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**MAGISTERIAL INQUIRY INTO
THE HOMICIDE OF RICHARD DE ZOYSA**

Report of Anthony Heaton-Armstrong,
Observer appointed by the
International Commission of Jurists

August 1990

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MAGISTERIAL INQUIRY INTO THE HOMICIDE OF RICHARD DE ZOYSA

Report of the observer appointed by the International Commission of Jurists

1. BACKGROUND

On 18 February 1990 Richard de Zoysa, a 31 year old journalist, was abducted from his home near Colombo in Sri Lanka in the early hours of the morning by a group of men. His body was found in the sea on 19 February. He had been shot. A magisterial inquiry into the killing was instituted shortly afterwards. About three-and-a-half months later Mr de Zoysa's mother, Dr Manorani Saravanamuttu, who had been present at the abduction, claimed to have identified one of the abductors as Senior Superintendent of Police Ronnie Gunasinghe when watching a television news broadcast on which he had appeared. The police authorities declined to arrest Mr Gunasinghe. Public concern about the killing had, meanwhile, been growing nationally and internationally. Both Dr Saravanamuttu and the lawyer she had instructed to represent her interests at the inquiry received death threats over the telephone and in writing. Following representations made to Justice, the British section of the International Commission of Jurists, the ICJ decided to send an observer to witness the later stages of the magisterial inquiry. I was appointed as its representative on 20 June 1990.

In presenting this report on my mission, I do not propose to comprise within it a comprehensive account of the wider background to Mr de Zoysa's killing. Suffice to say, I have been considerably assisted by two documents and ask that these be considered as addenda to my report:

1. "Sri Lanka - A Mounting Tragedy of Errors"

A report of a Mission to Sri Lanka in January 1984 on behalf of the International Commission of Jurists (ICJ) by the late Paul Sieghart, then Chairman of the Executive Committee of Justice.

This widely respected and comprehensive report followed the inter-communal and other violence and killings in Sri Lanka in and around 1983. I have cited this report for two reasons:

- a) because it seems to me that there are many significant parallels between the situation which developed in Sri Lanka in 1983 and the violence which erupted there in 1988 and 1989, culminating, in a sense, in Richard de Zoysa's death;

b) because Mr Sieghart's conclusions are, in many respects, similar to some of those which I have reached and are equally applicable now. I will refer to these later in this report;

2. "Political Killings in Southern Sri Lanka"

This is a report sponsored by International Alert written by Eduardo Marino. It covers the background and detail of the upsurge of violence prior to and following the Presidential election in 1989, and provides a wealth of information about relevant events in Sri Lanka in the 2-3 years before Richard de Zoysa's death;

I should emphasise that I have cited these reports in order to provide background material. I do not endorse the comments contained within them except where I have specified below.

2. SUMMARY OF OBSERVER'S INVOLVEMENT

After I had been asked to undertake the mission, I applied for a visa at the Sri Lanka High Commission in London and addended a copy of the Order of Mission to my application.

It was however clear to me that it was unlikely that there would be any official objection to my entering Sri Lanka on a tourist visa and attending the court hearing on 5 July 1990 because the proceedings were open to members of the public.

On my arrival in Sri Lanka Desmond Fernando, chairman of the Bar Association of Sri Lanka, arranged a meeting with Bradman Weerakoon, the special Adviser on International Affairs to the President and this took place on a day prior to the court hearing on 5 July 1990.

Mr Weerakoon was told by Desmond Fernando that I was the official representative of the ICJ. The possibility of there having been some misunderstanding by those responsible for processing my visa application was discussed. Mr Weerakoon made it clear that, as he saw it, there could be no objection to my entering and remaining in the country on a tourist visa.

As is detailed in the chronology, I attended the court hearings on 5 and 16 July 1990. I shall not reiterate what happened in court - the details are fully set out in the official record of the court proceedings. I add only that on 16 July 1990 the magistrate was handed one of my original orders of mission from the ICJ who caused relevant details to be entered into the shorthand note of the proceedings.

During my stay I met and spoke to numerous individuals who had an interest in the case. These included:

- | | |
|-----------------------|---|
| Desmond Fernando | - Chairman of the Sri Lanka Bar Association |
| Batty Weerakoon | - the lawyer employed by Dr Saravanamuttu |
| Sunil da Silva | - Attorney-General of Sri Lanka |
| Ernest Perera | - Inspector-General of Police |
| Suriya Wickremasinghe | - Secretary, Civil Rights Movement of Sri Lanka |
| Anura Meddegoda | - State Counsel representing the Attorney-General at both hearings |
| Ranjit Abeysuriya PC | - previously the Director of Public Prosecutions, currently a leading criminal lawyer in private practice |
| David Gladstone | - British High Commissioner |

In addition to those I have named I met several other local people with differing social, professional and religious backgrounds who expressed views about the case which were useful to me. I also met a number of members of diplomatic missions including representatives of the West German and American Embassies. I have kept abreast of media reports about the case in the local and international press.

Following my return to England I have consulted a number of senior lawyers with, between them, considerable experience in the criminal courts and discussed the strength of the identification evidence with them.

3. PERSONAE

RICHARD DE ZOYSA was a well-known and respected journalist who enjoyed a good reputation among the local population. The Government and the President himself were frequent targets of his criticism. In the context of Sri Lanka's recent troubled history he was likely to have caused a large number of disparate groups, official and unofficial, to have felt that this scrutiny was unwelcome. At the time of his death he was working for the Inter Press Service News Agency, concentrating on human rights violations reports. He was very shortly due to leave Sri Lanka to take up a post for the IPS in Lisbon, Portugal.

