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# Indo-Sri Lanka Accord: Intervention by Invitation or Forced Intervention

## **Cover Page Footnote**

International Law; Commercial Law; Law

# **Indo-Sri Lanka Accord: Intervention by Invitation or Forced Intervention?**

*Roshani M. Gunewardene\**

The concept of one state's intervention in another state's internal affairs by invitation has been recognized in international law in modern times. It is the nature of the invitation to intervene, however, that indicates whether or not the intervention is legitimate. The Indian military occupation in the northeastern part of Sri Lanka at the "invitation" of the Sri Lankan government is an example of an intervention resulting from a covertly orchestrated invitation coerced by India. This Article analyzes the facts and circumstances that led to the Indian peace keeping force's intervention in Sri Lanka's ethnic civil war, specifically how political, social, and economic pressures may have forced the Sri Lankan government to "invite" the Indian intervention. Whether the invitation was legitimate and whether the intervention went beyond the stated purpose of settling the ethnic dispute should be evaluated according to accepted standards of international law. A detailed summary of the evolution of the ethnic conflict and Indian participation is necessary in order to make an appropriate evaluation.

## **I. Historical Evolution of Accord**

### *A. Sinhala-Tamil Ethnic Conflict*

The Sinhalese, who claim to have come from the Bengali area of north India over 2,000 years ago, constitute the majority of the island country of Sri Lanka. The Tamils, who came during successive invasions of South Indian kings, are a distinct minority comprising about 12.5 percent of the population. The Sinhalese Kingdom was forced southwards by these invasions in the thirteenth century, and the Tamil Kingdoms reigned in most of northern and eastern Sri Lanka. Even after four hundred years of European colonization, the

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Sinhalese hold deep-seated suspicions towards the Tamilians as former colonizers-cum-invaders.

The current ethnic conflict has been traced by some historians to the governorships of Sir Robert Chalmers (1918-1925) and his successor, Sir Hugh Clifford (1925-1927), during the British colonial era.<sup>1</sup> Ethnic discord erupted during the 1920s when the national movement for independence led by the Ceylon National Congress split into two factions.<sup>2</sup> One of the factions was the Sinhala Maha Sabha (The Great Congress of the Sinhalese) which was led by S.W.R.D. Bandaranaike, and the other was the Tamil Congress, led by G.G. Ponnambalam.

In 1947, the Tamil Congress appealed to the Soulbury Commission to grant parity of status to both ethnic groups despite the vast difference in numbers between the Tamils and the Sinhalese.<sup>3</sup> The Soulbury Commission recommended to the British government that protective status be granted to ethnic minorities at the time of granting independence to Sri Lanka in 1948. However, Britain did not attempt to create two distinct nationality provisions in the first constitution, as it did in the case of India and Pakistan. Instead, it left Sri Lanka to decide the issue under the United National Party (UNP) government.<sup>4</sup> The Citizenship Act excluded those of Indian Tamil and Pakistani origin from claiming citizenship rights and created a large group of stateless Indian Tamil plantation laborers. Indian concern over the Indian Tamil laborers' citizenship rights was ignored by successive Sinhalese-dominated governments, although some mutual diplomatic agreements were reached in 1964 and during the 1970s.<sup>5</sup>

In 1958, the Sri Lankan government, headed by the Sri Lanka Freedom Party (SLFP) and dominated by Sinhala-Buddhists, passed the Official Language Act, which made Sinhala the sole official language of the island. Sinhala-Tamil riots ensued, and ethnic divisions fermented.<sup>6</sup> In 1976, the Federal Party passed a resolution in Vadukodai calling for a separate state for the Tamil people called Eelam. The Federal Party then renamed itself the Tamil United Liberation Front (TULF).

In the 1977 general elections, the TULF won all 18 Tamil seats, and its leader, A. Amirthalingham, was awarded the status of Leader of the Opposition. Subsequently, Tamil youth vowed to pursue a separate state through armed insurrection. As a result, many gov-

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<sup>1</sup> Marasinghe, *The Indo-Sri Lankan Accord in Perspective*, 21 VERF. & R. UBERSEE 157 (1988).

<sup>2</sup> *Id.* at 157.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.* at 157-58.

<sup>5</sup> S. VANIASINGHAM, *SRI LANKA: THE CONFLICT WITHIN* 76 (1988).

<sup>6</sup> Marasinghe, *supra* note 1, at 158.

ernment and quasi-governmental officers were killed between 1977 and 1983. During that period, the Tamil guerrillas escalated their war by using sophisticated weaponry and by training their men in foreign countries, mainly India.<sup>7</sup>

The Indian government's intelligence bureau, the Research and Analysis Wing (RAW), had infiltrated the Tamil militant groups who were being trained in Indian camps with the blessings of the Tamil Nadu state government.<sup>8</sup> The Indian government, however, routinely denied all allegations that it was fermenting secessionist movements on its soil. In the 1985-87 period, former Prime Minister Rajiv Gandhi became a prime mediation figure in a solution for Sri Lanka's ethnic problem. The arrest of militants in Madras, mass fingerprinting, arms seizures, and related recordation revealed clear evidence of Indian involvement, largely covert, in training Sri Lanka's Tamil separatists.<sup>9</sup> However, all militants were released without any legal action taken against them, an indication that Tamil Nadu politicians disfavored any action adverse to their ethnic brethren and protégés. The Indian central government was not successful in curtailing the activities of militants since the Tamil Nadu state government itself had called for secession in the mid-1960s, and was now regarded as a major political force in India's Congress Party politics.<sup>10</sup>

#### *B. Seeds of Direct Indian Participation*

On July 23, 1983, the Tamil militants ambushed a convoy of the Sri Lankan army and killed thirteen soldiers. This incident sparked anti-Tamil riots in Colombo and other Sinhala-dominated areas of Sri Lanka. Many Tamils lost their lives and property, and some were forced to seek refuge in South India. As a response to these events, the Parliament enacted the Sixth Amendment to the Constitution, calling upon all members of Parliament to reaffirm their allegiance to a unitary state.<sup>11</sup> The TULF members who advocated a separate state refused to pledge their allegiance and as a result lost their status in Parliament.

In the meantime India, which had been a mere covert participant, via the State of Tamil Nadu, in the Sinhala-Tamil ethnic conflict, was pressured by the Tamil Nadu government to mediate a settlement.<sup>12</sup> Indira Gandhi sent her Foreign Minister, Narasimha Rao, and Foreign Policy Advisor, Gopalaswamy Parathasarthy (a Tamil), to Colombo. India offered its services as good officer in me-

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<sup>7</sup> R. GUNARATNA, *WAR AND PEACE IN SRI LANKA*, 51-53 (1987).

<sup>8</sup> A. WILSON, *THE BREAK-UP OF SRI LANKA*, 204 (1988).

<sup>9</sup> S. VANNIASINGHAM, *supra* note 5, at 96-97.

<sup>10</sup> See A. WILSON, *supra* note 8, at 202.

<sup>11</sup> Marasinghe, *supra* note 1, at 158.

<sup>12</sup> *Id.* at 159.

diating an acceptable settlement to the problem, but continued to host the Tamil militant groups and their training camps and thousands of Sri Lankan Tamil refugees.

Indira Gandhi, under pressure from Tamil Nadu, also had a secret plan for the invasion of Sri Lanka; the Fifteenth Independent Para-Brigade, the paratroopers of the Indian Army, were prepared to capture crucial Sri Lankan air strips in August of 1984. This plan was uncovered when some secret Indian defense files which included the invasion strategy were given to a French agent and released to the press.<sup>13</sup> The plan was never implemented due to Indira Gandhi's assassination in October 1984.

