise of the PTA and other anti-terrorist activities and policies, have not met this challenge. Repressive government policies are a major factor in Tamil complaints, so it is not surprising that additional repression has not worked to decrease the violence. As terrorists react to further government repression with renewed violence, the government is placed in the uncomfortable position of either having to bear down even further on policy implementation, or losing face. Thus, each side feeds off the reactions of the other, and the violence is perpetuated. This is the cycle of violence that must be broken before peace can be achieved in Sri Lanka.

IV. OPTIONS AVAILABLE WITHIN THE CURRENT POLITICAL SYSTEM

The calls by Tamil groups for a separate state may be viewed as a consequence of the government's policy of state terror against the Tamils. Self-determination in this respect might be viewed as the only viable alternative to a continuation of the present policies, or as a last resort. In light of the situation which for so long had remained dormant in most respects, the use of state terror has worked as a catalyst for the rise and militancy of these claims by Tamil separatists.

The claims by Tamil militants stem primarily from the particular developments which have manifested themselves in the political environment of Sri Lanka in the last several years. The Sri Lankan government, in its efforts to develop stronger political foundations of its own creation, has implemented certain policies which have caused protest among many members of its political community. It has become painfully apparent to those in the forefront of the Sri Lankan political leadership, that maintaining a multi-cultural democracy can at times lead to controversial decisions and policies.⁵⁹

A large part of Sri Lanka's history - especially dating back to Portuguese, Dutch and later English colonial rule until 1948 - has reflected at least the potential for conflict among its ethnic groups (particularly between the Sinhalese and Tamils). This situation has been used for political advantage on many occasions by the fostering of turmoil and distrust among the groups by following a variation of the divide and conquer technique.⁶⁰

This potential conflict became a political issue when Sri Lanka

59. For a discussion of some of the effects of colonial domination, see B. PFAFFENBERGER, *CASTE IN TAMIL CULTURE: THE RELIGIOUS FOUNDATION OF SUDRA DOMINATION IN TAMIL SRI LANKA* 35-59 (1982).

60. See *supra* note 41. This attitude is not uncommon among government officials, who choose to define narrowly the actual conflict.

gained its independence and the British left. The Tamils had more readily assimilated with the British institutions (especially the educational system), and when the majority government began taking measures which were designed to establish a Sri Lankan national identity, these pro-Sri Lankan policies in effect worked as anti-Tamil policies. This view of national unity has provided the national security consciousness espoused by many of the members of the government, who view the Tamil separatists as ordinary terrorists who are simply trying to promote anarchy.⁶¹

The government's response to movements for change as an attempt to cope with difficulties is based on ethnic problems which have been and remain an important consideration for both parties. The question of whether the ethnic conflict is essentially a matter of differences based on intergroup rivalry in certain spheres of influence within the political and cultural setting of Sri Lankan society as it is currently ordered, or whether the conflict runs deeper, in that the form of government is unsuitable for the amicable conduct of relations between the parties remains an important issue. The importance of this question relates back to the nature of the conflict and the policies undertaken by the government. An examination of this question consequently refers to larger issues concerning the efficacy of the governmental institutions.⁶²

The governmental responses to internal pressures for change which have been expressed by the Tamils are especially indicative of its concern for protecting what it views as democracy based on national unity. The government's means of protecting this have very high costs,⁶³ and its responses to internal pressures for any change clearly point to an unwillingness to identify problems facing the government in broader but perhaps more realistic terms. As a result, the political climate has been and re-

61. For a discussion of this conflict, in terms of its sources and how these are reflected in the administration of the government, see Samarasinghe, *The Ethnic Conflict in Sri Lanka: The Role of the NGOs*, 24 *ETHOS* 1 (1985). Samarasinghe is of the opinion that the choice is essentially up to the people - i.e., those who vote:

The people of this country entrusted their political future to the government of J.R. Jayewardene in 1977. They did not give that power to priests, historians or self-appointed defenders of the Sinhala race. . . There are three choices open to the government. The first is for the government to push through a solution of its own, which it has either been unwilling or unable to do for the past seven years. The second is to hold a general election in the near future. The third and most pragmatic choice is to form a transitional national government with the sole purpose of negotiating an end to the ethnic problem, and shortly thereafter hold a general election.