DR SARAVANAMUTTU is a medical general practitioner of considerable experience. She is regarded as being a highly composed and considerate individual who is unlikely to have hysterical reactions even to the most provocative of events which involve her personally.

The de Zoysa family has an illustrious history and is well known to many of the people with whom I had contact.

RONNIE GUNASINGHE is a senior policeman and has recently been tipped for promotion to the rank of Deputy/Assistant Inspector-General of Police. He has been closely involved in the operations to stem the tide of JVP violence. He has a reputation as a hard and tough man, and is said to be personally favoured by the President.

It is generally felt to be unlikely that he would have been physically present at the abduction in view of his seniority and, inter alia, the risk of being identified. A number of people with whom I spoke expressed the view that, if he was not physically present at the abduction, it was likely that he was 'behind' it, although I hasten to say that I have seen no evidence to connect him with the abduction apart from the evidence referred to in the chronology.

It has been suggested that, on the assumption that Gunasinghe was involved in the abduction, this may have been considered to be necessary in view of the urgent need to remove Richard de Zoysa before he left Sri Lanka for Portugal. Gunasinghe's seniority and authority would thus have been useful as a means of getting past obstacles, eg. challenges by more junior or less influential officers in the course of or following the abduction and killing. This is only an hypothesis - and many have been suggested (see for example copy of article in Probe magazine) - but it does offer a plausible explanation for the involvement of Gunasinghe.

THE INVOLVEMENT OF STATE AUTHORITIES. Several of my contacts said that they felt that the Government had a hand in the abduction albeit without being able to point to any specific evidence to support their convictions. These included a

number of local people whom I felt were unlikely to be partial on the issue.

A great deal of concern has been expressed about the current administration's human rights record generally, and there has been talk at diplomatic level of a threat to the existing level of international aid. It appears that the President is protected by members of his staff, to a very great extent, from details of the concern and the threat to aid.

4. CHRONOLOGY

The statements of fact contained within this chronology have been collated from a number of sources, the principal of which is Batty Weerakoon, Dr Saravanamuttu's lawyer. Whilst I should make it clear that I have not been able to confirm the accuracy of the whole of this account, I believe that it is broadly correct and have acted on the assumption that it comprises no major misstatements.

FEBRUARY 1990

18 Feb - About 2:30am a group of armed persons came to the house of Kenneth Honter and demanded to know the address of Richard de Zoysa. When Honter said he did not know it, he was told to find out. Under duress he phoned a mutual friend Arjuna Ranawana who gave him the address which he conveyed to the intruders.

When the armed group left Honter phoned Arjuna Ranawana again and explained what had happened. Arjuna Ranawana, fearing for Richard de Zoysa's safety, phoned a friend in the police in the Mirihana/Nugegoda area.

Henry Perera, Senior Superintendent of Police, Mirihana, then phoned and informed the Welikada police station which is about 500 yards from Richard de Zoysa's house. (This transpires in a statement later made by SSP Henry Perera).

18 Feb - Richard de Zoysa was taken from his home at about 3:30am by several armed men who said they were from the police and wished to interview de Zoysa. One of the men who came into the house apparently in police uniform but without any obvious signs of identification. His mother, Dr (Mrs) Saravanamuttu, witnessed the abduction. There were also other witnesses.

18 Feb - Mr Gamini Fonseka, Deputy Speaker of Parliament, was amongst several persons contacted on the morning of the abduction. Fonseka was contacted by a friend and then by Dr (Mrs) Saravanamuttu. He assured both that Richard was in safe hands. Police recorded statements of Mrs Saravanamuttu and others including servants and neighbours.

The following names also transpire in the attempts to find out what happened to Richard, and the 'safe hands' reply received:
Karunatileke, one of the several friends of Richard's, who made phone calls seeking information, General Weeratunge, his daughter, Lucky Algama,

General Attygalle, the Inspector General of Police, SSP Henry Perera, Victor Unantenne (Secretary to Leader of Opposition).

- 19 Feb - Richard's naked body was found at about 12:30pm washed up on the beach at Moratuwa with gunshot wounds in the head and neck. Post mortem medical report states his jaw was fractured and noticeable abrasions across both legs at shin level. Private parts swollen. The Ministry of Defense said that the murder was being specifically investigated by the Crime Detection Bureau (CDB) of the police.
- 20 Feb - Inquest commences. Dr (Mrs) Saravanamuttu testified regarding the abduction and said she could identify two of the persons who took away her son. Police do not lead evidence of the others such as neighbours who saw the operation that had been mounted around the house.
- Verdict of homicide is given in inquest proceedings.**
- 21 Feb - de Zoysa is cremated.
- 22 Feb - Further statement of Dr (Mrs) Saravanamuttu recorded by police. No attempt yet by the police to get a description of the two persons she said she could identify. About the same time police tell CDN that they have recovered certain documents that point to a breakthrough in the investigations.

MARCH 1990

- 2 Mar - SLBC, the State owned radio station, broadcast a news item in LANKAPUWATH that the police have stated that investigations into the death of Richard de Zoysa have revealed that he was a JVP activist working with the military wing and sending out death threats to assorted people. The item also noted that police investigations have allegedly revealed that he had used Inter Press Service News Agency to transmit several false messages on human rights violations in Sri Lanka. LANKAPUWATH is state owned. Matter raised in Parliament and Minister of State for Defence Ranjan Wijeratne says he will inquire into the LANKAPUWATH news item.
- 22 Mar - Court hearing. Batty Weerakoon appears for Richard de Zoysa's mother for the first time and files affidavit that the post mortem report is not in the court record and that the certified copy of proceedings issued by court to Mrs Saravanamuttu says that police do not suspect foul play. Police noticed to appear on 26 March.

