

India's Vote on Sri Lanka: A Responsible Choice

Written by Bhaskar Balakrishnan

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BHASKAR BALAKRISHNAN, APR 10 2014

On March 27, 2014, the UN Human Rights Council (UNHRC) adopted Resolution 25/1 on Sri Lanka. India abstained in the main vote, while the resolution got the support of only 23 countries out of 47 UNHRC members. India's decision to abstain was a sensible, responsible, and balanced choice, taking into account a host of factors.

Human rights groups had alleged that war crimes were committed by the Sri Lankan military and the rebel Liberation Tigers of Tamil Eelam (LTTE) during the Sri Lankan civil conflict (1983-2009), especially during the final months of the conflict in 2009. The alleged war crimes include attacks on civilians and civilian buildings by both sides, executions of combatants and prisoners by both sides, and enforced disappearances and child recruitment by the LTTE. An expert group appointed by the United Nations Secretary-General (UNSG) found "credible allegations" which, if proven, indicated that war crimes and crimes against humanity were committed by the Sri Lankan Military and the LTTE, and has called for an independent international inquiry into the alleged violations of international law. The UNHRC has been considering this matter since 2012, and in August 2013, the UN High Commissioner for Human Rights visited Sri Lanka with the cooperation of the Government of Sri Lanka. The March 2014 session of the UNHRC considered the matter once again and adopted Resolution 25/1.

The Sri Lanka government had appointed, in May 2010, the Lessons Learnt and Reconciliation Commission (LLRC), a commission of inquiry, to investigate the facts and circumstances which led to the failure of the ceasefire agreement of February 2002, the lessons that should be learnt from those events, and the institutional, administrative, and legislative measures which need to be taken in order to prevent any recurrence of such concerns in the future; and to promote further national unity and reconciliation among all communities. The LLRC report was made public in December 2011. The commission has been heavily criticized by international human rights groups, the UN group of Experts, and others due to its limited mandate, alleged lack of independence, and failure to meet minimum international standards or offer protection to witnesses.

During the discussion, in a procedural motions tabled by Pakistan, India had voted for a "no action" motion, and against operative paragraph 10(b) calling for an investigation process by the Office of the High Commissioner for Human Rights (OHCHR), on the grounds that there were no budgetary resources for such an activity. Both these moves failed, and the resolution itself was carried by 23 for, 12 against, and 12 abstentions. The voting was along predictable lines, with the US and European countries lining up as a solid bloc, while the developing countries were split. Argentina, Austria, Benin, Botswana, Brazil, Chile, Costa Rica, Côte d'Ivoire, Czech Republic, Estonia, France, Germany, Ireland, Italy, Mexico, Montenegro, Peru, the Republic of Korea, Romania, Sierra Leone, the former Yugoslav Republic of Macedonia, United Kingdom, and United States of America voted in favour. Voting against were Algeria, China, Congo, Cuba, Kenya, Maldives, Pakistan, Russia, Saudi Arabia, the United Arab Emirates, Venezuela, and Vietnam. Burkina Faso, Ethiopia, Gabon, India, Indonesia, Japan, Kazakhstan, Kuwait, Morocco, Namibia, the Philippines, and South Africa abstained. Significantly, the Resolution managed to secure only one vote from the Asian region. The gap between the positions of Sri Lanka and the sponsors of the Resolution proved too wide to reach a consensus.

India's position is seen as critical, being the closest neighbor to Sri Lanka with the greatest engagement and influence on Sri Lanka. India was opposed to the inclusion of the operative paragraph 10(b) which, for the first time, called on the OHCHR

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to undertake a comprehensive investigation into alleged serious violations and abuses of human rights and related crimes by both parties in Sri Lanka during the period covered by the Lessons Learnt and Reconciliation Commission [LLRC], and to establish the facts and circumstances of such alleged violations and of the crimes perpetrated with a view to avoiding impunity and ensuring accountability, with assistance from relevant experts and special procedures mandate holders.

The Indian view is that such a decision is highly intrusive and undermines national sovereignty, and would not be a constructive approach. That the period covered by the LLRC was limited to crimes committed between 2002 and 2009 was also criticized by the Sri Lankan government as seeking to leave out crimes committed in the period of 1983-2002 when a number of terrorist attacks were committed by the LTTE.

Should India have voted for the resolution as demanded by groups in the Indian state of Tamil Nadu? This would have damaged India's relationship with Sri Lanka further. India's substantial programme of assistance to the Tamil community in Sri Lanka needs the cooperation of Sri Lanka's government to succeed. India is the one country that can make a big difference to the lives of the Tamil population in Sri Lanka through its direct assistance and through its constructive engagement with the Sri Lanka government. Keeping this effort going must be top priority, and Tamil groups in India and elsewhere should appreciate this. India's votes on the two procedural motions clearly indicate its opposition to the intrusive mechanism suggested. Its abstention on the main vote was, therefore, an attempt to strike a balance. An early benefit has been the release of over 100 Indian fishermen detained in Sri Lanka.

Much media attention has focused on the question of India's vote being a strategic choice to avoid losing ground to China and Pakistan, who have been strong supporters of the Sri Lankan government position. But clearly India's relationship with Sri Lanka has its own dynamics and cannot be hyphenated with any other country. Pro-LTTE elements in the Tamil diaspora have been strongly lobbying governments, especially in the UK, Canada, and Australia, to condemn Sri Lanka's government in the UNHRC. Despite this, Australia, a non-member of the UNHRC, has taken a stand similar to India against the international enquiry process.

The new resolution could adversely affect the process of national reconciliation in Sri Lanka and has led to greater polarization. The Tamil National Alliance, Sri Lanka's leading Tamil political party, has welcomed the adoption of the Resolution. Calling on the Sri Lanka government to cooperate with the UN in implementing the resolution, it said the Resolution "sends a strong message to the Sri Lankan government that the undemocratic, militarized and discriminatory trajectory on which it has set the country is unacceptable and unsustainable." Sri Lanka's government has banned the Transnational Government of Tamil Eelam and 15 other groups (based in the US, Canada, Australia, the UK, and Norway) under UN Security Council Resolution 1373, which sets out strategies to combat terrorism and control terrorist financing. The move would add to a climate that made it difficult to interact with Tamil groups, as it could render them vulnerable to anti-terror laws. The crackdown on activists and civil society figures is being seen as a move to discourage potential witnesses from cooperating with the UN inquiry, which was scheduled to deliver an oral report to the UNHRC in September 2014, and a written report in March 2014.

The question of human rights violations during a major counterterrorism operation is a highly sensitive matter. Violations can be and are indeed committed by government forces as well as terrorist groups. Countries such as the US, UK, Argentina, Mexico, Chile, Peru, and so on have witnessed such episodes. The international community must ensure that actions to protect the human rights of the population do not undermine the international struggle against terrorism. There is an unfortunate tendency to apply double standards and geopolitical interests in this game.

At the end of the day, the UNHRC Resolution is a Pyrrhic victory. Sri Lanka will have no incentive to cooperate with an investigation that will be literally a trial *in absentia* with a predetermined conclusion. If this happens, the credibility of the UNHRC will be damaged. It is unfortunate that so many Latin American states and developing countries have yielded to Western pressure in supporting such a resolution. The task of helping to heal the wounds of the 26-year civil conflict in Sri Lanka will have to be undertaken by Sri Lanka's Asian neighbours, among which India has a prominent place. It will be a challenge for India to find constructive ways to engage with Sri Lanka to move forward towards national reconciliation.

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