

Integrity of Recruitment in Sri Lanka Foreign Service

A debate on Governance Issues

Appointments to the Foreign Service are a subject of debate in Sri Lanka at various levels. A series of articles published in media, particularly by former reputed diplomats, have raised many vital issues of integrity in the process and their adverse and diverse effects on the country. The issues raised are necessarily linked to good governance. Transparency International Sri Lanka (TISL), issues this Position Paper analyzing various critical issues arising out of the "recruitment process" for serious public discussion.

1. INTRODUCTION

1.1 Historical Perspective

The ability to practice diplomacy is one of the defining elements of a state, and diplomacy has been practiced since the formation of the first city-states. Originally diplomats were sent only for specific negotiations, and they would return immediately after their missions concluded. Diplomats were usually relatives of the ruling family or of very high rank in order to give them legitimacy when they sought to negotiate with other states.

The origins of the modern diplomacy are often traced to the states of Northern Italy in the early Renaissance, with the first embassies being established in the thirteenth century.¹ Elements of modern diplomacy slowly spread to other parts of the world but not without obstacles. For example, Napoleon refused to acknowledge diplomatic immunity, imprisoning several British diplomats accused of scheming against France. After the fall of Napoleon, the Congress of Vienna of 1815 established an international system of diplomatic rank which developed further after World War II.

1. With the evolution of diplomacy for many centuries, the definition of diplomacy is quite recognized and worth keeping in mind. According to *Webster's Third New International Dictionary*, two definitions for "diplomacy" are: The art and practice of conducting negotiations between nations for the attainment of mutually satisfactory terms.
2. Adroitness or artfulness in securing advantages without arousing hostility: address or tact in conduct of affairs.

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¹ www.wikipedia.org

1.2 Sri Lanka Diplomacy in brief

Sri Lanka's introduction to international diplomacy dates back to the 3rd century BC between the Indian Emperor Asoka of the Mauryan Dynasty and his Sri Lankan contemporary King Devanampiyatissa of Anuradhapura through the medium of the Emperor's two personal emissaries, his son and daughter, Mahinda and Sanghamitta respectively, who brought Buddhism to Sri Lanka. There are geographical and historical dimensions to Sri Lanka's early diplomacy.²

A new chapter in the history of Sri Lanka began with the arrival of European powers in Asia (Portuguese, Dutch and British) where Sri Lanka had the first real experience of foreign rule³. Foreign policy and foreign relations depended on the country that ruled Sri Lanka. With Independence in 1948 foreign policy became a matter of paramount importance. Sri Lanka has passed many phases in foreign affairs, under different political leaderships but this Paper does not deal with the merits and demerits of those different phases.

Two important aspects of its polity which have a significant bearing on the formulation of its foreign policy should be kept in mind.

- (i) Since Independence there have been changes in the party or parties in power which in turn affected the foreign policy of Sri Lanka, and
- (ii) There has been a fundamental agreement among the two major parties viz-a-viz the United National Party (UNP) and the Sri Lanka Freedom Party (SLFP) on important areas of foreign policy. (For example 'on issues relating to anti colonialism, disarmament and arms control, and non involvement with power blocs'.)

1.3 Diplomatic Missions and Ranking

Unlike the early stages of diplomatic structure, diplomatic practices and procedures have evolved and been established to regulate interaction between nations. A country may have several different types of diplomatic missions in another country. Embassies⁴, High Commissions⁵, Permanent

Missions⁶, Consulate Generals⁷, Consulates⁸ and Consulates headed by Honorary Consuls⁹.

In modern diplomatic practice there are a number of diplomatic ranks below Ambassador.

Ambassador (or High-Commissioner in Commonwealth mission and permanent representatives)

Minister

Minister-Counselor

Counselor

First Secretary

Second Secretary

Third Secretary

Attaché

Assistant Attaché

² www.slmfa.gov.lk ; Also V.L.B. Mendis, Foreign Relations of Sri Lanka, From Earliest times to 1965, Tissera Prakashakayo

³Some dispute this and argue that first real experience of foreign rule dates back to Chola rule between 1017 & 1065 AC

⁴A diplomatic mission located in the capital city of another country which generally offer a full range of services, including consular services

⁵An embassy of a Commonwealth country located in another Commonwealth country

⁶ A diplomatic mission to a major international organization

⁷ A diplomatic mission located in a major city, other than the capital city, which provides a full range of services, including consular services

⁸ A diplomatic mission that is similar to a consulate general, but which does not provide a full range of services.