- 26 Mar - Batty Weerakoon informs court that police have failed so far to file in court report of investigations and summary of witnesses' statements as required by the Criminal Procedure Code. Files Mrs Saravanamuttu's affidavit that police have been told of the assurances re 'safe hands' and wishes to know what investigations have been done on that. Gamini Fonseka's name mentioned by Batty Weerakoon as amongst those who gave the assurance. Police say they have not recorded Fonseka's statement because they had no typewriter. Magistrate directs police to record his statement and file report and summary of statements on next date 6 April 1990.
- 28 Mar - Dr (Mrs) Saravanamuttu met with The Hon Attorney-General. She tells him of her distrust of the police investigation.

APRIL 1990

- 6 Apr - Police file for first time report and summary of statements. In these Gamini Fonseka says he got the assurance of safety from General Attygale, the then Secretary of Defense. The General in his statement says he got this from the IGP, and the latter in turn says in his statement that he got it from Henry Perera SP Nugegoda. He covers Welikade where de Zoysa resided. The latter in his statement had said that he was told that there was information that the deceased was in safe hands when he was in the home of Mrs Saravanamuttu on the morning of 18 February 1990, and that Mrs Saravanamuttu had told him that there was no reason to investigate further. Dr (Mrs) Saravanamuttu denies that she ever said this. Police report says that they have to record statements from journalist friends of de Zoysa - Arjuna Ranawana and Karunatileke who have both left the island - that this story of 'safe hands' was started by Karunatileke who attributed it to General Weeratunge and that he will be prosecuted for this. Batty Weerakoon tells Court that these are journalists who have left the country apparently because they fear for their lives but that their addresses are known. Ranawana is ASIAWEEK correspondent in Ankara and Karunatileke is in New Delhi and can be contacted through Sri Lanka High Commission there. Court gives long date to police to get their statements. Next date 1 June.

MAY 1990

- 10 May - News broadcast - Dr (Mrs) Saravanamuttu recognises Gunasinghe as one of Richard's abductors.
- 16 May - Death threats sent to Dr (Mrs) Saravanamuttu by anonymous letter. (Document "E")
- 30 May - Mr Batty Weerakoon received a telephone call from a man who said he should not attend Court on 1 June 1990 because the proceedings related to the death of a traitor, and that a letter too has been posted to him. Mr Weerakoon cut off the call when the caller refused to divulge his identity or the location of his organisation.

JUNE 1990

- 1 Jun - Police report that Sri Lanka High Commission in India has telexed to say that Karunatileke has sent his affidavit, but no affidavit is produced. Police say they have not received it. Dr (Mrs) Saravanamuttu revealed to Court through an affidavit that she had been able to identify SSP Mr Ronnie Gunasinghe as one of the persons who came to her house on 18 February 1990 and took her son away. Thereupon SSP Gamini Perera of the Crimes Detection Bureau (CDB) stated to the Court that he needed an identification parade and that he would arrest and produce the suspect. The Magistrate ordered that the suspect be arrested and produced on 11 June 1990 and that she would make an order on the parade after that.
- 1 Jun - On returning home Mr Batty Weerakoon finds in his mail a letter claiming to be from the "Organisation for the Protection of the Motherland". (Document "F + F1")
- 3 Jun - Letter from Mr Batty Weerakoon to HE President Premadasa informing him of the death threats made to both Mr Weerakoon and Dr (Mrs) Saravanamuttu. (Document "G") The letter also communicated his position that the killing of Mr de Zoysa and the death threats were both linked to police personnel. Mr Weerakoon said he shall continue appearing in the case and asked that the Government take the necessary steps to ensure the safety of all concerned.
- 5 Jun - Statement of Dr (Mrs) Saravanamuttu recorded by the police. In the statement she recalled how she had come to identify SSP Mr Ronnie Gunasinghe as one of Richard's abductors, namely when she happened to see him on TV news on two occasions in May 1990 and in

the newspaper too during the same period. She mentions that OIC Ranchagoda of the Fort Police Station was also named to her in her original information as a policeman involved in her son's killing. Others named were Inspector Devasurendra of the Slave Island Police Station and one Sarathchandra, also a policeman.

- 6 Jun - Letter to Mr Batty Weerakoon from Mr KHJ Wijayadasa, Secretary to the President, stating that HE the President has instructed General Cyril Ranatunga, Secretary to the Ministry of Defence, and Mr Ernest Perera, Inspector General of Police, to ensure that all necessary steps are taken in consultation with Mr Weerakoon to provide him with adequate security cover and protection. (Document "H")
- 8 Jun - SSP Mr Ronnie Gunasinghe petitioned the Court of Appeal for a revision of the Magistrate's Order to arrest and produce the suspect on the ground that Dr (Mrs) Saravanamuttu's affidavit to Court on 1 June 1990 to the effect that she had identified the suspect was belated. The Court of Appeals rejected the application as the papers were defective.
- 11 Jun - A copy of the statement made by Dr (Mrs) Saravanamuttu to the police on 5 June 1990 was tendered to the Magistrate by her lawyer Batty Weerakoon through an affidavit. (Document "I") The police failed to produce the suspect on that day as required and stated to the Court that it did not do so because on a reading of Dr (Mrs) Saravanamuttu's statement they found that she had made a definite identification and that therefore they do not require an identification parade. It was pointed out to the police that if there has been a definite identification the suspect must be arrested and produced. The police thereupon said that it is as yet premature to arrest the suspect and that there is not a sufficiency of evidence for an arrest. The Magistrate said that she did not see that any more than the statements so far made by Mrs Saravanamuttu was necessary for this arrest of the suspect and ordered the police to consult the Attorney-General on this matter. Mr Batty Weerakoon asked that he be permitted to lead evidence in open Court under procedure available to him so that the Magistrate could herself decide on the matter in issue. He also says he has other witnesses but he fears to reveal their names till their evidence is taken in Court. Order on this application will be made on 5 July 1990.
- 22 Jun - Two police officers on regular assignment to Batty Weerakoon are told by anonymous letter to leave post or they will be killed. BASL informed.