Parthasarthy's shuttle diplomacy resulted in a proposal for Regional Councils within the Tamil dominated areas. These councils were to be granted internal powers in administration of justice, economic development, land policy, education, health, and social services. The Regional Councils also were to share powers of taxation, transportation, and communications with the central government.

The Sri Lankan President at that time, J.R. Jayewardene, called for an All-Party Conference (APC) in January 1984 to consider these proposals. All religious groups were also invited to participate in the talks, which continued until September 1984. The talks proved futile, however, as the Sinhala-Buddhist lobby would not relent from its demand for granting only District Development Councils. The District Development Council proposal had been rejected by the Tamils as early as 1980, because the District Development Council elections were rigged.<sup>14</sup>

Jayewardene attempted to propose a Draft Bill in December 1984 which would have added the Tenth Amendment to the Constitution. The proposed amendment included an amalgamation of District Development Councils and Regional Councils, with the latter being formed after a referendum. The bill was later incorporated in the 1987 Accord between India and Sri Lanka.

One of Jayewardene's Ministers, Cyril Mathew, expressed his opposition to the amendment by sending a letter to Sinhala Friends.<sup>15</sup> Mathew was dismissed from the cabinet in December 1985 for his insubordination. Jayewardene, however, sent mixed signals when he dissolved the All Party Conference. As a result, the TULF leaders returned to India, declaring that Jayewardene had chosen a military solution to the problem.<sup>16</sup> In early 1985, the northern and eastern provinces of Sri Lanka came under guerilla control and the government created the Special Task Force (STF),

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<sup>13</sup> R. GUNARATNA, *supra* note 7, at 58.

<sup>14</sup> Marasinghe, *supra* note 1, at 160-61.

<sup>15</sup> *Id.* at 161.

<sup>16</sup> *Id.* at 161-62.

an elite para-military police force, to deal with the situation. Jayewardene also opened an Israeli Interest section in the United States Embassy to obtain Israeli military advice and strategy on combatting guerilla-type terrorism. In addition, some logistical and weapons support was secured from Pakistan and China, causing friction with India.

Jayewardene blamed the volatile situation on Parathasathy, and accordingly requested India for a change in personnel. The new Prime Minister, Rajiv Gandhi, responded by sending Romesh Bandhari. A mini-summit between Jayewardene and Gandhi followed in June 1985. Rajiv Gandhi pledged his adherence to the idea of a unitary state in Sri Lanka, and persuaded the Tamil guerrillas to observe a cease-fire, which lasted only a few weeks. Rajiv Gandhi also invited Sri Lankan lawyers to engage in a dialogue with Gandhi's Attorney General to pave the way for mediation with the separatists.<sup>17</sup> Talks between Sri Lanka and the separatist groups were held in Thimpu, Bhutan, but produced nothing of substance. India, however, made it clear to the separatist groups that it would dismantle the military bases and training camps in the southern state of Tamil Nadu if they were unwilling to negotiate an amicable settlement.<sup>18</sup>

India's role as a mere good officer gradually evolved into that of a major player and power-broker in the settlement of Sri Lanka's civil and ethnic conflict. India made her political might clear by arresting two of the militant leaders, Balasingham, chief of the political Bureau of the Liberation Tigers of Tamil Eelam (LTTE) and Chandrahasan, head of the Organization for the Protection of Tamils of Eelam from Genocide (P.R.T.E.G.), who had refused to attend the Thimpu talks. Balasingham was deported to the United Kingdom because he was supposed to be a citizen of that country, and Chandrahasan was flown to the United States because he had a valid visa to enter that country.<sup>19</sup> Both leaders were later readmitted to India, but only after much bureaucratic maneuvering on the militants' part. The strength and interest of India in settling the dispute according to its terms was made abundantly clear in this preview of what was in store for Sri Lanka.

### C. *India as Mediator*

Despite their failure, the Thimpu talks did bring about a statement by the separatist groups outlining their minimum objectives. Most of these demands, including the concept of a Tamil homeland in the north and the east, were rejected by the Sri Lankan govern-

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<sup>17</sup> *Id.* at 162-63.

<sup>18</sup> *Id.* at 163.

<sup>19</sup> *Id.*

ment.<sup>20</sup> Private discussions between the TULF and the UNP on possible devolutions of power continued during the first half of 1986. During this time Sri Lankan citizenship was granted to 94,000 Indian Tamils and their legitimate offspring, amounting to a total of approximately 150,000 people.

Subsequent to the Thimpu talks, a Political Parties Conference (PPC) was convened and a proposal for three levels of government (central, provincial, and local) in the northern and eastern provinces was formulated. However, the major militant group, the LTTE, rejected the proposal since one of the districts in the east, Amparai, would be detached. The LTTE called for the de-Sinhalization of the Amparai district and the incorporation of Amparai into the eastern province.<sup>21</sup> They also called for a linkage of the northern and eastern provinces. The Sri Lankan government rejected this proposal, and India put pressure on both sides to come to a settlement.

In the period between December 27, 1986, and June 1, 1987, guerilla fighting in the north and east intensified. Sporadic attacks occurred in Colombo and other areas. The talks between Sri Lanka and the separatist groups were becoming deadlocked.<sup>22</sup> The Sri Lankan government intensified its operations with aerial bombardments on guerilla bases in the Jaffna Peninsula. An economic blockade was also placed on the Jaffna Peninsula.<sup>23</sup> The Sri Lankan army was gaining ground in the north for the first time.

As the Sri Lankan army gained ground, Dixit, Gandhi's emissary, warned Sri Lanka against exercising any military action against Jaffna, the traditional capital of the Tamils.<sup>24</sup> India's repeated warnings to the Sri Lankan government to stop the operation went unheeded. As a result, India sent a twenty-boat flotilla with relief supplies to the beleaguered Jaffna Peninsula.<sup>25</sup> The flotilla was intercepted by the Sri Lankan navy and directed to return to India.

On June 4, 1987, India air-dropped 25 tons of food and other supplies into the Jaffna Peninsula. The transport planes were escorted by French Mirage 2000 fighters. India claimed that this was an act of humanitarian intervention.<sup>26</sup> Sri Lanka claimed it was a violation of its sovereignty and territorial integrity.<sup>27</sup> India had already made it easy to intervene militarily if necessary by reinforcing the

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<sup>20</sup> *Id.* at 164.

<sup>21</sup> *Id.* at 167.

<sup>22</sup> *Id.* at 168.

<sup>23</sup> Asian Recorder, Mar. 12-18, 1987, at 19,365, col. 2; *see also* Sri Lanka News, Aug. 23, 1989, at 10, col. 2.

<sup>24</sup> Asian Recorder, *supra* note 23, at 19,365, col. 2.

<sup>25</sup> Asian Recorder, Aug. 13-19, 1987, at 19,600, col. 2.

<sup>26</sup> Note, *The Indian Supply Drop into Sri Lanka: Nonmilitary Humanitarian Aid and the Troubling Idea of Intervention*, 3 CONN. J. INT'L L. 417, 418 (1988).