⁹ A diplomatic mission headed by an Honorary Consul which provides only a limited range of services

1.4 Recruitment of Diplomatic Staff

The selection and recruitment of personnel to diplomatic positions entail careful screening procedures to ensure that the right caliber of person is identified. In order to make it more effective, the criteria of recruitment of all diplomatic staff are disclosed in developed democracies. For example, the selection of diplomatic staff by the US Federal government has three major steps, which can be summarized as follows;

Pre Selection Steps

1. Registration: Application and Personal Narrative
2. Foreign Service Officer Test
3. Qualifications Evaluation Panel
4. Oral Assessment

After the Selection Process: Additional Steps

5. Medical Clearance
6. Security Clearance
7. Final Review Panel
8. The Register

Key Considerations

1. Foreign Languages
2. Career Track Choice
3. Candidates with Disabilities
4. Veteran's Preference
5. Commitment to Foreign Service Work

1.5 Early Sri Lankan Experience in Recruitment of Diplomatic Staff

In terms of the first Overseas Service Minute – operative from 1949 to 1959 – nearly 32 officials were recruited to the then Ceylon Overseas Service as probationers and were designated as ‘Grade IV Officers of the Ceylon Overseas Service.’

The Overseas Service Minute of 1949 was superseded by the Overseas Service Minute of 1959, which had the effect of a revision of the examination to recruit officers to the Overseas Service. From 1949 to 1973, a total of 73 officers had been recruited to the SLFS.

From January 4, 1974 onwards, the scheme of recruitment to the SLFS was revised so as to give the opportunity to graduates who were qualified in Sinhala and Tamil media to sit the examination in Sinhala/Tamil media besides the examination in the English medium. Thereby, many graduates from Sinhala and Tamil speaking rural areas who received their education in Sinhala and Tamil media (who were mostly from ‘central colleges’ established in keeping with the ‘C.W.W. Kannangara vision’) were benefited and the numbers from such rural areas exceeded the numbers from urban areas. Whether this pattern was followed constantly is another issue.

However, with the introduction of the 1972 Constitution, the independence and powers of the Public Services Commission were eroded and ministerial powers were enhanced. Before the 1970s under the Soulbury Constitution the Foreign Affairs portfolio was linked to the Defence and both were held by the Prime Minister.

In some years recruitment to Foreign Service was on the basis of interviews alone and in other years on written examinations.

2. Rules Governing Foreign Service & some background information

(a) The current Sri Lanka Foreign Service (SLFS) Minute¹⁰ (hereinafter the Minute) embodies the rules governing the Foreign Service of Sri Lanka. Some of the salient provisions are dealt with below:

(i) The Minute shall apply to all members of the Foreign Service

(ii) In terms of clause 7, the SLFS shall consist exclusively of the members of the Sri Lanka Foreign Service

(iii) In terms of clause 8.1 of the Minute, the diplomatic ranks of the SLFS officers, when posted abroad shall be as follows;

Third secretary	-	on appointment to Grade III of the SLFS
Second secretary	-	on completion of 4 years of Grade III of SLFS and having earned all annual increments within that period
First secretary	-	on completion of 7 years of Grade III of SLFS and having earned all annual increments within that period
Counsellor	-	on promotion to Grade II of SLFS
Minister Counsellor	-	on completion of 2 years of Grade II of SLFS and having earned all annual increments within that period
Minister	-	on completion of 7 years of Grade II of SLFS and having earned all annual increments within that period

(iv) The members of the SLFS are chosen through open competitive examinations.

(v) Recruitment shall be at Grade III level and in accordance with the scheme of recruitment.

(b) There is no official information available in the public domain as to how many SLAS officers are serving at present but our informal inquiries suggest that there are 169 officers in the SLFS.

(c) The number of Missions and total number of employees in the Foreign Missions are worth mentioning here. According to the Budget Estimates 2008, following information has been tabled in relation to the Ministry of Foreign Affairs.