- 22 Jun - Desmond Fernando (President BASL) informed IGP re threats. IGP said he had not been informed of this and was hearing it for the first time. President BASL also told him that no police inquiries whatever had been made from Mr Weerakoon regarding the manner in which the threats were made. The IGP said that he would see if security could be increased that night and would also look into the matter of lack of inquiries.
- 23 Jun - President BASL rang HE the President and was told that he was away in Kandy. President BASL then rang Mr Bradman Weerakoon, advisor to the President, who said he would be meeting the President that day in Kandy and would tell him about the threats to the police officers and about the lack of police inquiries re the threat to Mr Weerakoon.
- 25 Jun - Letter to The Hon Attorney-General from Mr Batty Weerakoon (Document "J") bringing to his notice certain facts as pertain to the police investigation, and its unreliability.
- 25 Jun - Letter to Ernest Perera, Inspector General of Police, from Mr Batty Weerakoon (Document "K") sending a copy of 25 June 1990 letter sent to the Attorney-General on the matter of the CDB's investigation into the death of Richard de Zoysa. He states that the Magistrate was perturbed over the degree of collusion shown in open Court by the CDB's officers and the lawyers who claimed to appear for the suspect SSP Mr Ronnie Gunasinghe. He said the Magistrate's reaction is on record. Mr Weerakoon suggested that the investigations and the conduct of the case in Court be taken out of the hands of the CDB and entrusted to the CID. He cited the annexed letter to the AG for the reasons underlying this request. Mr Weerakoon also mentioned the death threats to the policemen guarding him and how the fact that the threats mentioned the names and the functions of the plainclothes police officers suggest that the threats came from within the police itself.

An anonymous letter received by Batty Weerakoon which is clearly from a policeman in the Fort Police Station about the involvement of OIC of the station, Ranchagoda, in the de Zoysa killing is also enclosed. He points to the significance of that information.

- 25 Jun - Letter to HE President Premadasa from Mr Batty Weerakoon (Document "L") stating that the President's instructions that steps be taken to apprehend those responsible for the death threats have yet to be carried out. Not even the first step

in this regard, the recording of a statement from Mr Weerakoon, has been taken. In the meantime he noted that the two police officers who were accompanying him have sent letters ordering them to leave him and that if this is not done that they too will be killed.

- 28 Jun - Letter to Mr Batty Weerakoon from Mr KHJ Wijayadasa stating that HE the President acknowledges receipt of Mr Weerakoon's letter of 25 June 1990 and that HE the President will take appropriate action regarding the two matters referred to in the letter. (Document "M")

JULY 1990

- 5 Jul - Court hearing. See extract from court records (Document "N"). Mr A Heaton-Armstrong and Mr Desmond Fernando were present in Court throughout the proceedings. A large number of persons were present, representatives from the Diplomatic missions of Australia, Netherlands, FRG, Sweden and the USA, and the President of the Bar Association of Sri Lanka.
- 6 Jul - Batty Weerakoon writes to Attorney General disclosing the name of one witness and giving the summary of the evidence of another witness whose name is not disclosed but who is not relied for direct identification. (Document "O")
- 8 Jul - SP Colombo South, Mr Lal Ratnayake, and ASP Mr Ignatius recorded Mr Weerakoon's statement on the death threats made to him. They told him that they were not investigating and that they had only been told by the DIG to record his statement. In his statement Mr Weerakoon gave the details of the threat and his belief that the threats came from the police personnel responsible for the abduction of Richard. He told the police of the LANKAPUWATH news item (see 2 March 1990) and said that if the police trace the source of the "leak" they will find it very helpful in their investigations (if any) into the threats. For Mr Weerakoon's notes on this subject see Document "P"
- 9 Jul - Mr Batty Weerakoon met with the Attorney-General in his chambers. State Counsel Mr Anura Meddegoda and Deputy Solicitor General Hector Yapa were also present. The AG said that he did not see why Mr Weerakoon should not lead evidence in court under section 138 of the Criminal Procedure Code. The AG wished a consultation between his officers, the lawyers for the named suspect and Mr Weerakoon. Mr Weerakoon said he did not wish to participate in any

consultation, for the present, with the lawyers for the suspect. The AG wished his State Counsel to go into the question about the right to cross-examination. Mr Weerakoon told the AG that the Magistrate specifically drew the attention of parties to section 272 of CPC and said she will be guided by it. Mr Weerakoon noted that he had not as yet studied this matter of the right of cross-examination. State Counsel was asked by the AG to get back to Mr Weerakoon after his interview with those representing alleged suspects. For Mr Weerakoon's notes on this subject see Document "P"

- 14 Jul - State Counsel Meddegoda telephones Batty Weerakoon to inform him that AG has decided to lead the evidence Weerakoon contemplates leading but says he would make application to Court to lead this under section 124 in preference to 138.
- 16 Jul - Court hearing. See extract from court records (Document "Q"). Dr (Mrs) Saravanamuttu present in Court with her lawyers in order to give evidence.
- 18 Jul - Mrs Saravanamuttu leaves the country on invitation from abroad. Her friends and relatives feel her life here in the midst of the fresh ethnic situation is highly endangered.