<sup>27</sup> Asian Recorder, *supra* note 25, at 19,600, col. 2.



southern command at the Tanjavur air base.<sup>28</sup>

India insisted that the Tamils in the northern province were in virtual starvation and made arrangements under a joint communique between the Indian and Sri Lankan governments to continue to supply the Tamil regions with relief supplies.<sup>29</sup> The international reaction to this event was unenthusiastic.<sup>30</sup> Only some members of the South Asian Association for Regional Cooperation (SAARC), namely Pakistan, Bangladesh, Nepal, and the Maldives, openly protested the action. The Buddhist clergy and the ultra-leftist guerrillas, the Janatha Vimukthi Peramuna (JVP), declared their total opposition to the Indian intervention and to any concessions to the Tamils beyond granting them District Development Councils.

On July 17, 1987, the President of Sri Lanka and his Minister of National Security and Minister of Land and Land Development met with the Indian High Commissioner to explore possibilities for settlement. Prabhakaran, the leader of the LTTE guerilla group, was flown in, along with members of the TULF, the formerly civilian Tamil Separatist Party, to come to some agreement on the matter. Prabhakaran was held incommunicado under the guard of the ferocious "black cats"—an Indian anti-terrorist battalion.<sup>31</sup> Prabhakaran later announced that he had protested against the so-called Peace Accord between India and Sri Lanka, but was not taken seriously by the Indian premier or his stalwarts.<sup>32</sup> India's dominance as a geopolitical power was felt by both the Tamil groups and the Sri Lankan government, which ultimately had to yield to the proposals of India. No parliamentary debate or political party consensus between the two ethnic divisions was permitted.<sup>33</sup>

Jayewardene announced that the Indo-Sri Lanka Accord would be signed on July 29, 1987. There was much dissension within Jayewardene's cabinet, and Gamini Jayasuriya, a veteran cabinet member, resigned. The Prime Minister at that time, R. Premadasa, openly opposed the Accord and was absent from the signatory ceremony. Also absent was the National Security Minister, who expressed acquiescence merely as a gesture of political party solidarity. Seven of the twenty-nine cabinet ministers were absent from the functions associated with the signing of the Peace Accord.<sup>34</sup> Some suggest that the Accord was hurriedly signed in late July in order to preempt United States Congress discussions of human rights viola-

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<sup>28</sup> Marasinghe, *supra* note 1, at 168.

<sup>29</sup> Asian Recorder, *supra* note 25, at 19,601, col. 1.

<sup>30</sup> Marasinghe, *supra* note 1, at 168.

<sup>31</sup> *Id.* at 169.

<sup>32</sup> R. GUNARATNA, *supra* note 7, at 8.

<sup>33</sup> See Marasinghe, *supra* note 1, at 169.

<sup>34</sup> Asian Recorder, Sept. 10-16, 1987, at 19,642, col. 1.

tions in Sri Lanka on August 4, 1987.<sup>35</sup>

The masses, particularly in the Sinhala regions, vehemently opposed the Accord. The Buddhist clergy performed "Satyagraha," a form of passive resistance, and the SLFP, the major opposition party, demonstrated on the streets of the capital with banners. The JVP-controlled university student organizations destroyed public property worth 4.2 billion Sri Lankan rupees.<sup>36</sup> Even during the signing ceremony, Rajiv Gandhi was attacked by a Sri Lankan navy honor guard with a rifle butt. This navy guard was considered a hero by much of the Sinhala population in the south.<sup>37</sup> It was no secret that the Sri Lankan armed forces disliked the agreement.

#### D. The "Peace Accord"

The Indo-Sri Lankan Accord was drafted to enable the Indian government to intervene militarily in the ethnic conflict with the tacit approval of the Sri Lankan government. The Accord recognized, however, that Sri Lanka was a unitary state and that its territorial integrity and sovereignty should be protected.<sup>38</sup> Most of the demands of the Tamil ethnic group were acknowledged, such as recognition of the Northern and Eastern provinces as areas of historical habitation of the Sri Lankan Tamil peoples and a proposal for possible linkage of the Northern and Eastern Provinces after a referendum.<sup>39</sup> For its part, Sri Lanka was to withdraw its armed forces from the area on the condition that the Tamil militant groups turn over their arms and surrender to the government. Section 2.16 of the Accord laid the ground-work for the Sri Lankan government to request military aid, as a peace keeping force, and for India to respond unconditionally.<sup>40</sup>

India sought to exploit its superior bargaining power to persuade the Sri Lankan government to accept conditions that would solidify India's political power over Sri Lanka's foreign policy. In the Exchange of Letters, it was outlined that Sri Lanka should not "employ foreign military and intelligence personnel" which would jeopardize Indo-Sri Lankan relations. In addition, the work of restoring the Trincomalee oil tank would be undertaken as a joint venture between India and Sri Lanka, and Sri Lanka would provide foreign broadcasting organizations facilities only for public broadcast purposes, not for any military or intelligence purposes.<sup>41</sup>

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<sup>35</sup> S. VANNIASINGHAM, *supra* note 5, at 144-45.

<sup>36</sup> Marasinghe, *supra* note 1, at 170.

<sup>37</sup> Hennayake, *The Peace Accord and the Tamils in Sri Lanka*, 29 ASIAN SURVEY 401, 408 (Apr. 1989).

<sup>38</sup> *Id.* at 408.

<sup>39</sup> Marasinghe, *supra* note 1, at 180-81.

<sup>40</sup> *See id.* at 182; *see also* Sri Lanka News, Oct. 5, 1988, at 6-7.

<sup>41</sup> *See* Marasinghe, *supra* note 1, at 184.

India agreed to train and provide military supplies for Sri Lankan security forces and to deport all Sri Lankan citizens who were engaging in terrorist or separatist activities in India.<sup>42</sup> India has failed to honor the latter condition to this day. The Accord brought about a token surrender of arms by most Tamil militant groups, but the most belligerent of the Tamil guerrillas, the LTTE, reneged on the agreement and began intense fighting against the Indian Peace Keeping Forces (IPKF).

#### *E. India as Active Military Leader*

Less than three months after the signing of the Accord, the Jaffna Tamils started supporting the Tamil military groups, popularly referred to as the "boys."<sup>43</sup> The IPKF, which was ill-prepared to fight the "hit and run" style guerrillas, took their revenge for any Indian army casualties on Tamil civilians.<sup>44</sup> Several civilians were brutally murdered, tortured, or sexually molested for the crimes committed by the Tamil militant groups. India also followed a policy of "divide and rule" by backing the Eelam People's Revolutionary Liberation Front (EPRLF), and by later making it the puppet government of the Provincial Councils in the North and the East.<sup>45</sup> Ironically, many Tamil civilians began to identify themselves as Sri Lankans for the first time in years and dubbed the IPKF as the "Innocent People Killing Force."<sup>46</sup> The Tamils also realized that Tamil Nadu was not as close an ally as they had expected, and that the Tamils of India identified first and foremost with the Indian government.<sup>47</sup>

#### *F. India as Hostile Occupation Army*

President Jayewardene's successor, R. Premadasa, called for the withdrawal of the IPKF and the replacement of the Indo-Sri Lankan Peace Accord with an Indo-Sri Lankan Friendship Treaty.<sup>48</sup> India was initially asked to withdraw its troops by July 29, 1989, but due to pressure from the Indian-backed EPRLF provincial government, the Indians renegotiated for a gradual withdrawal of troops.<sup>49</sup> The IPKF has been accused of training EPRLF cadres for the "Tamil National Army," which was subsequently decimated by the LTTE.<sup>50</sup> India

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<sup>42</sup> *Id.*

<sup>43</sup> Hennayake, *supra* note 37, at 412.

