The subject of Mr. Gareth Evans' Memorial Lecture commemorating Neelan Tiruchelvam's 8th death anniversary encompassed "the limits of state sovereignty and the role of the international community in responding to catastrophic human rights violations...". The concept advanced by Mr. Evans, "Responsibility to Protect", or R2P was that the International Community (IC) had the right to intervene on humanitarian grounds when states fail to protect their citizens, even if it amounted to violating the sanctity of the sovereignty of the state. The "right of humanitarian intervention" was later expressed as a "responsibility" of the IC to protect people at grave risk.

While the concept's intentions are commendable, how the proposition manifests itself in practice needs careful consideration. For instance, who decides "grave risk" and what circumstances would warrant intervention? Having set the guidelines for intervention, which representative body of the International Community would make the decision to intervene: Is it the United Nations, NATO, a "coalition of the willing" or a single state acting unilaterally? If the procedures laid down are circumvented, would that intervention be considered illegitimate? These questions were not addressed by Mr. Evans. Since the circumstances justifying intervention and the procedures to be followed prior to intervention are unspecified, doubts and misgivings concerning the IC's intentions are understandable. Procedures were circumvented in the case of former Yugoslavia. Realizing Russia's opposition to intervention in former Yugoslavia, Security Council approval was circumvented, and the resources of NATO were used to militarily intervene.

The danger of the R2P proposition is that it permits the powerful states to decide whether, when and where to intervene. This is borne out by the fact that although the HR violations in Rwanda were of a much larger scale than in the Balkans, the IC decided to intervene in the Balkans but not in Rwanda. Was the intervention in the Balkans prompted by the need to break up former Yugoslavia to gain access to its vast mineral resources and break the influence of Russia in the Balkans, or was it humanitarian? If in fact it was the latter, what is the explanation for not intervening in Rwanda where the conflict had resulted in over 800,000 dead?

The conflict in the Balkans has a history, and given that history, conflict was inevitable. The "...targeting of Yugoslavia did not begin with the bombing. Economic destabilisation of that nation began in the 1980s with IMF and World Bank structural adjustment programs (SAPs)...they devastated the economy, laying the ground work for the break-up of Yugoslavia" (Covert Action Quarterly, Issue 68, Fall 1999). Thus, the right preconditions were first created followed by other covert actions, by way of supply of arms and training to the
Kosovo Liberation Army (KLA) fighting for Kosovo's independence. The conflict between the KLA and the Serbian Army was the right of a sovereign state to defend its territorial integrity. The inevitable outcome gave the "right" of intervention by NATO; an action that exacerbated the ethnic cleansing of Serbs as well as Kosovo Albanians. Thus, conflicts could be orchestrated giving grounds for intervention, the rewards for which invariably are access to resources and/or strategic advantages.

There is little wonder therefore that there is skepticism when powerful states come up with notions to manipulate the territorial integrities of less powerful states. Mr. Evans's proposition, R2P would be received with the same skepticism in Sri Lanka as it would be anywhere else in view of the record of duplicity of the more powerful states. Instead of intervening after HR violations assume serious proportions, the obligation of the IC should be to prevent HR violations from occurring, more so because the genesis of many conflicts have their roots in a past created by the powerful states that constitute today's IC.

**OBLIGATIONS TO PROTECT**

The conflicts that caused serious HR violations in Rwanda, Iraq and even in countries such as Sri Lanka have their genesis in their colonial past. For instance, a Tutsi monarchy in Rwanda, ruled over 85% of the Hutu majority from around the 1500s, despite the former being only 14% of the country's population. With independence from colonial rule and the introduction of democracy political power was transferred to the Hutu majority. Horrendous HR violations resulted due to the inability to cope with the altered circumstances. The obligation of the IC should have been to arrange for the transition of political power in a more measured manner rather than allowing democracy to manifest itself in the most rustic of forms. The failure of members of the IC to live up to their obligations resulted in a grave humanitarian catastrophe.

The situation in Iraq is somewhat similar. For decades the Sunni minority exercised political power, albeit under a Dictatorship, over the Shia and Kurd majorities. With the US intervention in Iraq and the introduction of democracy, political power was shifted overnight to the majority leaving the Sunni minority with an uncertain future. This was compounded by the fact that the Sunni regions do not have oil. The resolution of this conflict requires a reasoned basis for sharing oil revenues and for all communities to share power, not as a fragmented country, but as a country that functions as a territorially integrated whole. The IC had an obligation to ensure that here too, as in Rwanda, the process of transition was undertaken in a measured manner.

