

PART II

CASE NO 5 - KILLING OF FIVE YOUTHS IN TRINCOMALEE

Background

The incident has taken place in the town of Trincomalee which is the provincial capital of the then merged North- Eastern province. The town is well known for its natural harbour which is one of the best natural harbours in the world and of strategic value to international navigation. The European powers who came to the east for trade since the 15th century have been keen to capture this town and even today the regional as well as the world powers are sensitive to the significance of Trincomalee as the gateway to the Indian Ocean.

The population of Trincomalee is multi- ethnic in character and its distribution among the three principal ethnic groups, namely the Sinhalese, the Tamils and the Muslims were approximately in equal proportion. Religion wise there are adherents of Buddhism, Hinduism, Islam and Christianity living together. However with the emergence of the official language policy after 1956 and the rise of Tamil insurgency in the late 1970s the relations between the Sinhalese and Tamil communities became sour. The situation became worse with the rise of the Liberation Tigers of Tamil Eelam (LTTE) as the main rebel group. They had a grand design of establishing a separate state of Tamil Eelam comprising the two provinces, Northern and Eastern with one third of the land area and two third of the coast line running from Puttalam to Yala. Their intention was to have Trincomalee as the capital city of Tamil Eelam. The merger of the two provinces under the Indo-Lanka agreement of 1987 and the selection of Trincomalee as the administrative capital of the merged province fell in line with the aspirations of the Tamil groups. The LTTE activities and the reaction from the Sinhalese community disrupted the social harmony that existed in the past.

With the Ceasefire Agreement (CFA) of 2002 there was a lull in inter communal relations, but the LTTE made use of this opportunity to consolidate their influence and re-arm themselves. They in fact have violated the provisions of this agreement with impunity which finally led to its abrogation. With the resumption of hostilities the situation became worse and mutual suspicion and communal feelings reached a high pitch.

In the latter half of 2005 Trincomalee was seething in turmoil, and there were many incidents of violence. The erection of a Buddha statue by the Sinhala Association of Trincomalee in the vicinity of the central bus stand further intensified the tension as some Tamil residents raised their objections. In the ensuing acts of violence many Sinhala civilians had been attacked and in particular the killing of Albert Weerakkody, a Sinhalese businessman allegedly by the LTTE whose sons were employed in the security forces. The tension that prevailed created the need for strengthening security in the area. A group of Special Task Force (STF) officers had been brought to Trincomalee in late December in order to supplement the security forces. It has to be borne in mind that it was a war situation that prevailed in Trincomalee which was a part of the two decade long on going separatist conflict.

It is against this backdrop that the incident of the killing of five Tamil youth took place in the heart of the Trincomalee town on the 2nd of January 2006.

1. Facts and circumstances pertaining to the incident

It was the 2nd of January, the day after the new year, a group of students had gathered and having a conversation, as was their normal practice on the sea front near the Gandhi statue. They had left Koneswaram Hindu College, and were either expecting to enter the university, or engaged in some other form of higher education. Several had paid their regular visit to the Kali kovil and were having snacks and soft drinks, seated on a concrete ledge at the beginning of Fort Road, facing the beach across the road, with the Gandhi statue behind them.

It appears at about 7.30 p.m. a green auto rickshaw which came along Dock Yard Road southwards had done a sharp turn to the left into Fort Road, shied a grenade towards the youths and moved towards the Fort passing the army checkpoint at the point where Konesawara Road branches off to the Clock Tower from Fort Road (Pansala checkpoint). According to a witness the auto rickshaw had gone towards Fort Fredrick which housed the army headquarters in Trincomalee.

After the hand grenade was thrown an explosion was heard and people on the beach front and started running away from the area. About 5 – 10 minutes later sounds of gun shots were heard.

Arrival of the security forces

STF personnel deployed on duty at a road block 750 metres away arrived first on the scene followed by Navy personnel and Inspector A.K.A. Zavahir, Acting OIC of the Trincomalee Harbour Police. Other Navy and Army personnel too arrived later.

When Inspector Zavahir arrived at the scene of the incident he found seven young persons fallen on the ground, lying injured.

Inspector Zavahir had dispatched the seven persons to the Trincomalee General Hospital being located a short distance away, by the police jeep in which he had arrived and in another jeep that came from Trincomalee Police Headquarters.

Admission to Hospital

Five persons/youths were found to be dead at the time of admission to the Trincomalee General Hospital and two were seriously injured.