<sup>44</sup> Indian Express, Sept. 3, 1989, at 8, col. 1; Bose, *Was This Our War? IPKF's Abject Failure in Sri Lanka*, The Statesman, Oct. 16, 1989, at 8, col. 4.

<sup>45</sup> See generally Hennayake, *supra* note 37, at 413.

<sup>46</sup> See *id.*

<sup>47</sup> See *id.* at 414.

<sup>48</sup> Sri Lanka News, Oct. 19, 1988, at 1, col. 2.

<sup>49</sup> Asia Week, July 28, 1989, at 18-20, col. 1; Sri Lanka News, June 28, 1989, at 1, col. 1.

<sup>50</sup> The Statesman, Dec. 18, 1989, at 1, col. 7.

also air-dropped supplies to this paramilitary army of the EPRLF in an area from which Indian troops had withdrawn.<sup>51</sup>

India attempted to prolong its military presence in Sri Lanka by invoking section 2.16(e) of the Accord.<sup>52</sup> That attempt failed, however, because both the Sri Lankan government and the Tamil civilians at large wanted the IPKF out of Sri Lanka. Nonetheless, Tamil Nadu will continue to play a major role in uniting the various warring Tamil factions to face an orderly transition to civilian rule in the region. Thus, India's geopolitical influence and covert military presence in Sri Lanka will continue.<sup>53</sup>

## II. India: Invitee or Intervener?

The detailed current political history of Sri Lanka's ethnic conflict indicates that India may have staged events so as to obtain a legal justification to enter Sri Lanka as an "invited" guest and control parts of Sri Lanka. The Sri Lankan Tamils lured India into the conflict, but later realized that India had her own interests in controlling Sri Lanka's ethnic conflict. Part of India's interest was in foreign policy issues. It is widely acknowledged that India may have nullified Sri Lanka's ability to conduct its own foreign policy under the accord.<sup>54</sup> Others claim that India had an economic interest in being involved in the conflict—mainly to sell its military hardware.<sup>55</sup> From a pure international law standpoint, whether or not India's intervention was by "invitation" or by coercion of Sri Lanka can be evaluated only by looking at the various elements that could justify the intervention.

### A. Was the Indo-Sri Lankan Accord Signed by the Established Government Without Coercion?

There is no doubt that Prime Minister Rajiv Gandhi, as chief executive of India, had full powers to enter into the Accord with Sri Lanka. Jayewardene also consented to the treaty on the basis of his far-reaching executive powers as President of Sri Lanka.<sup>56</sup> From Sri Lanka's perspective, however, India's invitation was not based on mutual agreement. The Accord was rather a means for India to gain control over Sri Lanka's internal and foreign affairs.<sup>57</sup>

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<sup>51</sup> Sri Lanka News, Dec. 20, 1989, at 1, col. 2.

<sup>52</sup> Suryanarayana, *Sri Lanka: New Accord, New Twists*, Indian Express, Sept. 28, 1989, at 8, col. 3.

<sup>53</sup> Indian Express, Feb. 27, 1990, at 1, col. 4; see Indian Express, Mar. 23, 1990, at 7, col. 2.

<sup>54</sup> Marasinghe, *Ethnic Politics and Constitutional Reform: The Indo-Sri Lankan Accord*, 37 INT'L & COMP. L.Q. 551, 570 (1988).

<sup>55</sup> Marasinghe, *supra* note 1, at 174-75.

<sup>56</sup> *Id.* at 169; see also Glennon, *Treaty Process Reform: Saving Constitutionalism Without Destroying Diplomacy*, 52 U. CINN. L. REV. 84, 99 (1983).

<sup>57</sup> Hennayake, *supra* note 37, at 405-06.

This author proposes that the President of Sri Lanka did not have a clear mandate from the Sri Lankan people to sign the Accord, and as a result was overreaching his executive powers. Jayewardene was elected directly by the people, and had the authority to dissolve the Parliament if it failed to ratify the Accord.<sup>58</sup> Nonetheless, he should have held a referendum prior to unilaterally signing the Accord with India. The overwhelming opposition to the Accord even within the ruling party, as illustrated above, required some accountability to the general Sri Lankan public. As a proponent of this minority view, the author is aware that under international law, those elected and recognized as leaders of states are considered to have the authority to enter into treaties.<sup>59</sup> However, in Sri Lanka's case, the President had power only under the law, but not in fact. If a referendum had been held on the Accord, an overwhelming majority of the Sri Lankan public would have rejected it. The fact that even the Tamil militants accepted the Accord only under duress lends credence to this statement.

Although international law would recognize Jayewardene's authority to act in binding Sri Lanka, a cloud overshadows the validity of the Accord because a majority of Sri Lankans opposed it, and some even adopted a militant stance against it. Furthermore, Jayewardene and his cabinet ministers' lives were threatened soon after the signing of the Accord, when suspected JVP militants threw bomb grenades into the parliament, where the Accord was being discussed.<sup>60</sup> Although Jayewardene escaped injury, one of his ministers died and several others were injured, including the Prime Minister and the national security minister.

Although international legal norms generally look only to the duly elected or selected state representative to validate treaties of this nature, some attention should be given to whether the state representative is popularly supported in entering into the treaty in question, in order to assess its validity. Current international norms do, in fact, invalidate treaties entered into by puppet governments; but there is disregard for situations, such as in Sri Lanka's case, where a civil war exists and the de jure government makes the invitation. In situations where a foreign army is "invited" to crush an ethnic or civil conflict, popular support for the inviting government's invitation should be taken into account in assessing the validity of the agreement or accord. Perhaps the United Nations should take the lead in formulating standards to judge whether a de jure government is popularly supported by the people of the inviting state. Some fac-

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<sup>58</sup> Asian Recorder, *supra* note 34, at 19,644.

<sup>59</sup> Vienna Convention on the Law of Treaties, May 22, 1969, art. 7, 1155 U.N.T.S. 331, 334 [hereinafter Vienna Convention]; see generally M. VILLIGER, CUSTOMARY INTERNATIONAL LAW AND TREATIES, 92-93 (1985).

<sup>60</sup> Asian Recorder, Sept. 17-23, 1987, at 19,655-56.

tors that should be included in this standard are: whether the elected government has put the question of invitation to a vote before the people either at a nationwide referendum or at a general election; whether there is sustained opposition, including organized violence against the invitation; and whether the entire local population would be affected by the "invited" intervention.

*B. India's Actions Prior to the Accord Amounted to Threat of Force*

Even if, under currently accepted international norms, the Accord was entered into by Sri Lanka's duly authorized representative, the question remains whether India used threats of force to coerce Sri Lanka into acquiescing to the Accord and the subsequent military intervention. Coercion by threat of force is an explicit or implicit communication to the target state that military force may be used if the state fails to conform to a pattern of behavior acceptable to the threatening state.<sup>61</sup> The threat of force can be communicated through diplomatic or similar channels, through formation of defensive alliances, and through positive actions, such as deployment of military forces in close proximity to the target state, military maneuvers, and similar acts.<sup>62</sup>

In Sri Lanka's case, India has secretly, but consistently, assisted the Tamil separatist groups since the late 1970s, by providing weapons, military training, and logistical support. India's military intelligence wing has also been involved in these actions. When the Sri Lankan government was not complying with the demands of the Indian-backed separatist groups, was obtaining assistance from China and Pakistan to crush them, and was seeking defense assistance from the British and the Americans, the Indians even had a carefully organized plan to invade Sri Lanka, as highlighted above. The idea of India becoming a good officer was also part of a plan to coerce Sri Lanka into adopting a political and military solution to the ethnic conflict according to India's terms.