Her affidavit on certain matters that arose in Court on the 16 July 1990 is forwarded to AG by Weerakoon with his covering letter. (Document "R + R1")

AUGUST 1990

- 10 Aug - Following a ministerial statement in parliament about steps being taken in the pursuance of the inquiry, Batty Weerakoon writes to the AG correcting him on certain matters misleadingly put before parliament. (Document "S")

5. OBSERVATION

1. Since the upsurge of JVP violence there have been between 8,000 (the official figures estimated by the International Committee of the Red Cross), and 30,000 (the unofficial figure) 'disappearances' in Sri Lanka. It is officially conceded that the security forces have been directly or indirectly responsible for some of these, although it is not possible to quantify these precisely.
2. Almost invariably, the disappearances are absolute - ie the disappeared person is lost forever. Bodies are rarely identifiable as the killers take steps either to secrete them or to make identification impossible e.g by burning them or by removing them to a location where identification is unlikely due to the remoteness from those who might be able to perform the identification.
3. Until very shortly before Richard de Zoysa's abduction/killing, the security forces were entitled to dispose of bodies in their custody without recourse to a post-mortem or inquest.
4. Richard de Zoysa's abduction and killing was unusual in that his body was recovered in an identifiable state and was actually identified. This has therefore been described as a 'bungled job'.
5. Detention without trial has been widely used. There are currently said to be approximately 15,000 detainees in state institutions who have not been charged. The authorities are not obliged to inform concerned relatives or friends about the whereabouts of detainees.

Many people have been discovered to be in detention only after habeas corpus hearings in the courts. Following death threats and other harrassment, a number of lawyers who specialised in habeas corpus proceedings on behalf of detainees' families have fled the country and claimed asylum elsewhere.

6. In the general context summarised above, the abduction and killing of Richard de Zoysa is hardly an unusual event in itself. Ascertaining the identity of his assailants and those 'behind' his killing was always going to be fraught with substantial difficulties, however determinedly and conscientiously the task of investigation was approached. There is enormous fear among potential witnesses and those responsible for disappearances and killings have, through experience, become very adept at concealing their tracks.

7. It became clear to me during my meetings with the Attorney-General and the Inspector-General of Police that, at least until my departure, no credence has been officially attached to Dr Saravanamuttu's identification of Ronnie Gunasinghe as one of those present at her son's abduction - hence the failure to suspend him from duty pending further investigation or, at least, to transfer him to an area where he was less likely to be able to influence potential witnesses and to jeopardise a successful and effective investigation.

This view seems to have been justified by the police and the AG largely because, firstly, the purported identification took place some three months after the incident; secondly, bearing in mind that Dr Saravanamuttu had already been alerted to the possibility of Ronnie Gunasinghe's involvement through an anonymous telephone call (referred to in the chronology), an announcement of Gunasinghe's name was made by a broadcaster immediately prior to his appearance on television; thirdly, it is not felt to be sensibly feasible that Gunasinghe would have been physically present at the abduction in any event.

8. Point seven above explains not only why the authorities have abdicated the pursuance of proceedings against Gunasinghe to Dr Saravanamuttu's lawyer, but also why the proceedings have become undoubtedly so protracted.
9. There seems to have been a distinct breakdown in communications between the authorities on the one hand and those pursuing the investigation on behalf of Richard de Zoysa's family on the other. Thus, it apparently came as a complete surprise to the latter to hear that the police claim to have erected roadblocks around the de Zoysa house within half-an-hour of receipt by the police of a warning that his life was in jeopardy. I was told this by the Inspector-General of Police when I saw him on 17 July 1990. I was very surprised to have learnt this for the first time so late in the day particularly bearing in mind the claims made by Batty Weerakoon, in his letters to the authorities which are addended, that the police had not responded to the warning with any proper enthusiasm. I understand that the mention of roadblocks to me by the IGP during our meeting was the first time that there had been any public mention of this.

Furthermore, I am puzzled about the late disclosure by the Attorney-General of the detail of the video of Ronnie Gunasinghe's appearance on the news broadcast. His representative's announcement that 'the name preceded the face' in court on 16 July (this is not mentioned in the court record) bore the resemblance of the late display of a trump card in a competitive game. One would have expected this to have been revealed much earlier in the proceedings. Specifically, Batty Weerakoon's letter

to the Attorney-General of 25 June 1990 (Document "H") might usefully have elicited this information but the letter has remained unanswered - at least in writing.

Finally, I should mention that, when I saw the Inspector-General of Police on 17 July 1990, he showed me a copy of his statement concerning the events of 18 February 1990 as far as they related to the 'safe hands' issue. It was clear to me, on a brief reading of this, that Batty Weerakoon's knowledge about the official explanation for what is said to have been a series of misunderstandings, is unnecessarily limited. I assume that he has not been shown a copy of the Inspector-General's statement.