- (i) There are 59 Sri Lanka Missions abroad in 57 countries. The total number of employees in the Ministry is 476 while 769 employees are serving in the Missions abroad.
- (ii) The key functions of the Ministry of Foreign Affairs are "Implementation of Policies, Plans and Programmes in respect of Foreign Affairs, Foreign Governments and International Organizations, representing Sri Lanka International Agreements and Treaties, External Publicity, Consular Functions, Diplomatic Immunities and privileges."
- (iii) SLFS is assigned the responsibility of conducting foreign relations of Sri Lanka and promoting and protecting Sri Lanka's interests abroad.

¹⁰ Gazette Extraordinary dated 24-1-2004

3. Public Criticisms on Appointments

Analysis of many published articles and critiques¹¹ show that the concerns revolve around the following:

- Since 1970's there have been continuous attempts to politicize the Foreign Service, but there is evidence that even prior to that there were occasional political appointees to the Foreign Service.
- Deterioration of the Foreign Service due to politicization, specially due to the appointment of unsuitable appointees (hand picked by political masters) to cadre positions of the foreign service by respective governments.
- Cabinet has usurped recruitment powers of the Public Services Commission and proceeded to make a series of appointments¹².
- A large number of political appointees connected to the politicians of the government or the political party in power were appointed to many diplomatic positions including Consul General, Minister Counsellor, Second Secretary, First Secretary etc¹³. There is also evidence that from time to time, even minor staff – such as peons, clerks, drivers and cooks were appointed based on political patronage.
- These questionable appointees, including diplomats, did not have knowledge or experience about foreign relations of the country and therefore the image of the country is adversely affected by these appointments.
- By appointing inexperienced and unqualified outsiders to the cadre positions of the Foreign Service, frustration is created among officers of the SLFS. Adding to this frustration, Sri Lanka Administrative Service Officers are also being appointed to SLFS positions¹⁴.

¹¹ Particularly the Editorials in English newspapers and series of articles published by Nanda Godage, a distinguish former Diplomat

¹² Following appointments have recently been approved by the Cabinet:

- Chandrapala Liyanage, presently Media Coordinating Secretary, President's office, to be posted as Minister Counsellor to SL Embassy Rome, w.e.f. 1-4-2008
- Lal Kumara Gamage, (Former Secretary to the Ministry of Advanced Technology), as Minister to the Sri Lankan Embassy in Moscow w.e.f. 15-3-2008
- K.D.S. Ruwan Chandra (SLAS Class I), as Minister Counsellor, Beirut w.e.f. 1-9-2008
- M.P.D.U.K. Mapa Pathirana (SLAS Class I) as Minister Counsellor to Oslo w.e.f. 1-5-2008

¹³ Newspaper articles and our own investigations reveal that a large number of individuals without any SLFS background or knowledge on Foreign Service have been appointed to many Sri Lanka missions and details of some of them are given in the following table:

Name	Designation	SL Mission
Jaliya Wickramasuriya	Consul General	Los Angeles
Buddhi Athauda	Consul General	Frankfurt
P.Ganegoda	Minister Counsellor	New Delhi
H.M.M.Dissanayake	Minister Counsellor	Seoul
S.Guneratne	Minister Counsellor	Bangkok
T.Attanayake	Minister Counsellor	Japan
Walter Jayawardena	Minister Counsellor	London
Sugeeshwara Senadhiraja	Minister Counsellor	Paris
Thamara Kunanayakam	Minister Counsellor	Brazil
M.J.A.Fernando	Counsellor	Rome
I.P.Karunajeewa	Counsellor	London
Aminda Rodrigo	Second Secretary	Washington
Chamara Ranaweera	Third Secretary	Islamabad

¹⁴ At least following officers have already been appointed (Sunday Island 9 March 2008):-

- H.G.U Pushpakumara Consul Sydney
- W.A. Wijeratne Minister, Rome
- E.M.S.B. Ekanayaka D.G. Administration
- K.N.J. Cooray, Senior Assistant Secretary

4. Legal Position

Provisions of the Constitution and the SLFS Minute need to be analyzed in order to understand the legal framework governing the diplomatic appointments.

4.1 Heads of Missions – Scope of President’s Powers

In terms of article 33(c), the President shall have the power to appoint accredited Ambassadors, High Commissioners, Plenipotentiaries and other diplomatic agents. Series of decisions in the Supreme Court in Sri Lanka authoritatively state that any person enjoying power cannot arbitrarily exercise it and that public power should be exercised in trust for and for the benefit of the public. Further, according to the Article 33(c) the President’s power is limited to the appointment of diplomatic heads of missions and does not apply to cadre positions.