India's true motives surfaced when it air-dropped supplies in violation of Sri Lanka's territorial integrity and airspace. Military aircraft accompanied all the supply aircraft. The Sri Lankan navy previously had intercepted Indian ships carrying supplies, and had advised them to communicate with the Sri Lankan government prior to dispatching any further supplies. India blatantly disregarded the Sri Lankan government's warnings not to interfere in the economic blockade of the northern part of Sri Lanka.<sup>63</sup> There was no permission granted to the Indians to unilaterally enter Sri Lanka and pro-

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<sup>61</sup> See generally Sardurska, *Threats of Force*, 82 AM. J. INT'L L. 239, 240-42 (1988).

<sup>62</sup> *Id.* at 242-43.

<sup>63</sup> Asian Recorder, *supra* note 25, at 19,600, col. 3.

vide supplies.<sup>64</sup> This action was seen as a precursor to India's forcible intervention by many in the ruling government of Sri Lanka.

The statements made by India's representative, Mani Dixit, to Sri Lanka's national security minister about India's intention to prevent Sri Lanka from capturing Jaffna, the capital of the northern peninsula, was tantamount to a direct threat to intervene militarily in Sri Lanka's affairs. India's actions in East Pakistan during the separatist movement for Bangladesh loomed heavily in the Sri Lankan government's mind. The Sri Lankan government feared that India would militarily intervene and create a separate Tamil state. The Accord was meant to prevent such an Indian action.

It should also be noted that prior to signing the Accord, Jayewardene was psychologically coerced into believing that there was no alternative but to accept India's hegemony. Shortly after signing the Accord, Jayewardene told the *Times of London* that he had turned to many countries for military help, but none had been forthcoming. According to Jayewardene, "India is the greatest power in South Asia. I [had] to accept reality. . . . I had to go to a stronger power or to India."<sup>65</sup> Jayewardene, now in political retirement, acknowledged his state of mind at the time to a correspondent of *India Today* when he stated, "It was the right thing then. If the accord had not happened, the government would have lost, it would have collapsed. . . . When we were undertaking the Vadamarachchi campaign [we were told] that India won't allow us to take Jaffna."<sup>66</sup> Jayewardene was also not able to take the proposed accord before the people in the form of a referendum or local election, as proposed by the Prime Minister, because that was deemed unacceptable to India.<sup>67</sup> Article 51 of the Vienna Convention on the Law of Treaties states that an "expression of a state's consent to be bound by [a] treaty which has been procured by coercion of its representative through acts or threats directed against him shall be without legal effect."<sup>68</sup> This lends validity to the argument that Sri Lanka's consent to the Accord was not legal—Jayewardene consented to the Accord because of India's explicit and implicit threats. The comments of the former National Security Minister, R. Wijeratne (recently as-

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<sup>64</sup> See generally *id.* at 19,600, col. 2.

<sup>65</sup> B. GUPTA, *SOUTH ASIAN PERSPECTIVES: SEVEN NATIONS IN CONFLICT AND COOPERATION* 253 (1988).

<sup>66</sup> Sri Lanka News, Aug. 23, 1989, at 10, col. 1.

<sup>67</sup> Sri Lanka News, Oct. 5, 1988, at 6, col. 2. The Prime Minister at the time proposed to President Jayewardene that the upcoming local government elections should be used as a platform to explain why Sri Lanka "needed" to invite the Indians. This was seen as more prudent politically than a nationwide referendum. Although Jayewardene was agreeable to the proposal, he had rejected it since India was putting pressure on him to sign the Accord without further delay. *Id.*

<sup>68</sup> Vienna Convention, *supra* note 59, at 344.

sassinated), on the situation as it appeared at the time indicate this point:

The Indian government put pressure on us to ease the campaign against the Tamil militants in the north. When we were undertaking the Vadamaracchi campaign, Mani Dixit told Lalith Athulathmudali [the national security minister at the time] that he won't allow us to take Jaffna. . . . If we did not sign [the] Accord we would have had to fight with India. India would not have come forward [to help the Sri Lankan government], but would have given arms [to the Tamil separatists] to shoot down helicopters that distributed food and arms to the [Sri Lankan] soldiers in the north."<sup>69</sup>

The air-drop and many of the communications to the Sri Lankan government amounted to implicit and explicit threats of force on Sri Lanka and were violative of article 2(4) of the United Nations Charter. Likewise, under article 52 of the Vienna Convention on the Law of Treaties, the Accord, India's invitation to intervene, would be considered illegal. Article 52 states that "a treaty is void if its conclusion has been procured by the threat or use of force in violation of the principles of international law embodied in the Charter of the United Nations."<sup>70</sup>

Although there is some disagreement among scholars as to whether article 2(4) actually prohibits the threat of force, it is fairly clear that the threat of force, particularly "military action" to coerce a state to make concessions, is forbidden.<sup>71</sup> Perhaps India could argue that under article 1(1) of the United Nations Charter, member states have the authority to maintain peace and security, and therefore these threats of force against Sri Lanka were justified.<sup>72</sup> The fact that Sri Lanka's political independence was jeopardized could be understated under that argument. Sri Lanka's ethnic conflict was not one which expanded across the world like the Palestinian conflict, however, and India's internal and external affairs were not violently disrupted by Sri Lanka's ethnic conflict. India was not acting in self-defense or seeking to obtain a right wrongfully denied her as in the *Corfu Channel Case*.<sup>73</sup> Even if India could justify the threat of force on the grounds that it was attempting to put pressure on Sri Lanka to settle an internal conflict, since India was not directly threatened by the ethnic conflict, it is unlikely that the threats of force made by India would be acceptable. Under Professor Oscar Schachter's analysis of article 2(4), this particular threat of force on Sri Lanka to compel it to make political concessions would be considered illegal.<sup>74</sup>

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<sup>69</sup> Sri Lanka News, Nov. 9, 1988, at 3, col. 3.

<sup>70</sup> Vienna Convention, *supra* note 59, at 698.

<sup>71</sup> Sardurska, *supra* note 61, at 240 (quoting and analyzing Schachter, *The Right of States to Use Armed Force*, 82 MICH. L. REV. 1620, 1625 (1984) (interpreting United Nations Charter, art. 2(4))).

<sup>72</sup> Sardurska, *supra* note 61, at 249-50.

<sup>73</sup> See generally *id.* at 263-65.

<sup>74</sup> *Id.* at 267.