6. THE EVIDENCE OF IDENTIFICATION IMPLICATING SSP
GUNASINGHE AND COMMENTARY: SUMMARY OF RELEVANT MATERIAL

18 FEBRUARY: THE ABDUCTION

Dr Saravanamuttu witnesses her son's abduction. This occurs in the early hours of the morning, when it was dark. It is not clear what the extent of the lighting was in the de Zoysa house at the time. The house is in a 'good' residential area, within a few hundred metres but not in sight of the local police station, and about 100 metres from the house occupied by the Solicitor-General. Her son is taken from her by a person dressed in a white T-shirt, white shorts and white cap. She was face-to-face with this person for, at least, several seconds and, at an early stage, stressed that she would be able to recognise him again. Dr Saravanamuttu asserts that she said 'There is no need to take him (Richard de Zoysa) downstairs' to this man but there is no record of her having received a reply.

The police have evidently failed to take a physical description of this person from Dr Saravanamuttu. However, I note that, prior to her identification of Gunasinghe on the television, no attempt appears to have been made by any party to take a description. If I am correct, this is unfortunate. I understand that Gunasinghe has a rather distinctive appearance (he is said to have heavily pock-marked facial skin) and a pre-identification description by Dr Saravanamuttu would, if it had tallied with Gunasinghe's appearance, have tended to confirm the correctness of her identification and support her credibility as a potential witness. I understand that, prior to the identification, Dr Saravanmuttu told various associates about the physical appearance of the man in white clothing, including detail of his facial skin. This material has, unfortunately, not been reduced to writing. I suggest that statements should be taken from anyone to whom Dr Saravanamuttu gave descriptions prior to the identification.

I do not consider the failure to obtain an early description is necessarily anything very sinister. It is a common error, sadly, for police officers under pressure to make. However, the error, as error indeed it was, was an exceedingly elementary one and should have been noticed by, at least, the senior police officer in charge of the investigation. The error should have been rectified long before the identification and, had it been, the identification might have been considerably stronger - or weaker, depending on the consistency of Dr Saravanamuttu's pre-identification description with the actual appearance of Gunasinghe. I view the CONTINUING failure to take a description of the physical features of the two people whom Dr Saravanamuttu said she could recognise to be a much more fundamental and grave error - particularly in view of her complaint to the AG about the adequacy of the investigation generally at an early stage.

Sometime before the identification, Dr Saravanamuttu received an anonymous telephone call during which she was told that Gunasinghe had been responsible for putting the abduction team together. Her informant also provided names of police officers who, he said, had taken part in the abduction itself.

It is, of course, significant that Dr Saravanamuttu was evidently not told that Gunasinghe was physically present at the abduction. In any event, her lawyer informed her that it was unlikely that a police officer of Gunasinghe's seniority would have taken part and it seems that, at the time of her identification, she had ruled him out as someone she would be able to identify.

One of the abductors' names which she was given was an Inspector Devasurendra. She was able to obtain a photograph of this police officer and has made it clear that she did not recall seeing him in the abducting party. This suggests that she has taken a calm and considered approach to identification generally, at least as far as this officer is concerned.

10 MAY:

Dr Saravanamuttu was watching television and, during a news broadcast, saw the man referred to above as the person in white clothing. It seems that she later discovered, during a second broadcast and confirmed by a picture in a newspaper, that it was Gunasinghe. She did not previously know what Gunasinghe looked like.

What happened thereafter, at least until the court hearing of 16 July, is adequately summarised in the chronology.

I refer to the third paragraph of the document labelled "O". I have not seen any statement from the servant named Karmadasa. It seems that this person may have told the police at an early stage that s/he would not be able to identify anybody who took part in the abduction, although there is a suggestion that this may have been said through fear or that, failing this, the police recorded the statement incorrectly. Both possibilities are feasible although I am in no position to comment on the accuracy of these claims. However, it seems that no descriptions of the abductors were recorded from the servant and I make the same comments about this as those I have made about the failure to record descriptions from Dr Saravanamuttu.

Following the Attorney-General's revelation that Gunasinghe's name preceded his appearance on the television news broadcast, Dr Saravanamuttu made a further statement which is addended and labelled Document "P".

7. COMMENTARY AND CONCLUSIONS

7.1 THE POLICE INVESTIGATIONS

Many complaints have been made against the police about what is said to be their inefficiency and lack of enthusiasm during the investigation of Richard de Zoysa's killing and, later, the death threats made against Dr Saravanamuttu and her lawyer, Batty Weerakoon.

I have not found it easy to form any particularly valuable and well-balanced views about these. There have been no written responses from the authorities to Batty Weerakoon's letters save those addended hereto. I did not have sufficient opportunities to investigate the validity of the complaints by, for example, speaking to all those against whom the complaints were made. Certainly, there has been considerable delay but whether this is solely attributable to any dilatory attitudes on the part of the authorities is, in my view, open to debate. Those responsible for abductions of this nature, particularly if they are connected to the security forces are, as I have already mentioned, likely to be highly skilled in covering their tracks. There seems to be no reason to believe that even the most thorough investigation would be any more likely to discover the culprits than in any other abduction/disappearance/killing situation.

