

*We have the following report from Sunila Abeysekera, human rights activist, who represented some Sri Lankan human rights groups at the 48th session of the United Nations Human Rights Commission in Geneva.*

## THE UN HUMAN RIGHTS COMMISSION : GENEVA, FEBRUARY 1992

Sunila Abeysekera

**T**he Commission on Human Rights is the principal human rights body of the United Nations. From 1992, it has consisted of 53 members, elected for 3 year periods by the Economic and Social Council (ECOSOC) of the UN. The HRC meets once a year for a six week session in February/March. The Sessions held in 1992 was the 48th since its inception.

The chief subsidiary body of the UNHRC is the Sub-Commission on the Prevention of Discrimination and Protection of Minorities, which meets every year in August; the Sub-Commission consists of 26 'experts' who are elected by the Commission to serve in an **individual** capacity. The Sub-Commission undertakes studies, drafts proposals for new instruments and submits recommendations to the Commission for further action in the field of human rights.

The UN Human Rights Commission has also set up a range of other mechanisms, by which it can undertake investigations into allegations of human rights abuses, such as the Working Groups and Special Rapporteurs. Over 139 Non-governmental organisations are accredited to the UN HR Commission and submit oral and written statements on different aspects of the Commission's work during the sessions.

One of the most sensitive items, on the agenda of the UN HR Commission, each year is, Item 12, which deals with the question of the violation of human rights and fundamental freedoms in any part of the world; under this agenda item there is also a special procedure - 1503 - which allows for the confidential discussion of

situations, in which a consistent pattern of gross violations of human rights exists among the member countries. Under this procedure, the Commission can - and has - appointed a number of Rapporteurs to investigate abuses in individual countries over which there is a special concern.

Once it has been substantively established that consistent violations of human rights abuses are taking place in any country, the HR Commission can consider passing a Resolution on this particular country; the Resolution has to be tabled by a country that is a member of the Commission and the matter then comes up for public debate; countries that are members of the Commission and other countries that are member states of ECOSOC but are not members of the HR Commission may participate in the debate. If there is a major difference of opinion, a vote may decide the outcome of the Resolution.

In recent years, the mechanism of a Chairman's statement has been resorted to, as a means of expressing the consensus opinion of the Commission with regard to the situation in a particular country without going as far as passing a Resolution against the country concerned. This means that there is no public debate or discussion regarding the issue; behind-the-scene negotiations between the country which is being subject to censure and members of the Commission, result in a statement being read out by the Chairman of the session.

Over the years, there has been growing criticism of the role played by the UN HR Commission in determining which

countries should be censured for committing violations of human rights, and which should not. Some observers have pointed out that geo-political considerations, at times, seem to outweigh human rights needs, and say that countries singled out for censure are most often those with few allies in the world arena.

In 1992, the oral intervention of the International Commission of Jurists, under Agenda Item 12, focused strongly on this problem: 'Each year, political considerations seem to play as great a role in the Commission's decision-making as the human suffering, which action by the international community might help to alleviate. Last year, the ICJ drew attention to the Commission's repeated failure to denounce widespread abuses in Iraq, until Iraq's invasion of Kuwait made it expedient to do so. The trend towards political expedience continues, however. Last year, a compromise was reached on Iran which would terminate the mandate of the Special Representative, 'if there is further progress achieved' regarding the human rights situation. But, has Iran's human rights performance progressed or merely its political standing? Does placing Cuba, but not Guatemala under the Agenda Item reflect on the dignity with which citizens of these countries live, or on their government's relative positions in the 'new world order'? Why are African countries, other than South Africa exempt from public criticism? What is the difference between Indonesia's brutal occupation of East Timor and Iraq's destruction of Kuwait - other than Kuwaiti oil? →

## THE UN HUMAN RIGHTS...

The expanded HR Commission, which sat for the first time in February this year, consists of 53 members; the so-called developed nations are represented by 11 countries - Australia, Austria, Canada, France, Germany, Italy, Japan, Netherlands, Portugal, the U.K. and the U.S.A. - while Asian, African and Latin American countries make up the rest. Thus, the balance of power within the Commission is now heavily weighted in favour of the so-called developing world.

This leads to a very ironic situation in terms of political manoeuvring and lobbying work within the UN HR Commission. Since most states in the developing world are authoritarian ones, which are involved in the suppression of the democratic rights and fundamental freedoms of their citizens, they form a unified bloc in resisting attempts by other 'Western' countries to criticise their regimes or impose sanctions on them; they freely use the terms 'neo-colonialism' or 'imperialist domination' to denounce their critics. Those from the developing countries who oppose their states' practices and who fight for human rights within those countries are, on the other hand, forced to forge alliances with their erstwhile colonial 'masters' in order to get the situation in their countries discussed.