C. *Continued Perception of Threat from India*

The fact that the Sri Lankan government has chosen not to challenge the validity of the Accord, even after India's failure to demilitarize the Tamil separatists, indicates that there is a continued perception of threat of force from India. Sri Lanka has attempted to replace the Accord with an Indo-Sri Lankan Friendship Treaty, which has met some opposition from India. India initially demanded that Sri Lanka sign the Friendship Treaty prior to the complete withdrawal of the Indian troops.<sup>75</sup> India also included practically all of the clauses in the annexes of the Accord in her version of the draft Friendship Treaty. These clauses have been interpreted as diminishing Sri Lanka's ability to conduct an independent foreign policy.<sup>76</sup> The crucial clauses are as follows:

2. Your Excellency and myself will reach an early understanding about the relevance of foreign military and intelligence personnel with a view to ensuring that such presences will not prejudice Indo-Sri Lanka relations. *Tricomalee or any other ports in Sri Lanka will not be made available for military use by any country in a manner prejudicial to India's interests.* The work restoring and operating the Trincomalee oil tank farm will be undertaken as a joint venture between India and Sri Lanka. Sri Lanka's agreement with foreign broadcasting organizations will be reviewed to ensure that any facilities set up by them in Sri Lanka are used solely as public broadcasting facilities and not for any military or intelligence purposes.<sup>77</sup>

The National Security Minister of Sri Lanka has rejected India's draft treaty and stated that "Sri Lanka's position [is] that the July 1987 Indo-Sri Lanka agreement was not a legally binding one and that with the withdrawal of the IPKF [Sri Lanka] will no longer [have] any obligation under the Accord."<sup>78</sup> This is perhaps the boldest statement made by any Sri Lankan leader about the Accord. India's stand on the issue, however, has not been shaken. India stalled the troop withdrawal from July 1989 to March 1990, and has not given up the idea of having some "say" in Sri Lanka's affairs. The strength of India's resolve is evidenced by many of its activities, including: (1) assisting the EPRLF in organizing an illegal paramilitary army, the TNA; (2) supporting the EPRLF's leader, V. Perumal, in his unilateral declaration of Eelam in the northeastern part of Sri Lanka; and (3) air-dropping supplies to the TNA.<sup>79</sup> In addition, there is some indication that the Indians may have covertly assisted the JVP, the subversive group in the south that was fighting to overthrow the

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<sup>75</sup> Sebastian, *Lanka Not for Treaty Before IPKF Pullout?*, Indian Express, Feb. 5, 1990, at 1, col. 1.

<sup>76</sup> Marasinghe, *supra* note 54, at 569-70.

<sup>77</sup> Exchange of Letters (July 29, 1987) (emphasis added).

<sup>78</sup> Sebastian, *supra* note 75, at 7, col. 9.

<sup>79</sup> See Sri Lanka News, *supra* note 51, at 1, col. 2.

Sri Lankan government.<sup>80</sup>

The Sri Lankan government is fully aware of India's military and political power over the northeastern region, and of its interest in controlling Sri Lanka's external affairs. Sri Lanka agreed to give the Trincomalee tank farm development project to India because of India's fear that the original bidders, a Singapore firm, had links to the United States. Jayewardene's decision in 1981 to lift the nine year-old ban on foreign warships in the Trincomalee harbor had been seen as a major threat to India's hegemony in the region, particularly because the United States was the first to send many warships to the port for refuelling.<sup>81</sup> India feared that the Trincomalee harbor would be covertly converted into a United States naval base if she did not put pressure on Sri Lanka to give up the Singapore firm's offer. Other perceived threats to India's influence were the revival of the Defense Agreement of 1947 with the United Kingdom<sup>82</sup> and Pakistani and Chinese military aid to the Sri Lankan armed forces.<sup>83</sup>

India continues to have the same concerns about Sri Lanka, and does not want Sri Lanka to develop any links to other regional or global powers that may destabilize India's hegemony in the South Asian region. Thus, India's strategy to use the threat of escalating the ethnic conflict to control Sri Lanka's foreign policy is a fact that the Sri Lankan government may have tacitly accepted. Occasionally, a minister of the government may make a bold statement, declaring total independence from India's influence; but that often amounts to mere rhetoric. In reality, the consciousness expressed by Jayewardene that "India is the greatest power in South Asia. [We have] to accept reality"<sup>84</sup> is shared by other Sri Lankan rulers. Sri Lanka may once again be cajoled into accepting India's version of the proposed Indo-Sri Lankan Friendship Treaty. The fact that Sri Lanka had an uphill battle in convincing the Indians to withdraw troops before the proposed treaty was signed, a right the Sri Lankan government possessed under the Accord,<sup>85</sup> indicates that India may attempt to impose its version of the treaty.

It should be noted that the Indian government withdrew troops by the March 31, 1990 deadline because of some Indian academicians' and overwhelming Sri Lankan discontent with the idea of India

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<sup>80</sup> Sri Lanka News, *supra* note 51, at 8, col. 5.

<sup>81</sup> V. VAIDIK, *ETHNIC CRISIS IN SRI LANKA—INDIA'S OPTIONS* 98 (1986).

<sup>82</sup> *Id.* at 101.

<sup>83</sup> B. GUPTA, *supra* note 65, at 172-73.

<sup>84</sup> *Id.* at 253.

<sup>85</sup> Kodikara, *The Continuing Crisis in Sri Lanka*, 29 *ASIAN SURVEY* 716, 719 (July 1989); Sri Lanka News, July 5, 1989, at 1, col. 2. Section 2.16 of the Accord states that "[i]n the event that the government of Sri Lanka requests the government of India to afford military assistance to implement those proposals the government of India will cooperate by giving to the government of Sri Lanka such military assistance as and when requested." (Emphasis added).

officially maintaining a military presence in Sri Lanka.<sup>86</sup> India recognized that keeping the IPKF in Sri Lanka was an embarrassment to India in the international arena. The newly elected government of India also had a much more conciliatory attitude towards Sri Lanka's demands than had the previous regime of Rajiv Gandhi. It should be noted, however, that India still has most of the Tamil separatists in the states of Tamil Nadu and Orissa, and has not given up her role in Sri Lanka's affairs. Some Tamil militant groups are still supported by the Indian government covertly, with arms, supplies, and training, and also by the Tamil Nadu state government. India will probably continue to use the Tamil Nadu state government to control the ethnic conflict in Sri Lanka. Therein lies an indirect threat of force to Sri Lanka.

Sri Lanka perceives this threat of force from India, and therefore has agreed to sign an Indo-Sri Lankan Friendship Treaty to replace the Accord. It is doubtful that this will affect India's hegemonic influence in Sri Lanka. As noted above, the proposed treaty may continue the Accord's provisions that give India a right to influence Sri Lanka's foreign policies, and to a large extent the Tamil ethnic conflict. It is too early to tell if another intervention by "invitation" may happen under the new treaty, but India has the ability to use the treaty and the Tamil ethnic conflict as tools to obtain another coerced "invitation."

Thus, the Indians did not receive an "invitation" in the strict sense of the word to intervene in Sri Lanka. It was more a cleverly orchestrated program by India to strengthen its influence in Sri Lanka.<sup>87</sup> The fact that Sri Lanka may still perceive a threat of force from India as a result of the continuation of this Accord also indicates that India's intervention was by a coerced "invitation." India may claim that its intervention in Sri Lanka was on either humanitarian grounds or as assistance to a national liberation movement. Neither of these arguments legitimizes the coercive "invitation" obtained from Sri Lanka.

#### *D. India's Air-Drop Was Not Humanitarian Intervention*

The air-drop of relief supplies on June 4, 1987, accompanied by five Indian military jets, cannot be described as a mere humanitarian intervention. Humanitarian intervention in this century has fallen into disfavor, and India's claim that it was a non-military intervention

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<sup>86</sup> New York Times, Mar. 25, 1990, at 4, col. 1; Sri Lanka News, Mar. 28, 1990, at 6, col. 5 (Tamil Nadu parliamentarian, V. L. Gopalswamy, urged the Indian central government to probe the activities of RAW in Sri Lanka, indicating that RAW may have received directives from former Prime Minister Rajiv Gandhi and "tens of millions of rupees" in secret funds to aggravate the divisions among the Sri Lankan people).