Having said this, however, there are some comments which I feel I ought to make on this issue:

- a) the police could be said to have responded to allegations of security force involvement in an unnecessarily defensive manner. The reported feeding to the press of rumours about Richard de Zoysa's private life shortly after his killing (see chronology) when the matter was 'sub judice' was, if it occurred, ill-advised and prejudicial to an exhaustive and efficient enquiry;
- b) an identification parade should have been held immediately after it became known to the police that Dr Saravanamuttu had claimed to have identified Gunasinghe. I do not agree that such a parade would have been meaningless. A properly conducted parade, with a 'line-up' comprising a number of individuals with similar appearances to that of Gunasinghe might have proved, and might yet prove, to be extremely helpful. If Dr Saravanamuttu picked Gunasinghe out this would tend to confirm the accuracy of her television 'identification'. If she did not do so, her failure would lend considerable, if not conclusive, weight to the argument that her original identification was incorrect. I suggest that it is still not too late to hold a parade and that efforts should therefore be made to assemble a group of individuals with as similar an appearance as possible to that of Gunasinghe for this purpose;

- c) the decision not to suspend or, at least, not to transfer Gunasinghe away from the area where the abduction and killing occurred can, I suggest, no longer be justified in view of Dr Saravanamuttu's latest affidavit, dated 17 July 1990. It is not for the police to disbelieve her assertions at this stage and only by doing so can leaving Gunasinghe on duty in his current posting be justified. I do not consider that it would be right for the police to disbelieve Dr Saravanamuttu, in view of everything which is known about her and her reputation. Ultimately, her credibility should be a matter for the court.
- d) I understand that under section 393 (5) of the Code of Criminal Procedure it is the duty of the Superintendent or Assistant Superintendent of Police to report to the Attorney-General on any offences such as abduction and murder which occur within his division. This does not seem to have been done in this case. The Attorney-General first became 'officially' involved following the magistrate's order on 11 June 1990.
- e) I am concerned about the alleged collusion between the police investigating the case and the lawyers representing Gunasinghe and Ranchagoda - see chronology entry for 25 June 1990 and Document "K". There seems to be some strength in Batty Weerakoon's complaint - particularly in view of what he claims were the magistrate's own observations on the issue.
- f) Weerakoon also complains that there was no follow-up action after he informed Senior Superintendent of Police Gamini Perera that he had received an anonymous letter about the case purporting to emanate from the Fort Police Station. Taken at face value, this is a matter of great concern.

Viewed as a whole, the police investigations into Richard de Zoysa's killing seem to have proceeded on the unshakeable assumption that SSP Gunasinghe cannot have been involved. Batty Weerakoon's involvement in the case could be said to have been regarded by the police as unhelpful and unnecessary. His contributions seem to have been dismissed almost out of hand. Taking a step back and looking at the case from a distance, it seems to me that this has been an influential factor in the police investigation.

7.2 THE ROLE OF THE ATTORNEY-GENERAL

SSP Ronnie Gunasinghe is a senior police officer. False accusations against such men in the current climate are by no means unusual and he, doubtless, has numerous enemies who might be prepared to go to considerable lengths to discredit him and the individuals and institutions that he represents and supports. The Attorney-General's reluctance to cause him

to be charged is understandable in view of the fact that the identification evidence is not of the best quality.

It does seem to me, nonetheless, that the AG could be said, like the police, to have reacted unnecessarily defensively and to have proceeded, too, on the unshakeable assumption that Gunasinghe is innocent. I say this for the following reasons:

- a) The AG must have become aware of the case at an early stage in view of the wide publicity it received. Dr Saravanamuttu complained to him about the police investigation as long ago as 28 March 1990. It was well within his powers to have the case referred to him at an early stage in view of the serious nature of the crime and the broader implications of the case - See Code of Criminal Procedure section 393. He failed to have the case referred to him officially, this was left to the magistrate herself.
- b) Once the case was referred to him, the AG was empowered to take a more active role in the investigation. For example, he could, and arguably should, have taken a stronger stance over the question of an identification parade - both for Gunasinghe and Ranchagoda.
- c) The AG's decision to request that the evidence due to be called under section 138 of the Code of Criminal Procedure on 16 July should be called, instead, under section 124 has the appearance of a determination to prevent the court taking the initiative over the decision whether or not to arrest and charge Gunasinghe. In my view, this unusual case called for a public examination of Dr Saravanamuttu's evidence in court followed by a judicial, not an executive, decision. In the event, the role of the magistrate has been undermined.
- d) The AG's decision to interview the lawyers for Gunasinghe and Ranchagoda in the privacy of his chambers must, at least, be most unusual. I can understand that he might have agreed to this in the interests of 'fair play', since he had also interviewed Batty Weerakoon, but I do not consider that it was a wise decision. By doing this, he made himself susceptible to arguments that Gunasinghe and Ranchagoda should not be prosecuted by their own lawyers. I do not consider that it is right that he should have allowed himself to be so pressurised.

The situation as it stands, however, seems to call for a positive decision. This is not a 'fleeting glance' case. Dr Saravanamuttu has made what appears on the face of it to have been a valid identification. There are, without doubt, a number of factors which could be argued to weaken the strength of her identification but, short of disbelieving her, it seems that her evidence - all of it - must be taken at face value.

This has not been a case which cried out for an immediate arrest but there is, at this stage, no alternative but for SSP Gunasinghe to be arrested and brought before a court for committal proceedings on a charge of unlawful abduction and murder.

7.3 THE ROLE OF THE COURT

I have no reason to believe that the court proceedings were not conducted fairly, judiciously and in an atmosphere of ostensible independence. The magistrate was clearly very concerned about the case and had a detailed knowledge of the material placed before her. I was interested to note that, before the announcement by State Counsel on 16 July 1990 of the detail of the video recording of the news broadcast during which Dr Saravanamuttu made her identification, the magistrate indicated that she was concerned to know whether the announcement of Gunasinghe's name had accompanied his appearance on the screen.