The Scene of the Crime and its Environs

The incident took place on the sea beach front, near the Gandhi statue, a well known landmark in Trincomalee, at or near the commencement of Fort Road, which branches off from Dockyard Road and winds its way to Fort Fredrick along the sea front, while dockyard Road continues passing the Urban Council, the Mcheyzer Stadium and the Clock tower.

The area in which the incident took place was surrounded by security checkpoints. Along Dockyard Road there were three security checkpoints which were mainly under the control of the Navy. One checkpoint was manned jointly by the Navy and the Police passing the Urban Council Roundabout and opposite the Urban Council about 136 metres from the crime scene. The other was manned by the Navy near the

Martyr's Monument before it branched off into Fort Road about 111 metres from the crime scene. The Gandhi statue is 500 ft south of the Urban Council and the Martyr's Monument 250 ft south of the Gandhi statue. The third checkpoint manned by the STF near the Clock Tower, beyond the Konesar Road intersection which connects Dockyard Road to Fort Road about 750 metres from the crime scene. (see Annex VI the map)

Along Fort Road there was one checkpoint. This checkpoint was near the temple and manned by the Army. It was situated beyond the Konesar Road, Fort Road intersection, about 200 to 250 metres from the crime scene. One has to pass this checkpoint to proceed to Fort Fredrick.

Along Inner Harbour Road there was another checkpoint. This checkpoint was near the rest house and manned by the Navy on Inner Harbour Road which enters Dockyard Road at the UC Roundabout from the landside. This checkpoint was about 200 metres from the crime scene.



The Scene of the crime

Visit of the Magistrate

The Magistrate visited the scene at 09.25 p.m. on 2nd January 2006. According to the note made by him, he had been informed by the OIC of the Harbour Police, that 'there was a bomb blast in the sea shore within his Police area and some have died and some are injured.'

On his arrival he had found the following officers at the scene: SP/Jayasekera, (who is now a senior Superintendent of Police), ASP/Serasinghe and IP/Zavahir.

He had made his observations of the scene, which were later reduced to writing, and directed the police to collect all productions and left the scene at 09.45 p.m.

The post mortem examination

The Magistrate had directed the Medical Superintendent of the General Hospital Trincomalee on 3rd January 2006 to hold the post mortem examination and report. The post mortem examination was conducted by Dr E.M.G. Waidyaratne, JMO.

At the post mortem held on the following day, the JMO had confirmed that the dead and injured had gun shot injuries and/or injuries sustained as a result of a bomb explosion. Of the 7 youths, all had gun shot injuries, 6 in addition had injuries caused by shrapnel arising out of a bomb explosion, and 2 had abrasions.

The cause of death of the 5 youths as determined by the JMO on 3rd January 2006 is as follows:

Manoharan Rajihar	– Severe damage to the brain following firearm injury
Shanmugarajah Sajendran	– Severe damage to right lung, bladder and small intestine following firearm injury
Lohitadasan Roshan	– Severe damage to the liver and right kidney following firearm injury
Thangadurai Sivanandan	– Severe damage to brain following firearm injury
Yogarajah Hemachandran	– Severe damage to brain following firearm injury

Visit of the Government Analyst

Mr A Weliana Ass. Govt. Analyst had visited the scene of the crime on 16th January 2006, that is, two weeks after the incident. He had examined the crime scene and taken soil samples.

2. The description, nature and backgrounds of the victims

Persons who directly suffered death

Shanmugarajah Sajendran – 14, Vidyalaya Road, Trincomalee

A Hindu 21 yrs. of age. Second son of Vairamuttu Shanmugarajah. Studied at Vikneswara Hindu College from Grade 1 to 5 and Koneswara Hindu College from Grade 6 to 13. Employed as a Computer Instructor at Sally College. He was awaiting admission to University.

Thangadurai Sivanandan – 31/1, Vanniyar Road, Trincomalee

A Hindu. 20 yrs. of age. Younger son of Thangadurai Suginda. Educated at Koneswara Hindu College. 1st year student of Moratuwa University following a course in Statistics. Returned home for the week-end holiday on the morning of 01.01.2006 and was due to leave for Colombo on the night of 02.01.2006.

Manoharan Rajihar – 14, St. Mary's Road, Trincomalee

A Hindu. 20 yrs. of age. The second son of Dr K. Manoharan and Dr (Mrs) Manoharan, who jointly carried on a private medical practice since 1996 in Trincomalee.