<sup>87</sup> Doswald-Beck, *The Legal Validity of Military Intervention by Invitation of the Government*, 56 BRIT. Y.B. INT'L L. 189, 190 (1985).

lacks credibility.<sup>88</sup> Some of the elements of humanitarian intervention were undoubtedly satisfied. For instance, there were human rights violations in Sri Lanka at that time.<sup>89</sup> It is at least arguable, however, that the gross violations of the militant groups were more severe than those of the government forces themselves. There were some proposals by the Tamil militants to use biological warfare against the Sri Lankan government and citizens.<sup>90</sup> It is acknowledged, however, that there were "disappearances" of Tamil youth in the northern region.<sup>91</sup>

India's air-drop was an uninvited action. Prior to the air-drop, the Sri Lankan government had intercepted Indian boats bringing relief supplies and had ordered them to return to India. India used proportionate force to bring in relief supplies. No severe threat to any fundamental rights of the Tamil or majority Sri Lankans was made.<sup>92</sup> Considering the events that followed the air-drop, however, it is reasonable to conclude that Sri Lanka's sovereignty and integrity were in fact violated. Not only was Jayewardene pressured into signing a treaty primarily drafted by the Indian government, but also the Sri Lankan government was required to give up some of its foreign policy and military decision-making.

India's actions on June 4, 1987, cannot be denominated as purely humanitarian intervention. There were very strong political overtones coupled with intervention strategy inherent in the air-drop.<sup>93</sup> The air-drop also led to the Accord, which legitimized the coerced invitation from the Sri Lankan government for India to intervene. India's argument that it intervened to support a national liberation movement fails on similar grounds.

#### *E. India as Supporter of a National Liberation Movement*

Tamil militants were adamant about dividing Sri Lanka into two parts, claiming that they were a national liberation movement. India supplied them with the necessary military training and logistical support. It should be noted that under United Nations guidelines, the Tamils are among those ethnic minorities that have not been clearly recognized as a distinct nationality group entitled to self-determination.<sup>94</sup> Armenians, Eritreans, Nagas, and Kurds fall into that cate-

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<sup>88</sup> Note, *supra* note 26, at 417; Sri Lanka News, Dec. 20, 1989, at 8, col. 2.

<sup>89</sup> Note, *supra* note 26, at 426.

<sup>90</sup> R. GUNARATNA, *supra* note 7, at 45-50.

<sup>91</sup> Note, *International Agreements—Indo-Sri Lanka Agreement to Establish Peace and Normalcy in Sri Lanka, July 29, 1987*, 29 HARV. INT'L L.J. 178-84 (1988); Asian Watch Report, *Cycles of Violence* 31 (1987).

<sup>92</sup> Note, *supra* note 26, at 428; see also F. TESÓN, HUMANITARIAN INTERVENTION 116 (1988).

<sup>93</sup> Note, *supra* note 26, at 429.

<sup>94</sup> POMERANCE, SELF-DETERMINATION IN LAW AND PRACTICE 15 (1982); Doswald-Beck, *supra* note 87, at 202.

gory. In addition, United Nations Resolution 1514 of 1960 acknowledged the undesirability of splitting territorial units. Total or partial disruption of national unity and territorial integrity of any country was declared incompatible with the purposes and principles of the United Nations Charter.<sup>95</sup>

Even India officially adopted the position that Sri Lanka should be preserved as a unitary state in 1984-85. India was compelled to acknowledge the unitary nature of Sri Lanka in order to avoid granting similar concessions to India's own separatists in Punjab and Kashmir. The Accord was entered into about two years after that declaration, and India's continued support of the Tamil militant factions is a violation of international law—primarily the United Nations Charter.

Due to the international position on the status of Tamils expressed above, the fact that the Indians may consider the Tamils to be a group seeking self-determination does not alter the illegality of India's actions. Furthermore, India has sought to control the Tamil militant groups and, in a sense, to create more factions among the Tamil separatists. The manner in which some LTTE leaders, such as Prabhakaran, were treated during the negotiations for the Accord demonstrates this fact. Thus, India's machinations to enter the Sri Lankan scene as a military player through a coerced invitation is not justified either on humanitarian grounds or on the basis of assisting a group legally entitled to self-determination.<sup>96</sup>

### III. Concluding Remarks

Even if India had a valid political and economic interest in settling Sri Lanka's ethnic problem, it had no right to interfere in what was essentially a civil war in Sri Lanka. The United Nations General Assembly Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of their Independence and Sovereignty of 1965, the Declaration on Principles of International Law Concerning Friendly Relations and Cooperation Among States of 1970, and the Declaration on the Inadmissibility of Intervention and Interference in the Overall Affairs of 1981 categorically forbid states to instigate, organize, or participate in acts of civil strife or terrorism in other states.<sup>97</sup> India has consistently violated this international norm since the late 1970s by providing military and logistical support to the Sri Lankan Tamil separatist groups. Undoubtedly, the existence of a valid invitation from a recognized

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<sup>95</sup> Doswald-Beck, *supra* note 87, at 201.

<sup>96</sup> See generally *id.* at 199-207.

<sup>97</sup> *Id.* at 208.

government can justify intervention.<sup>98</sup> In Sri Lanka's case, however, India's invitation was procured through explicit and implicit coercion and was a means to influence Sri Lanka's affairs, primarily foreign affairs.<sup>99</sup>

Some claim that India's intervention was inevitable and that Sri Lanka had no alternative but to give in to India's geopolitical manipulations.<sup>100</sup> Others claim that the Accord actually salvaged Sri Lanka from disintegrating into two territories.<sup>101</sup> India is estimated to have lost 1,120 soldiers in its campaign to disarm the Tamil guerrillas and to have killed at least 5,000 Tamils in the process.<sup>102</sup> It has also been argued that India is now perceived as the common enemy by all ethnic groups in Sri Lanka, except some pro-Indian Tamil militant groups, and that Sri Lanka has recaptured a Sri Lankan identity among its Tamil separatist group.<sup>103</sup> Despite this, the costs to Sri Lanka have been far greater than any favorable aspects of the Indian intervention. The Indians may have salvaged the de facto unity of Sri Lanka, but at the cost of continuing Tamil military in-fighting<sup>104</sup> and of Sri Lanka's continued sovereignty with respect to foreign policy making.

In light of repeated demands by the Sri Lankan government for the withdrawal of Indian troops, India's refusal to leave Sri Lanka without Sri Lanka's acceptance of the proposed Friendship Treaty was a violation of international law.<sup>105</sup> The Accord itself makes this clear in section 2.16, which permits the Indian government to "afford military assistance to the Sri Lankan government *only as and when requested.*" The Indian government's attempt to use section 2.16(e) of the Accord, which allows India to cooperate with Sri Lanka to assure the security and safety of all communities, to prolong India's military presence was a violation of Sri Lanka's sovereignty. India's Research and Intelligence Bureau (RAW) is believed to be still operating covertly to destabilize the government. A plot to overthrow the Sri Lankan government with the assistance of some 300 to 400 local

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<sup>98</sup> Friedmann, *Intervention and International Law I* in INTERVENTION IN INTERNATIONAL POLITICS 57-59 (1970).

<sup>99</sup> Hennayake, *supra* note 37, at 406-07.

<sup>100</sup> Marasinghe, *supra* note 1, at 177; Sri Lanka News, Aug. 3, 1988, at 6, col. 1.

<sup>101</sup> Matthews, *Sri Lanka in 1988: Seeds of the Accord*, 29 ASIAN SURVEY 229, 231-32 (1989).