Counsel for Gunasinghe and Ranchagoda, both of whom could properly be described as suspects, seem to have been given 'free rein' during both hearings I attended. They were, therefore, at risk of being able to pick up information of interest to their clients which might prejudice a fair and just trial. Little care appears to have been taken to ensure that they did not become privy to information which should not have been revealed to them at this stage.

I consider that it is most unfortunate that Dr Saravanamuttu's claims have not been given a judicial and public airing, and that the magistrate has been deprived of the opportunity to make a decision about the strength of the evidence which would have enabled her to decide whether or not to order Gunasinghe's arrest and charging.

7.4 THE FUTURE

The State has conceded that the security forces have been responsible for unlawful abductions and, possibly, killings. Where these occur there are almost insuperable difficulties in identifying the culprits and prosecuting them to conviction and sentence. There is a widespread belief that the security forces have an extensive involvement in this area and that insufficient action is taken to identify those responsible by those whose duty it is to do so. If the State is not seen to take a firm stance against this type of activity private citizens will inevitably take the law in their own hands and attack the servants of the State.

The State's reaction, as far as I have been able to ascertain, comprises three principal responses:

- firstly, to investigate disappearances and prosecute offenders using existing resources and judicial frameworks;
- secondly, to debate the issue in Parliament and through, inter alia, the All-Party Conference and;
- thirdly, to set up extra-Parliamentary bodies such as the proposed Human Rights Commission for further debate.

These all have serious limitations. Conventional police investigations and court proceedings face the sort of difficulties encountered in the Richard de Zoysa case - witnesses are too frightened to come forward, culprits are very successful in concealing their tracks, 'conspiracy' theories abound which tend to cause the authorities to be sceptical about accusations when they are made and, finally, police resources are limited.

Parliamentary debate is hampered by the non-cooperation of many of the political parties and, in any event, is not authoritative. Independent bodies such as the proposed Human Rights Commission are said to, and probably do, lack 'teeth'.

There appears to be a strong case for the setting up by the President of an independent judicial enquiry into the circumstances of the killing of Richard de Zoysa and the police investigation which followed under the Presidential Commissions Act. Such an enquiry would at least establish some useful lessons for the avoidance of similar killings in future and might point the way towards more effective police investigations into them. If it achieved nothing else, an independent enquiry of this sort would serve to 'clear the air' and reassure the concerned public that all possible steps were being taken by the state to identify those responsible. A similar suggestion was made by Paul Sieghart (see page 79 of "Sri Lanka - A Mounting Tragedy of Errors") and I wholeheartedly support his conclusions.

The Chairman of such an enquiry has extensive powers to conduct investigations, subpoena witnesses, order the police to bring specified documents to the hearing, question the police about possible obstruction of the enquiry, sanction lack of cooperation and make authoritative recommendations in his report. His powers are considerably more extensive than those of the magistrate under the Code of Criminal Procedure, which merely permits the magistrate to take action in an individual case - not to make wide ranging recommendations of general application. Furthermore, the magistrate has no power to sanction a failure to cooperate by the police and must rely on what the police choose to place before him/her. The Chairman of a Commission of Enquiry can reach much further behind the scenes and is not generally subject to having his decisions overturned by the Court of Appeal.

It would be pointless not to concede that, whatever the criticisms made of them, the Attorney-General and the Inspector-General of Police are likely to be faced with enormous difficulties in an investigation and prosecution of this kind. I suggest that, if only to allay public anxiety and fears, it might be wise to publish details of the investigation and the reason behind a decision not to prosecute, should that be made (see Paul Sieghart's report at page 91).

As far as I am aware, there is no facility for the provision of a special team of investigators in a case where a serious accusation is made against a police officer. In common with Sieghart (at page 92 of the report) I take the view that this would be a useful resource and of particular importance in a case such as that of the abduction and killing of Richard de Zoysa.

Anthony Heaton-Armstrong
6 August 1990

8. LIST OF ADDENDED DOCUMENTS
- A. Order of Mission
 - B. "Sri Lanka - A Mounting Tragedy of Errors" by Paul Sieghart
 - C. "Political Killings in Southern Sri Lanka" by Eduardo Marino
 - D. Copy article in PROBE
 - E. Death threat letter received by Dr Saravanamuttu
 - F and F1 Death threat letter received by Batty Weerakoon and English translation
 - G. Letter from Batty Weerakoon to HE President Premadasa dated 3 June 1990
 - H. Letter from the President's secretary to Batty Weerakoon dated 6 June 1990
 - I. Dr Saravanmuttu's affidavit dated 10 June 1990 incorporating her statement to the police 5 June 1990
 - J. Letter from Batty Weerakoon to Attorney-General dated 25 June 1990
 - K. Letter from Batty Weerakoon to Inspector-General of Police dated 25 June 1990
 - L. Letter from Batty Weerakoon to President dated 25 June 1990
 - M. Reply to "L" from President's secretary
 - N. Record of court proceedings on 5 July 1990
 - O. Letter from Batty Weerakoon to Attorney-General dated 6 July 1990
 - P. Batty Weerakoon's notes relating to meetings
 - a) with police officers to record his statement concerning death threats
 - b) with the Attorney-General on 9 July 1990
 - Q. Record of court proceedings on 16 July 1990
 - R and R1 Affidavit of Dr Saravanamuttu dated 17 July 1990 and covering letter from Batty Weerakoon to Attorney-General dated 18 July 1990
 - S. Letter from Batty Weerakoon to Attorney-General dated 10 August 1990