Educated at Koneswara Hindu College, he has studied upto GCE 'A' Level. Failed to enter university in 2005 and was studying at home to make another attempt. He was also Secretary of the Table Tennis Association, whose President was the then Superintendent of Police, Trincomalee, and Secretary of the Chess Association in Trincomalee.

Lohitadasan Roshan – 39/9, Sivan Road, Trincomalee

A Roman Catholic. 21 yrs. of age. Eldest son of Lohitadasan Loganayaki who was a cancer patient. Studied up to GCE 'A' Level at Koneswara Hindu college. Applied for admission to follow a course in Civil Engineering at the Open University, Nawala and was awaiting a response.

Yogarajah Hemachandran – 25, Custom's Road, Trincomalee

A Hindu. 21 yrs. of age. Fourth son of Ponnadurai Yogarajah, an employee of the Sri Lanka Ports Authority for over 40 years, and a member of the Buddhist Society and SLFP Trade Union at the Sri Lanka Ports Authority. Hemachandran had been successful at the GCE AL Examination and had been selected to follow a course in Agriculture at the University.

Persons who directly suffered injury or any other physical harm

Pararajasingham Kokularaj – 439/01, Dockyard Road, Trincomalee

He was 20 yrs. of age. Father Electrician in the Sri Lanka Navy. Mother died of Leukaemia in 1995. Studied up to GCE AL at RKM Koneswara Hindu College, Trincomalee. Upon completion of A Level examination, he had joined the Open University at Nugegoda to follow a 3 year course in Automobile Engineering. The

Institute had closed for the holidays in November 2005 and he was spending the holidays in Trincomalee at the time of the incident.

Yoganathan Poonculalogan – 11/1, Kanniyar Road, Trincomalee

He was 20 yrs. of age. The second son of S.V. Yoganthan, a Civil Engineer at the Branch Office of the Norwegian Refugee Council and Mrs Y. Rajalakshmi. Educated at St. Joseph's College, he had sat for the GCE AL Examination in 2005 and was awaiting admission to the Engineering Faculty, according to the marks he had gained.

Kartheepan Velautham – 27, Thirumal Road, Trincomalee

21 yrs. of age. Youngest son of Velayutham Mayulu and A. Sarojini Devi. Educated at Koneswara Hindu College, Trincomalee up to GCE AL. Following a course in Management Studies at Wellawatte in Colombo.

3. The circumstances leading to the death, injury or physical harm to the victims

The Circumstances

Some versions given in various Media Reports

The BBC News report of 3 January, 2006 was as follows:

Army denies killing Tamil youths Sri Lanka's army has denied involvement in the killing of five Tamil youths in the eastern town of Trincomalee. Two survivors of Monday's attack said men in military fatigues had thrown a grenade at the group before dragging them into a truck and shooting them. Ceasefire monitors said the killings resembled executions. "All five were shot in the head," a spokeswoman said. It is the latest in a string of deadly attacks in the north and east linked to Sri Lanka's ethnic conflict. Inquiry The two students who survived Monday's attack told a post mortem inquest they had gathered at a popular meeting point near the beach in Trincomalee, about 250km (150 miles) north-east of Colombo, when the truck pulled up. They could not confirm the identity of their attackers. The army has ruled out an inquiry into the killings, saying the police are conducting one. A statement on the army's website said the youths died when a hand grenade in their possession went off by accident. It accused them of plotting to attack security forces. Tamil Tiger rebels said Sri Lankan military Special Forces had killed the youths. War fears the violence comes after a string of recent attacks on soldiers, in which more than 40 troops have died in the north and east. The government blames the attacks on the Tamil Tigers. A ceasefire between the two sides is under severe strain. The recent violence is the worst since the truce was agreed four years ago, after two decades of conflict had claimed more than 64,000 lives. The Tigers want autonomy for minority Tamils in the north and east.

Initial reports in the local papers stated that the deaths occurred as a result of a bomb explosion but later reports cited the post mortem examinations which revealed that the deaths occurred as a result of gun shot injuries. These reports generally covered the same ground as the BBC report.

Extract from Morning Leader – 4 January 2006

Military sources were quoted as saying that they believed the grenades had accidentally exploded amidst a group which had brought them.