<sup>102</sup> Sri Lanka News, Jan. 3, 1990, at 3, col. 2; *see* Indian Express, Mar. 21, 1990, at 17, col. 3; Indian Express, Mar. 23, 1990, at 7, col. 1; The Statesman, Mar. 29, 1990, at 1, col. 6.

<sup>103</sup> Hennayake, *supra* note 37, at 414; Suryanarayana, *Lankan Tamils Want IPKF To Go*, Indian Express, Oct. 2, 1989, at 7, col. 5.

<sup>104</sup> Sri Lanka News, Nov. 29, 1989, at 3, col. 1; *see also* Sri Lanka News, Oct. 5, 1988, at 1, col. 1; Sri Lanka News, Mar. 28, 1990, at 6, col. 5 (RAW indulged in forced conscription of Tamil youths to create the illegal Tamil National Army and caused more tension within the northeastern region).

<sup>105</sup> Hennayake, *supra* note 37, at 414.

youth was uncovered by the Sri Lankan government and may have been RAW's brainchild.<sup>106</sup>

As illustrated at length above, the Accord was procured by implicit and explicit threats of force, and India's intervention was not justified under international law. Sri Lanka may have a valid case if it desires to invalidate the Accord, but it is doubtful that Sri Lanka will take any actions against India on this issue. Some options available to Sri Lanka if it chooses to invalidate or seek compensation for harm done by the Accord are worth noting briefly.

#### IV. Possible Remedies

As mentioned above, Sri Lanka protested India's air-drop of relief supplies to SAARC, the regional organization for Asian solidarity. Only four members condemned the action. There was very little comment from the major powers in the world. The United States and the Soviet Union did not encourage Sri Lanka to bring the IPKF withdrawal issue to the Security Council of the United Nations, although the major powers were concerned about the tension created by India's insistence on remaining in Sri Lanka.<sup>107</sup> Thus, it seems that Sri Lanka's case in an international body such as the United Nations may not prove fruitful.

A U.N. resolution would probably fail because most members would not want to offend India. Even the United States has recognized India as a "pivotal power" and cautioned Sri Lanka and India's other neighbors on the importance of living at peace with India. India is unofficially regarded as the geopolitical power in the South Asian region. India's vast population and territory, compared to the other states in the region, solidify this status.

Sri Lanka could attempt to persuade the United Nations General Assembly or the Security Council to adopt a resolution that merely condemns India's actions as violations of article 2(4) of the U.N. Charter. However, this resolution would benefit Sri Lanka only politically. A more meaningful action may be for Sri Lanka to put demands on the SAARC, where some members support Sri Lanka, to pressure India to stop interfering in Sri Lanka's internal and external affairs. Whether those supporting states would go so far as to require India to pay Sri Lanka damages to materially compensate for the atrocities committed by the IPKF, is doubtful.

Sri Lanka could bring suit in the International Court of Justice claiming that India's threats of force coerced Sri Lanka into signing the Peace Accord and that India's military intervention did not serve Sri Lanka's needs but instead served India's objectives of controlling

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<sup>106</sup> *RAW Plans to Destabilize Colombo*, Sri Lanka News, Feb. 21, 1990, at 1, col. 1.

<sup>107</sup> See Sardurska, *supra* note 61, at 267.

Sri Lanka's foreign policy. An additional charge would be that India did not in fact intervene as a mere good officer, because it had encouraged the ethnic conflict by arming the Tamil separatist groups.<sup>108</sup> Sri Lanka's grant of broadcasting facilities to the Voice of America, and similar ventures with the superpowers, irritated India. The accord was a means to eliminate such irritants. Sri Lanka may be able to bring her claim in the International Court, but India probably would not consent to the jurisdiction of the court, considering that India has already made reservations against the general jurisdiction of the court.

It is likely that Sri Lanka would lose a suit in any event because international outrage at the intervention was minimal. Threats of force have generally been discounted in the international community unless they later resulted in a major assault on the threatened state. In addition, threats of force in some instances have been interpreted as deterrence against the actual use of force.<sup>109</sup> Therefore, Sri Lanka may be able to push for her rightful claims on the basis of interference with her sovereignty and territorial independence, but in our world of highly politicized international law, it is unlikely Sri Lanka will gain tangible results such as money damages.

#### V. Lessons for the Future

The Indo-Sri Lankan Accord is perhaps a unique situation in international law. Nonetheless, the fact that an apparently legitimate government of a state was coerced into inviting foreign military intervention in its internal affairs invites an examination of what can be done in the future in similar cases. Should the coerced state go to the United Nations or the Security Council to request some checks on the coercing state? The answer would be yes, except that if the threatening state is a major geopolitical power, even bringing the claim or resolution may be difficult.

Another question is how to assess which actions should be considered coercive. One factor that should be considered is whether the invited state had a covert or overt non-military or quasi-military presence in the inviting state prior to the invitation. The length of this presence and its magnitude should also be considered. If such a presence existed, then whether that presence was used against the established government of the inviting state should be evaluated. An additional consideration is whether this presence was used to remind the established government of the inviting state that the invited state could use its presence to drastically destabilize the inviting state if no formal invitation was granted.

The military and political strength of the invited state vis-à-vis

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<sup>108</sup> See generally The Statesman, Mar. 26, 1990, at 1, col. 8.

<sup>109</sup> Sardurska, *supra* note 61, at 260.



the inviting state is a crucial factor to be assessed. If the invited state also has substantial influence over a segment of the population in the inviting state, either through arms supplies or political and economic support or through ethnic, racial, or similar kinship, then the manner in which this segment of the population is used to apply any threats of force should also be considered.<sup>110</sup> If, according to these factors, the invitation is found to have been coerced, then the invitation should be considered illegal. If the inviting state is physically and politically weak and unable to enlist outside support to thwart the threats of force, then an even stronger argument can be made for invalidating the invitation.

A state that wishes to resist granting an invitation to a state applying duress or coercion could probably go to the United Nations or a regional organization, emphasizing the relative strength of the coercing state. The international organization could at least condemn the attempts to obtain an invitation through coercion. Small or politically weak countries that face a threat of force should analyze the situation in the early stages of the perceived threats and join regional organizations that may put pressure on the invited state to cease such actions. The inviting or oppressed state should also take its claim to the United Nations General Assembly and seek condemnation of the coercive action. The earlier the inviting state acts to bring international attention to the matter, the more likely it can avoid unwillingly granting an invitation to military intervention.

If an invitation has already been granted because of coercion, then the inviting state should seek political support for the withdrawal of the invited state through United Nations intervention and/or regional organizational pressure. Economic or diplomatic sanctions by other nations could be requested by the inviting state to compel the invited state to withdraw. A resolution by the United Nations declaring the invitation illegal would encourage the invited state to reform its course of action and could also alert member nations to take individual or collective action against the invited state to force it to withdraw.

The reality of international power politics will determine whether a state, particularly a small state such as Sri Lanka, benefits from such international legal actions. However, the use of threats of force to procure invitations to intervene should be condemned by some international body. Even if the inviting state hesitates to bring a formal claim, such situations should be denounced by the international community. If such action is condoned, intervention by coerced invitations could be used by states whenever they find it expedient in their national interests. The danger that such coerced invitations could be used to destabilize smaller nations and, when

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<sup>110</sup> See generally E. STOWELL, INTERVENTION IN INTERNATIONAL LAW 353 (1921).

resistance is shown by the oppressed state, the possibility of those threats of force changing to actual force should not be discounted. It is thus imperative that coerced invitations to intervene be condemned as illegal under international law.