Another debate, which is taking place within the UN HR Commission, particularly within the human rights NGO community, is that of how to censure militant or armed movements that are seen to violate fundamental freedoms. While, for many years, the practice had been to lay the blame for human rights

violations firmly at the door of the state/s concerned, in the past two years, one has increasingly noted that there is criticism also of the actions and activities of armed and militant groups. For example, in the Sri Lankan case, in the past two years both national and international NGOs have denounced human rights abuses committed by the LTTE and the JVP, at the same time as they condemn the state as being primarily responsible for the situation.

The Latin American NGOs strongly feel that one should take care not to give equal weight to the violations committed by the state vis-a-vis violations committed by armed groups; the argument is that the state is primarily responsible for human rights abuses and for creating and perpetuating a situation within a country which permits such human rights violations by whom-so-ever committed.

The Philippine groups also argued that since only states are signatories to the International Covenants regarding Human Rights, only states can be held responsible for violations of the articles of these Covenants; they state that other armed groups can be held responsible for violations of **humanitarian law**.

There is general concern, also expressed about the political implications of such censure, in that they implicitly acknowledge the existence and power of such groups, including their control over certain parts of a state's territories.

At the beginning of the 48th session of the UN HR Commission in February 1992, there was a strong possibility that there would be a Resolution on Sri Lanka. The fact that, the UN Working Group, on

Disappearances presented its report on its visit to Sri Lanka on October 1991 and that, in the report there was an acknowledgement that the situation in Sri Lanka was the 'worst ever' in the records of the Working Group was a key factor. There were also reports from Amnesty International, Asia Watch and the ICJ that pointed to the grave deterioration of the human rights situation in the island. However, on the other side, were factors such as the openness of the Sri Lankan government to visits by the Working Group as well as by non-governmental teams from Amnesty International, Asia Watch and a Canadian Fact Finding Mission which had visited Sri Lanka in January 1992. There were also various positive reports from the Sri Lankan government regarding a number of mechanisms such as the Human Rights Task Force and the Commission of Inquiry into the Involuntary Removal of Persons which had been set up in the past year. The Sri Lankan government delegation was therefore able to show, with some degree of success, that it had every intention of working towards improving the human rights situation in the country.

In this context, a consensus was reached, following which a Chairman's statement on the situation in Sri Lanka was read out at the sessions of 27th February. It is, now, the responsibility of the Sri Lankan government to honour the commitments made to the international community at the 48th session of the UN HR Commission, and of NGOs concerned about human rights in Sri Lanka to maintain a continuous vigil with regard to the situation in Sri Lanka.

## Chairman's Statement on the Human Rights Situation in Sri Lanka

I have been requested to make the following statement on behalf of the Commission.

The Commission acknowledges the measures taken by the government of Sri Lanka to address the human rights situation throughout the country, particularly the establishment of institutions and other mechanisms to monitor and inquire into reports of disappearances and other human rights violations, and that these measures have led to an improved human rights situation for the civilian population.

The Commission welcomes the full and valuable co-operation accorded by the government of Sri Lanka to the Working Group on Enforced or Involuntary Disappearances.

The Commission is, however, seriously concerned over the human rights situation in Sri Lanka indicated, *inter alia*, in the report of the Working Group (E/

CN.4/1992/18/Add.1), particularly the large number of disappearances recorded by the Working Group, and concerned that, whilst there has been an overall decline, incidents of disappearances continue to be reported.

The Commission calls upon the government of Sri Lanka to further intensify its efforts to ensure the full protection of human rights and further calls upon all parties to respect fully the universally accepted rules of humanitarian law.

The Commission urges the government of Sri Lanka to continue to pursue a negotiated political solution with all parties, based on principles of respect for human rights and fundamental freedoms, leading to a durable peace in the north and east of the country.

The Commission urges the government of Sri Lanka to implement the recommendations of the Working Group, and

expresses its satisfaction at the willingness of the government of Sri Lanka to take the necessary steps to implement the recommendations of the Working Group.

The Commission welcomes the decision of the government of Sri Lanka to invite the Working Group on Enforced or Involuntary Disappearances to again visit Sri Lanka for the purpose, *inter alia*, of evaluating the progress of the implementation of its recommendations during the course of 1992.

The Commission looks forward to considering the Working Group's report of its follow-up visit to Sri Lanka at the 49th session of the Commission of Human Rights.

It is the wish of the Commission that this statement appears verbatim in the Report of the 48th session of the Commission of Human Rights. ■

'Life is a battle' is a proposition which must at first have expressed melancholy and resignation. But our century of optimism and massacres has succeeded in making this terrible sentence sound like a joyous refrain. You will say that to fight against somebody may be terrible, but to fight for something is noble and beautiful. Yes, it is beautiful to strive for happiness (or love, or justice, and so on), but if you are in the habit of designating your striving with the word 'fight', it means that your noble striving conceals the longing to knock someone to the ground. The fight *for* is always connected with the fight *against* and the preposition 'for' is always forgotten in the course of the fight in favour of the preposition 'against'.

Milan Kundera  
*Immortality*