The term “Diplomatic Agent” is legally interpreted¹⁵ to mean a national representative in any one of the following categories:

- i) ambassadors;
- ii) envoys, and plenipotentiaries;
- iii) Ministers resident accredited to the sovereign;
- iv) charges de’ Affairs accredited to the Minister of Foreign Affairs

Therefore, the President enjoys the power to appoint heads of diplomatic missions. However, this power does not extend to the appointment of other officers (officers other than Ambassadors or Heads of Missions).

Is there any scrutiny of these Presidential appointments? Technically there is High Posts Committee of Parliament that is required to examine the suitability of persons who are nominated for high posts including the Heads of Missions. Unfortunately the High Posts Committee has been totally ineffective, intransparent and serves no purpose¹⁶.

4.2 Other Foreign Service Officers – Who can be appointed?

As stated above, in terms of clause 8.1 of the Minute, other officers serving in Foreign Missions abroad must be chosen and appointed from the SLFS. Any other appointment made outside the SAFS is contrary to the Minute and therefore illegal and ultra vires.

Officers other than the Foreign Service ranks, such as clerks, are required to be appointed from the Public Management Assistants Service after a competitive examination. For example, by public advertisement in 2007, applications were called and a competitive examination was held and about 50 clerical officers were selected¹⁷. Notwithstanding this competitive process, the Cabinet has appointed a considerable number of persons who have neither been in the Management Assistants’ service nor have sat for the competitive examinations¹⁸. These appointments are clearly outside the Management Service Minute.

4.3 Appointing Authority of Heads of Missions

Under the 17th Amendment to the Constitution, all public service appointments must be made by the Public Service Commission. According to the SLFS Minute, the situation remains the same. However this does not interfere with the Presidential appointments made under Article 33 of the Constitution in respect of the Heads of Missions.

Thus the question here is not whether the President has power but whether suitable appointments are made as Heads of Missions having regard to the intended purpose of such missions.

¹⁵ Black’s Law Dictionary

¹⁶ Report on Key High Posts, Transparency International Sri Lanka 2004 pg.22

¹⁷ Gazette Extraordinary dated 25-5-2007 published by Palitha Kohona, Secretary to the Ministry of Foreign Service

¹⁸ For example, Mr. P.G.P.B. Sirisena and M.K. Vijaya were appointed as Clerical Officers to London and Sydney respectively, w.e.f. 1-6-2008 consequent to Cabinet decision dated 23-4-2008

4.4 Appointment Authority of other Mission Officers

There is no doubt that it is the PSC which has the sole authority to appoint the offices of the diplomatic ranks, whether serving in the Ministry of Foreign Affairs or missions abroad.

It transpires that at present a series of appointments are being made by the Cabinet on the recommendation of the Foreign Minister etc. Thus the question is whether the cabinet has power to make such appointments.

The relevant provision of the 17th Amendment to the Constitution states as follows:

Article 55(1) - The appointment, promotion, transfer, disciplinary control and dismissal of public officers shall be vested in the (Public Service) Commission.

Article 55(3) - Notwithstanding the provisions of paragraph (1) of this Article, the appointment, promotion, transfer and disciplinary control of all Heads of Departments shall vest in the Cabinet of Ministers, who shall exercise such powers after ascertaining the views of the Commission.

Article 55(4) - Subject to the provisions of the Constitution, the Cabinet of Ministers shall provide for and determine all matters of policy relating to public officers.

There are no provisions whatsoever permitting the Cabinet of Ministers to make appointments to the ranks of the Foreign Service. The following are ranks of the Foreign Service that are governed by the SLFS Minute and appointments of which shall be made by the Public Service Commission:

Third secretary
Second secretary
First secretary
Counsellor
Minister Counsellor
Minister

It is therefore clear that appointments made by the Cabinet outside the SLFS is ultra vires and unlawful.

Further, appointments of Clerical Officers to foreign missions, made by the Cabinet too are contrary to the 17th Amendment to the Constitution.