However, JMO Trincomalee, Gamini Gunatunge on Monday discovered that the students had gun shot injuries on their bodies making it a case of murder. Meanwhile, the LTTE yesterday said that the youth had been made to lie on the ground and shot through the ear by the gunmen. The Tigers claimed that the gunmen were members of the Special Task Force. A STF Platoon had been moved to Trincomalee only recently. STF Commander, DIG Nimal Lewke however said that there was no involvement of the STF whatsoever with regard to the killing of the youth. Residents in the area are accusing the security forces of the murder while the security authorities are now claiming that they had to fire at the youth upon being fired at. Meanwhile, the security forces charged that the murders had been carried out by a civilian group who had been trained by the LTTE during the ceasefire.

"Investigations have revealed that these civilian groups have been responsible for many attacks in the past few weeks. Investigations are continuing into all the attacks." Military Spokesman, Brigadier Prasad Samarasinghe said yesterday.

Extract from Situation Report in Sunday Times – 8 January 2006

Claims made by the security authorities over the cause of the incident were being contradicted by Tamil groups and the Liberation Tigers of Tamil Eelam (LTTE). Security authorities in Trincomalee said the students were preparing to attack an armed forces patrol. The latter denied the charge. They said a grenade had been lobbed at the students by persons traveling in a three-wheeler scooter taxi and later troops had opened fire. By Tuesday afternoon, Dr. Gamini Gunatunge, Judicial Medical Officer, who held the post mortem examination, shed light on the incident. He declared the students had died of gun shot injuries.

The Sunday Times learnt that a Chief Petty Officer of the Navy rushed to the spot with some sailors from one road. He met up with a three-wheeler. A Sinhala mother and her child were heading towards the town area. He let them pass before reaching the spot. By then, a team of Police Special Task Force (STF) commandos from a neighbouring location arrived at the scene along another road. They allegedly opened fire. The incident triggered off angry protests and a Hartal continues.

Extract from Media Release of the Secretariat for Coordinating the Peace Process - 9 January 2006

President Briefs Co-Chairs on Escalation of Violence by LTTE

President Mahinda Rajapakse met with the Ambassadors of the Co-Chair countries of the Tokyo Donor Conference, Japan, United States, European Union and Norway, this morning and briefed them on the escalation of violence by the LTTE and in particular the unprovoked suicide attack on a Sri Lanka Navy Fast Attack Craft on Saturday which claimed the lives of 13 Navy Personnel and destroyed the Navy vessel. The President condemning the attack in the strongest possible terms identified it as a suicide operation which had all the hallmarks of the LTTE. The explosive laden boat had approached the navy vessel which was on routine patrol, using the cover of civilian fishing boats and rammed into the Navy FAC in a typical Sea Tiger suicide attack.

The President however assured the Co-Chairs that abuse of power by the Security Forces will not be tolerated under any circumstances. The President informed the Co-Chairs that an investigation is pending on the recent deaths of five students in Trincomalee and that the perpetrators would be brought to justice.

Extract from a report of The University Teachers for Human Rights (Jaffna),

On 27 February, 2007, the COI received via email from Dr. Rajan Hoole of the UTHR their Special Report No. 25 dealing with this case. Its re-capitulation of the events leading up to this incident briefly is as follows:

7.35 PM:

SP Kapila Jayasekera at the location after seeing the STF Unit at the Clock Tower, having parked his vehicle near the Valluvar Monument opposite the Gandhi statue, when the grenade is thrown at the students from the green auto rickshaw, which proceeds into the Army HQ (Fort Frederick) passing the Pansala army checkpoint. The Navy closes off the area. A naval party probably led by Lt. Soorasinghe inspects the five injured students and the two trying to help them, informs Naval HQ, and withdraws as the STF Unit in the Defender with only parking lights on approaches along Fort Rd. Lights at the beach front switched off after the blast either by the Navy or Kapila's men.

7.45 – 7.55 PM:

The STF Unit let by V.A.S. Perera assaults the injured, is supplied with a gun probably from one of the naval personnel nearby that is used to shoot the students. The Defender lights are switched on prior to turning and the headlights flash on the two uninjured students sitting on the ground away from the rest. They too are shot dead. The Defender with the STF men turns and returns along Fort Rd.

About 8.10 PM:

Inspector Zawahir's police party arrives on the scene. Naval Lt. Soorasinghe joins them in the very dim light from the street lamp near the UC.

