

United Nations General Assembly, Third Committee, 20 October 2006
**Statement by Professor Philip Alston, Special Rapporteur on extrajudicial,
summary or arbitrary executions**

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Mr. Chairman, distinguished delegates,

In my remarks this morning I want to focus on two particular concerns. They are: (i) challenges confronting the system of special procedures; and (ii) the need to sound an early warning alarm in relation to developments in Sri Lanka.

The Special Procedures system and the new Council

The creation of a new Human Rights Council represents a major achievement, but it is only a first step. In the past two years, the adjective ‘discredited’ has been used consistently by the vast majority of Governments and other observers to describe the Commission on Human Rights. It would be a mistake, however, to think that it was only the former Commission which was discredited. The real challenge emerging from this period of upheaval and renewal is to re-establish the credibility of the United Nations itself to protect human rights effectively, consistently, and fairly. Whether the Council will rise to that challenge remains very much an open question. If it fails, a great deal of damage will be done to the credibility and standing of the Organization as a whole.

It is often said that the system of special procedures constitute the ‘eyes and ears’ of the Council. But they are in fact much more than that. They provide the outside world with the sense that someone cares, they provide the most tangible indication that governments take their commitments to accountability seriously by engaging in a meaningful dialogue, and they provide the Council with the factual information, collected on the ground and often at significant risk, on issues and situations of major importance.

In my report, I point to one of the ways in which this system risks being undermined. The failure of states to issue the invitations sought in response to my requests has reached close to crisis proportions. 19 of the 22 countries to which I have directed requests have either failed altogether to respond or have proved unable to make any concrete progress on arrangements for a potential visit. While I can understand that my mandate might make me little more popular than the ‘grim reaper’ in some circles, the fact remains that extrajudicial executions go to the very heart of the worst violations of human rights and it is essential that a credible Human Rights Council be able to address these issues systematically. It is especially problematic to note that eight of those 19 countries are Council members, each of whom specifically undertook to ‘uphold the highest standards in the promotion and protection of human rights, [and to] fully cooperate with the Council’ (GA Res. 60/251, para. 9). This General Assembly should specifically call upon those States to uphold their commitments to cooperate with the Council and their procedures.

Permit me to say, Mr Chairman, that I am deeply troubled that, rather than addressing such issues, a great deal of the energy that I perceive within the Council has instead been devoted to endeavours designed to change the rules of the game in such a way that the special procedures would be severely constrained in their ability to achieve their objectives. In the face of such initiatives many of those most concerned with the credibility of the system appear almost complacent and reluctant to acknowledge the effort which will be required if the system of special procedures is to be preserved in a form that does not bring the adjective 'discredited' to be applied to the Council as well.

A case of early warning: Sri Lanka

The concept of 'early warning' has received enormous attention and support in recent years. The theory is that an early warning makes possible a response that is prompt enough to prevent what would otherwise become an intractable crisis with an intolerable human toll. The practice, however, sometimes appears to be one of an alarm followed by silence followed by disaster. The problem, of course, is that when the alarm sounds, Governments and others can opt to simply put in their ear plugs, hope for the best, and express surprise when disaster strikes.

Today the alarm is sounding for Sri Lanka. It is on the brink of a crisis of major proportions. Sadly, the world seems to think that the dramatic attacks of recent days and the spiraling number of extrajudicial executions are just one more episode in a long-running saga. There is a perception that Sri Lanka is not so much on the brink of a new crisis but, instead, only in the midst of an interminable and intractable crisis that has already exhausted its fair share of international attention. This perception is inaccurate and dangerous. Widespread violence during a faltering ceasefire is not the same as an all-out civil war that costs tens of thousands of lives. Real progress has been made over the past four years, and nothing that has happened in these past few months has made achieving a sustainable peace founded on respect for human rights impossible. But there is little reason to think that the opportunity will be available for much longer.

The issue was placed squarely before the Human Rights Council last month, but the signals are that any action the Council might take in November will do very little to make a difference as this tragic situation swells and threatens to reach bursting point. What can and should be done?

The first challenge is to acknowledge the need for significantly more sustained and high-level international involvement than has thus far been the case in efforts to pressure the parties to move towards a peaceful resolution of the conflict. This is still a conflict that can be resolved, but the parties will not get there on their own.

The second challenge is to accept the fact that there is no national institution capable of monitoring human rights throughout Sri Lanka. I have welcomed some of the Government's recent initiatives. It would be a mistake, however, to think that the national commission of inquiry will be anywhere near sufficient to meet the challenge. This is so even if the Government undertakes, as I believe it now should, to make public all of its findings and to act affirmatively on its recommendations.

The third challenge is to establish an effective international human rights monitoring presence. This is not a pro forma recommendation. There are reasons to believe that in Sri Lanka, in particular, international human rights monitoring could make a real contribution both to protecting individuals and to creating the conditions for a sustainable peace.

First, human rights is the appropriate language: The discourse of human rights is central to the parties' own understanding of the conflict's origins and conduct, and much of the human toll is the product of quintessential human rights violations - the targeting of civilians and the execution of individuals for the exercise of their civil and political rights. Moreover, a sustainable peace settlement will prove elusive until the Government, the LTTE, or both, demonstrate genuine respect for the human rights of all communities.

Second, the international community has a recognized and powerful role: This is ultimately a struggle for legitimacy, not territory, and the Government and the LTTE recognize the strategic importance of achieving and maintaining international legitimacy.

Third, monitoring would affect conduct: The parties feel that they are able to violate human rights and humanitarian law without losing international legitimacy so long as they commit abuses in a manner that permits them maximum deniability. Monitoring could foreclose the strategy of deniability and push the parties to show actual respect rather than simulated respect for human rights.

My report thus urges the General Assembly to 'call upon the United Nations Secretariat to establish a full-fledged international human rights monitoring mission in Sri Lanka'.

Nigeria

In my report on Nigeria I have urged the Government to commute the death sentences of all those who have spent more than five years on death row, on the grounds that the system of capital punishment has essentially broken down. I was very pleased to receive information that 107, or perhaps 20%, of the relevant prisoners did in fact have their sentences commuted very recently. I now call upon the Government to take action in relation to the other main recommendations in my report.

Lethal force

Finally, much of the report I am presenting is devoted not to issues concerning any specific State but to our understanding of the norms and standards which underpin the prohibition of extrajudicial executions and of their application in particular contexts. In that context, this report devotes considerable attention to the legal framework within which consideration should be given to the use of lethal force by law enforcement officials.