4.5 Trend of SLAS Appointments to Foreign Service Cadre Positions

There is emerging evidence that many Sri Lanka Administrative Service (SLAS) Officers, hand picked by the Cabinet on undisclosed criteria, are posted to various ranks of the Foreign Service. There is no valid rationale for this, except permitting political authorities to hand pick their favorites for diplomatic postings. This too is contrary to the Minute and thus contrary to the Constitution.

The SLFS is a specialized service. It runs parallel to the Sri Lanka Administrative service and other combined services in the country. However, its role is different from other services. Broadly, the SLFS officials are tasked with the responsibility of coordinating bilateral and multilateral relations with foreign countries and also with the responsibility of protecting and safeguarding the image of the country. The SLFS officers have measured up to their counterparts in other countries in discharging their assigned duties with diligence and bringing 'name and fame' to Sri Lanka.

5. Information Black out

Information is not available in the public domain on the following:

- (a) Criteria of appointment of Officers to the Missions abroad
- (b) Names, backgrounds of the officers who have been posted to the Sri Lankan Missions during a period together with the authority that made the appointment
- (c) The basis of appointment of Sri Lanka Administrative Service Officers to SLFS positions
- (d) The present cadre of the SLFS together with the number of vacancies if any
- (e) Number of SLFS officers who have not been posted in Missions abroad

6. Consequences of Unlawful Appointments to the Foreign Service

- (a) By the aforesaid appointments, the Cabinet and/or the executive arm of the state has usurped the powers of the PSC.
- (b) By continuing the aforesaid appointments the SLFS has been politicized critically undermining values of SLFS;
- (c) There are no criteria defined what so ever to make appointments from the non-SLFS Staff. In addition to contributing the negative foreign relationships at mission levels these appointments have an adverse effect on the morale of the duly recruited and competent officers in the SLFS;
- (d) The executive being a trustee of the people is required to act within the framework of the Rule of Law and the instant appointments are outside the Minute and rules and norms that are practiced in any democratic country.
- (e) No serious assessment/evaluation has been done on the economic losses caused to the country or the damage done to the international reputation consequent to this practice; however, it is reasonable to assume that these ill practices have caused a considerable damage both to the economy as well as to the foreign relations. Further this has an adverse effect in attracting good and capable youngsters to the profession. Further the current trend will promote a culture of securing positions through political patronage.

7. Expectations of a Foreign Service

- (a) It is understood that the diplomatic service officers are expected to promote the interests of the country overseas. The range and the variety of work generally covers every area where the interest of the country and that of its people are involved internationally.
- (b) Judging from the British diplomatic service and many other foreign services in developed countries the followings are the key interests that need to be handled by the diplomatic service:

Political- maintaining and developing political ties and promoting economic links in the host country and ensuring that the policies of the sending country are properly explained to the host country and media.

Commercial - helping the trade organizations of the country to sell their goods and services in the host country, promoting inward investments and ensuring that laws of the host country do not discriminate against the local companies.

Consular- assisting the citizens residing in host country, resident or visiting the host country and processing the applications from visitors into the country.

- (c) These key points are vital for diplomatic officers to function. Thus, selecting the officers to fill diplomatic positions must be carefully handled. In all countries where professionalism and merit are valued, the procedures and rules for the recruitment of officers to diplomatic posts are strictly adhered to and transparent. This enables the selection of officers of higher calibre.
- (d) A significant element in modern day diplomacy is to be engaged in economic diplomacy. This includes the use of political influence and relationships to promote international trade and investments, improve functioning markets, reducing cost and risks of cross-border transactions and developing international telecommunications, energy and transport networks. Economic diplomacy requires application of technical expertise and knowledge of economics as well as knowledge on international institutions such as IMF, WTO, World Bank etc. Versatility, flexibility, sound judgment and strong business skills are strongly demanded in the execution of economic diplomacy.
- (e) Globally recognized practice is that all diplomatic service officers are appointed on merit on the basis of a fair and open examination. In terms of the Diplomatic Service Code of Ethics of the British diplomatic service, the core values of the diplomatic service are “ integrity, honesty, objectivity and impartiality ”¹⁹, which are explained below:

‘Integrity’ is putting the obligations of public service above your own personal interest;

‘honesty’ is being truthful and open;

‘objectivity’ is basing your advice and decisions on rigorous analysis of the evidence;

‘impartiality’ is acting solely according to the merits of the case and serving equally well Governments of different political persuasions.