8.10-8.30 PM:

V.A.S Perera's STF party, which went down Fort Rd. and did a turn at the Clock Tower comes back along Dockyard Rd., parks the vehicle at the UC and returns to the scene at the Gandhi statue. The dead and injured are dispatched to the Hospital. ASP-1 arrives. Kapila Jaysekera crosses the road to the Gandhi statue and joins ASP-1 and V.A.S. Perera. "

The UTHR cites the following incidents to suggest a motive for the crime:

- threatening letter received by victims' families asking them to quit Trincomalee;
- Pongu Tamil rallies conducted in Trincomalee after the CFA which evoked a reaction from the Sinhala extremists, and culminated in the illegal erection of a Buddha statue near the Trinco Fish Market on 15 May, 2005.
- the alleged connections of a businessman named Ice Manjula with the LTTE and his involvement in the killing of Lt.Col. T.R.Meedin in October, 25;
- the killing of businessman, Albert Hendric Weerakkody on 24 December, 2005, allegedly by the LTTE and a threat by his wife at the funeral that 10 Tamils should be killed in revenge;
- killing of 2 Tamil auto rickshaw drivers on the day after the above threat was made;
- the killing of businessman, Baby Tyre Mudalali
- the killing of an off duty soldier on 28 December, 2005, allegedly by the LTTE.

Extract from a report of the Human Rights Commission:

The Special Rapporteur on Conflict Related Human Rights Violations of the Human Rights Commission, Mr. T. Suntheralingam conducted investigations into alleged violations during the period 1 January 2006 to 31 March 2006. One of the cases investigated into by him was the killing of 5 youths in Trincomalee. An extract from his report is reproduced below:

"It is therefore highly unlikely that anyone other than the STF could have shot those who were at the Gandhi statue. This is also confirmed by the evidence of Yoganathan Pooncalalon who was one of the injured who stated that about 10 to 15 uniformed persons arrived soon thereafter. They had then put those who had been injured into their jeep, assaulted them with their weapons, while they were in the jeep and then pushed them out of the jeep. Soon thereafter he had heard repeated gunshots two of which struck him on his thigh and back of his chest."

The Inquest

The Magistrate first visited the scene shortly after he was informed of the incident.

He visited the hospital at 02.45 p.m. on 3.01.2006 with the Police to see the bodies, made his observations, which were later reduced to writing and left the hospital at 09.40 p.m.

He visited the scene of the crime for a second time on 04.01.2006 with the Police – SP/Jayasekera, ASP/Serasinghe and some others. .He made certain observations which were later reduced to writing. On this occasion he had seen holes on the tarred road in two places due to gun shots. Inspector Janaka had taken earth from a particular pit.

Thereafter he visited the hospital on 06.01.2006 and recorded the statements of the two survivors of the incident P. Kokularaj and Y. Pooncalalon and continued with the inquest on 10.01.2006, 16.01.2006, 17.01.2006 and concluded it on 18.01.2006.

15 statements were recorded including those of the 2 survivors as follows:

P.Kokularaj, injured youth – 06.01.2006 recorded at the hospital
Y. Pooncalalon, injured youth – 06.01.2006 recorded at the hospital
Dr. K. Manoharan, father of deceased R. Manoharan – 10.01.2006
Suhirda Thangathurai, father of T. Sivananda – 10.01.2006
Subashini Chitravel, AAL Aunt of T. Sivananda – 10.01.2006
Vairamuttu Shanmugarajah, father of S. Sajendran – 16.01.2006
Lohithadasan Lohnayaki, mother of deceased L. Rohan – 16.01.2006
Ponnadurai Yogarajah , father of Y. Hemachandran – 16.01.2006
H.P.D. Upali Gunawardena RPS 571, Harbour Police – 16.01.2006
S.T.A.R. Surasinghe, Chief Petty Officer, Sri Lanka Navy – 16.01.2006
Dr. E. M.G. Gunatunge , JMO – 17.01.2006
B. G. Ananda Bulanawewa , SI, Uppuweli Police – 17.01.2006
V. A. S. Perera , Inspector of Police, STF – 17.01.2006
A. K. Zavahir, Inspector of Police, Harbour Police – 18.01.2006
H. P. Indika Prasanna, Able Seaman. Sri Lanka Navy – 18.01.2006

On 10.01.2006 ASP/ Serasinghe directed the evidence of witnesses in court. On 16.01.2006, 17.01.2006 and 18.01.2006 Deputy Solicitor General Mr. D.P.J. de Livera and State Counsel Mr. T. Thotawatte instructed by the AG directed evidence and assisted Court.