Id. at 13.

62. The government of Sri Lanka recognizes its role in the continuation of violence in only a very limited fashion. It has admitted that there have been some problems with security forces, but this "lack of discipline" which they have attributed as the major problem concerning the conduct of the security forces, is viewed in only individual terms, and definitely not as part of any policy.

63. In this respect, the Sri Lanka government has been very astute in identifying the goals of its counterterrorist policies. It has been able to "legitimize" many of its actions under the guise of promoting national unity.

mains turbulent.⁶⁴ The extreme means of safeguarding the Sri Lankan national unity by means of securing the state against the separatist Tamil threat actually work against the ideal (formulated and espoused by the government) of the Sri Lankan sovereign unity. The government will not be able to extract national unity at any cost, and its means of dealing with the Tamil threat are backfiring in many ways.

The policies of the current Sri Lankan government may prove to have very substantial consequences for the future leadership of a government which hopes to lead and support all members of Sri Lankan society. Currently, as the results of certain policies over the last several years emerge, the prospects for effective national leadership have become precarious. In this light, the claim for self-determination (secession) advanced by certain Tamil groups will be examined, as well as a less drastic alternative which has been the subject of speculation recently: devolution.

A. *Analysis of Claims to Secede*

In the Sri Lankan context, self-determination claims asserted by the Tamils can be identified as a consequence of the state terrorism currently being conducted in that country. In an analysis of claims for self-determination which would give rise to secession in this instance, certain considerations must be carefully weighed.

Self-determination is considered a drastic step in the current international order. The elimination of colonialism was the primary force behind self-determination in its early stages, but it might now also be applied to noncolonial situations. Standards for recognizing the legitimacy of claims to the right to secede impose difficult hurdles upon the group claiming the right. The establishment of minimum standards of legitimacy of the claim require the identification of at least four elements: identification of the group claiming the right - including objective and subjective elements; the nature and scope of the minority group's claim as articulated by the elites of the group; the underlying reasons for their claim, whether they are compelling - these include consideration of the divergent political beliefs, strength of desire to control their own resources more effectively, and the strength of the ethnic or cultural identification with the neighboring group; and the degree of deprivation of basic human rights - the severity of the deprivation, whether the group suffers subjugation, domination or exploitation, and the extent to which individuals are denied the right to participate.⁶⁵

64. This turbulence is also indicated by the calls of some Tamil groups for secession and self-determination. Self-determination does not appear to be a reasonable or viable option for the Tamils. Tamil secession from this small island nation is not likely to provide a peaceful solution to the ongoing conflict. The concept of self-determination is problematic under international law, although its parameters have often been identified and discussed. See, e.g., H. GROS-ESPIELL, *THE RIGHT TO SELF-DETERMINATION: IMPLEMENTATION OF UNITED NATIONS RESOLUTIONS*, U.N. Doc. E/CN.4/Sub.2/405/Rev. 1 (1980).

65. These elements are taken from Nanda, *Self-Determination Under International*

Alienation of the subgroup will be considered in the first element. This will include the treatment of the subgroup by the dominant group in their political system. Also considered here is whether the articulated demands stated by the subgroup are widely held within the group. In the Sri Lankan context, the Tamils do not appear to be unified in their call for secession. The groups calling for a separate state of Eelam do not espouse the majority view of the Tamils. The reasons underlying the claim for secession should also be compelling. Self-determination must be considered in the political context of the state from which the subgroup wishes to secede. Participation may be a critical factor in the Sri Lankan context, but it is unlikely that the founding of a separate state of Eelam will provide peaceful settlement. On the contrary, it would likely add further to the existing alienation and the "minority complex" which the Sinhalese feel. Finally, deprivation of basic human rights of the group and individuals within the group is considered. Once again, strict standard is applied, and given the Sri Lankan parliamentary system, some form of peaceful settlement with the use of further communication and negotiation between the groups is highly recommended. Although it has been suggested for several years by the Sri Lankan government, devolution appears to be the most promising means by which a peaceful settlement might be reached.