8. Conclusions

- (a) In the modern context any sovereign state should have an extremely professional foreign service, which is capable of conducting foreign relations of the country. Promotion and protection of the interests of the country is paramount and should be for the benefit of the State. Foreign service is not intended to cover up failures at home but conduct foreign affairs in cooperative and holistic manner.
- (b) President Mahinda Rajapaksa, addressing the Sri Lanka’s diplomats abroad on 4th October 2006 stated that “diplomacy is obtaining the maximum benefits for one’s country through discussion and bargaining among countries and groups representing countries And that I cannot say that our foreign service has carried out this task very well. I regret this”. He went on to say that “it is necessary to consider whether we obtain the full benefit of the money expended on every foreign mission, which is to judge this from a Value for Money concept”. This is a serious situation which can only be addressed by genuine commitment to establish a professional Foreign Service, devoid of any kind of partiality.
- (c) There is a visible politicization of the Foreign Service in Sri Lanka to the detriment of the interests of the country for almost four decades. The political leadership of the country is only paying lip service to the Foreign Service. There were many public pronouncements from time to time made by the authorities promising that future appointments to all levels of Foreign Service including clerical services would be made on merit; but the practice was to the contrary. For example, on 11 August 2004, a Press Statement was released by the Ministry of Foreign Affairs stating that no irregular appointments would be made outside the scheme of recruitment and that information advisers would only be appointed among the professionals to the foreign missions. However there is clear evidence that this was not followed.

¹⁹ www.cabinettooffice.gov.uk/prorerty_and_ethics.

- (d) The non implementation of the 17th Amendment (failure to appoint the Constitutional Council and then to appoint a legitimate Public Service Commission) and ineffective parliamentary scrutiny of the high posts are serious issues adversely affecting the integrity of the recruitment process.
- (e) Unsuitable and unwarranted appointments to the cadre positions of the Foreign Service continue in high scale. This practice has demoralized the SLFS. Consequently, the quality of the service will be adversely affected resulting in a near collapse of the service.
- (f) Though the appointment of heads of missions is within the purview of the President there must be disclosed criteria to select suitable candidates. Appointments outside the Foreign Service appear to be made on personal contacts of the powerful political personalities (irrespective of their background, quality or capacity) and without any assessment of their competence.
- (g) The Cabinet is usurping the power of the Public Service Commission in filling up the carder positions outside the Minute. There does not seem to be any move by the Public Service Commission to challenge these irregular appointments. Although information if widely available about the irregular appointments in media, neither the President nor any other authority has taken any action to arrest the situation.
- (h) Irregular appointments, if made with ulterior motives, amount to corruption. By appointing unsuitable persons the appointing authorities are obviously expecting benefits for themselves or their political parties. Consequently the entire process of such appointments is manipulated to the detriment of the State.
- (i) At present, the greatest challenge is demoralizing SLFS by appointing outsiders into ranks, many of whom have no visible qualifications to perform as diplomats. If this process of destroying the Foreign Service is not halted immediately, it is the national interest that will not be paramount in foreign affairs and will be at stake, to the great detriment of Sri Lanka²⁰.

9. Recommendations

- (a) All appointments governed under the SLFS should strictly be filled from and among the SLFS officers and by the PSC. At no stage the Cabinet should exercise these powers, contrary to the 17th Amendment to the Constitution.
- (b) The Management Assistant appointments in missions must also be made on merit and be based on a competitive examination.
- (c) All safeguards must be made to prevent the Head of the State abusing constitutional power to make appointments including Heads of Missions. This should include published criteria for such appointments, an effective and transparent scrutiny by Parliament and by the Constitutional Council.
- (d) Criteria should be formulated, adopted and followed based on international best practices to prevent the questionable recruitments in the Foreign Service.
- (e) Information of appointees and selection process should be in the public domain and should be readily available on the web.
- (f) Sri Lanka does not have an effective diplomatic Code of Ethics. Ad hoc recruitments as set out above has diminished the quality of the diplomatic service particularly integrity, honesty, objectivity and impartiality. Unfortunately by perpetuating these practices the Sri Lankan diplomatic service (which is otherwise capable of meeting its objectives) would not be able to meet the core values expected of it.

- END -

²⁰ Ms. Manel Abeysekere, former Diplomat presentation at OPA - Annual Sessions 2008