The conflict in Sri Lanka too has its roots are in a colonial past. Under colonial rule the Sri Lankan Tamils enjoyed a position and an influence beyond
what their status as a minority of 12% warranted. With independence and the natural processes of democracy, this influence eroded. Recognizing these transitional difficulties as the cause of the ongoing conflict, the IC should use its influence with the Tamil community in Sri Lanka and in the Diaspora to negotiate a political arrangement where the whole community can meaningfully be an integral part of Sri Lankan society. The threat to intervene if the HR situation gets out of control in the process of the government attempting to exercise its writ is counterproductive. In this regard, the position taken by the IC, calling on the GOSL to address unspecified "grievances" or federal arrangements that would allow only the Tamils of the Northern Province who are less than half the Tamil community, to "control much of their own affairs" (Richard Boucher, TamilNet, May11, 2007) can only be described as "irresponsible".

Despite strong criticism from the IC, it was in order to prevent a HR disaster in the Eastern Province that the GOSL intervened and engaged the LTTE following denial of water to 60,000 citizens by the closure of the sluice at Marvil Aru. By clearing the entire Eastern Province of the presence of the LTTE and resettling 97,000 of the Internally Displaced, with the remainder also to be settled shortly, the GOSL has fulfilled its duty to bring normalcy to the region to the overwhelming majority of the citizens of not only of the Eastern Province but also to the country as a whole. The Human Rights of the citizens of the Northern Province warrant that the process started in the Eastern Province be extended to the North. However, instead of territory the focus should be on addressing the capabilities of the LTTE.

It is reported that INGOs and NGOs are aiding the rehabilitation and reconstruction work in the liberated Eastern Province. Local staff employed by them would be considered as Aid Workers. The opportunity presented would be exploited by the LTTE to subject these aid workers to the same fate suffered by the 17 aid workers in Muthur. This would be cited as yet another instance of the government's inability to protect its citizens. Therefore, prudence requires that the GOSL excludes INGOs from participating in restoring normalcy in the Eastern Province.

**NEED TO ADDRESS LTTE CAPABILITIES**

Mr. Evans has issued a warning that while the current HR situation in Sri Lanka does not warrant intervention, there is a strong possibility that intervention would be justified if the HR situation spirals out of control by the GOSL extending its military offensive to the Northern Province. In addition to Mr. Evans' concern regarding the Human Rights of the Tamil population in the Northern Province, he should also be concerned with possible outcomes if the LTTE unleashes a terror campaign of a scale intended to trigger a backlash against the Tamils now living in large numbers in the South. This latter
scenario should be a matter of serious concern whether or not the GOSL ventures into the North. In such an eventuality, would the advice of Mr. Evans be for the GOSL to do nothing and wait for events to fester to a point that justifies intervention, or for the GOSL to neutralise the capabilities of the LTTE to inflict serious HR violations? The Obligation to Prevent (O2P) rather than to intervene after a HR catastrophe would require the IC in concert with the GOSL to take action to neutralise the capabilities of the LTTE in order to prevent potential HR violations.

In keeping with the O2P concept, the IC appears to be planning a course of action in Turkey to prevent a new front from opening up in Northern Iraq. According to a report in the Washington Post it was revealed during a secret briefing that the plan was "for a covert operation of U.S. Special Forces to help the Turks neutralise the PKK (the Kurdish rebel Group). They would behead the guerrilla organisation by helping Turkey get rid of PKK leaders that they have targeted for years" (July 30, 2007). Whether similar "preventive action" would not in the long run curtail serious HR violations from occurring thus protecting the largest number of civilians, should be considered by the International Crisis Group and other groups concerned with HR violations.

CONCLUSION

The weakness in the R2P concept is the subjectivity in interpreting what constitutes "grave risk" and who makes the assessment. This subjectivity gives license for members of the IC collectively or as "coalitions of the willing" to act unilaterally without legitimacy to pursue agendas on purported grounds of R2P with drastic repercussions on state sovereignty. Focusing on prevention may not eliminate the pursuit of agendas, but at least it would create opportunities for HR violations to be minimized, if not avoided. Intervention in sovereign states on grounds of Responsibility to Protect (R2P) citizens against grave risk underscores action after the event and not before. Since the objective is to prevent HR violations, the IC should consider prevention of HR violations as an obligation because of their responsibility for the root causes of current conflicts. An Obligation to Prevent (O2P) concept would enable the sovereignty of states as well as the safety of citizens to be better protected. This is best achieved by fellow Democracies banding themselves together to strengthen legitimate democratic governments in dealing with the capabilities of entities such as the LTTE, to commit HR violations.