B. Devolution of Power

Pluralism and integration need not be competing factors in governmental efforts to improve minority relations, and non-discrimination may be seen as a precondition concerning the implementation of rights of persons belonging to ethnic, religious and linguistic minorities. Generally, the rights of minority groups are comprised primarily of the right of persons belonging to ethnic minorities to enjoy their own culture; to profess and practice their own religion; and the right of persons belonging to linguistic minorities to use their own language.⁶⁶

Devolution in the Sri Lankan context would provide governmental competency to provincial institutions, and if certain concessions were made by the national government (especially in the field of education), Tamils would have the benefit of controlling their way of life.⁶⁷

The prospects for devolution in the current Sri Lankan political system remain tentative at best. It is also apparent, however, that devolution will not cause further splintering of an already fragmented populace. The release of certain governmental competencies of a local nature to local

Law: Validity of Claims to Secede. 13 CASE W. RES. J. INT'L L. 257 (1981).

66. Devolution has also been discussed in some of the Peace Talks. See *supra* note 41.

67. A brief discussion of some of these conciliation efforts (New Delhi, June 1985; Thimpu, July and August 1985; and New Delhi, August 1985) is contained in Address to Parliament By The President on 20th February, 1986 (1986), English version at 2-4.

authorities will ease ethnic tensions and provide a wider and more meaningful base of authority for particular (*i.e.* Tamil) groups.

In light of the prior discussion of the claim to secede it appears that few substantial problems would actually be resolved were the Tamils to form their separate state of Eelam. In order to put an end to the violence in Sri Lanka the government must take some kind of action to address the grievances of the Tamil minority. Perhaps a devolution of government authority will achieve these ends, without the destruction of territorial integrity inherent in secession.

C. *Implementation of Devolution*

Efforts at resolving the Tamil problem have been made in a number of different settings. The government, as well as some of the Tamil groups, has sought help from other nations.⁶⁸ These efforts have not been characterized by successful negotiations, but the fact that these have taken place remains an important factor.⁶⁹

The viable prospects for the government of Sri Lanka regarding the resolution of the Tamil problem as well as considerations for the future efficacy of current political institutions are, in the view of the government, quite limited. Based partly on its intransigence concerning the character of the current political conflict, the government has identified the conflict as one in which the actors must decide their allegiance based upon their loyalty to Sri Lankan political institutions, with the current administration as the embodiment thereof.⁷⁰ This extremely narrow view can be attributed to the stage of political development of Sri Lanka's system of government. Although this is not meant to explain away any of its abusive practices, it does shed some light on why the government has drawn the reins so tightly.

V. CONCLUSION

The government's response to this basic problem is inadequate. Although it has often not been a carefully calculated or coordinated effort, the government's response to Tamil militancy indicates a strong willing-

68. Prime Minister Gandhi has been involved in many of these efforts, but the "good neighbor" policy has brought about little effective change, and controversies and accusations of bad faith resulted in disappointment. Weisman, *A Region Has Difficulty Staying on Speaking Terms*, N.Y. Times, May 11, 1986, §4, at 3, col. 1. Shifts in India's policy toward the Tamil separatists who had previously been using the Indian state of Tamil Nadu as a sanctuary have also had a significant impact on the relationship between the Tamils and the Sri Lankan government. Weisman, *India Arrests Several Top Leaders of Sri Lanka Separatist Guerillas*, N.Y. Times, Nov. 10, 1986, at 15, col. 1. The endorsement of the Sri Lankan government's offers played an important role in certain regional efforts to resolve the problem. Weisman, *Gandhi Endorses Sri Lankan Stand on Strife*, N.Y. Times, Nov. 18, 1986, at 14, col. 1.

69. See *supra* note 52.

70. See generally, *supra* notes 16, 17.

ness to employ terror tactics to repress vocal elements. The policy might be characterized as one which is reflective of the existing inconsistencies of the current form of government.⁷¹ The incapability of the government to control various forms and means of its authority has frequently resulted in violence initiated by (in particular the armed forces) elements within the government or actively supported by it which demand and receive legitimization from the government.

71. Whether this legitimization is actually indicative of a concerted effort to repress certain elements (largely Tamil) is irrelevant. This phenomenon relates back, and significantly so, to the incapacities of the government.