Order was delivered on 18.01.2006 that there were adequate grounds to suspect that a crime has been committed in relation to the deaths of the five persons and the Magistrate directed the Police to take necessary action

A gist of the statements made by the two survivors of the incident to the Magistrate, as read out by the Registrar of the court, is as follows:

- i) P. Kokularaj said that he and six of his friends were near the Gandhi statue from about 07.00 p.m. and that some time later he heard a loud sound and fell down and that when he opened his eyes , he was in hospital. He described the injuries to his body.

"On the day of the incident, I went to the Kali temple, and that day the news related to the minimum marks in Advanced Level for admission to universities. From the temple I went to the house of my friend Yogarajah Hemachandran who died in this incident, and lives near the prison and talked with his mother. Then went to the shop named Kumar's situated near the post office junction and after drinking tea there at about 6.00 p.m. the four of us, I, Gajendran, Hemachandran and Rohan who died in this incident met Sivanandan also. At that time the five of us went to the beach. The time was about 7.00 p.m. Later Rajeehar came from the temple. After that Pooncalalon, who received injuries in this incident, came. All seven of us came to the wall erected round the Gandhi statue looking towards the beach. At that there were many people along the beach. Later when the bicycle of one of my friends fell down, I lifted it. When we were eating the bites and things brought from the shop, normal vehicles were moving on the road. When I was looking down I heard some sort of sound. It was a loud sound. Later I fell down, when I opened my eyes; I saw that I was in hospital. I don't know what happened after hearing the large sound until I opened my eyes in hospital. I have injuries on the left side of the head, left side of the jaw, left side shoulder,

left chest, left side of the body, stomach, lower part of the left elbow, left knee, right hand, lower part of the hand and right leg in connection with the incident. Other than this I do not have any thing else to say”.

- ii) Y. Pooncalalon said that he and the others were discussing about the cut off marks for admission to the university. His statement continued as follows:

‘Then we saw a green three wheeler that came towards us and then it went towards the Fort. Then all of a sudden I saw a grenade falling near my feet. After that I ran towards the Hospital for about 5 or 10 meters, and then I was injured on my legs. Then I fell down. The three-wheeler from which they had thrown a hand grenade it went towards the Fort. I saw the injured Kokularaj Sajendran and Sivanandan had fallen near me and they were also screaming, and we shouted asking for help and asking that we should be taken to the Hospital, but no one came. When this incident occurred on the beach as usual there were several people. There was a person selling yams. He was near the beach. Most of the people on the beach they also heard the noise and they also started running. Near the beach as usual even when this incident occurred there were people. There were people when this incident occurred. All of them ran after they heard the noise of the explosion. After about 5 or 10 minutes there were four or five people were coming to help us, and at the same time I saw a jeep arriving. I don’t know whether they belong to the Army, Navy or STF. These people spoke in Sinhalese, they were shouting in Sinhalese. They put me and the others who had fallen down beside me altogether three of us, took me and three others and loaded into a jeep and assaulted us with guns as well as with hands. I don’t know what had happened to the other three. First they had us at the back side of the jeep and then assaulted us and then they pushed us, and again assaulted after that they pulled us down, and assaulted then they pulled me down and the injured Gajendran, Kokularaj and Sivanandan, they pulled us down and they shot with their guns. At the time when they were putting us into the jeep there were 10 – 15 people in uniforms. Then they shot us. As a result I suffered injuries in my Left and Right legs and on my back on the Left hand side they were gunshot injuries, then I pretended to be dead and I didn’t move. I don’t remember how many gun shots were heard. The guns were fired only after 15 – 20 minutes after the explosion. After that the jeep went away. I don’t remember which way it went. After 10 – 15 minutes a Police jeep arrived and they took us to Trincomalee Hospital. I won’t be able to identify the people who shot at us. I couldn’t observe them clearly.”

The Magisterial Inquiry

The case was called regularly and the Police reported to court that investigations were proceeding but no suspects have been produced in court.

On 20.03.2006 the Officer in Charge, Harbour Police reported to the Magistrate that the CID is separately conducting investigations and that they have detained under Emergency Regulations 12 STF officers and a Sub Inspector of the Uppuveli Police who had visited the place of the incident first.

On 29.06.2006 the Officer in Charge, Harbour Police reported to court that the detained officers were released on 12.04.2006 on the instructions of the Attorney General consequent o the report of the Govt. Analyst.

The case is pending. There are no suspects yet.

Investigations into the incident

Investigations into the incident has been carried out by the following:-

Harbour Police/Trincomalee
Investigation Unit of the Crime Division of the Trincomalee District.
Criminal Investigation Department (CID)
Trincomalee Magistrate
Investigation Unit of the COI

COI Investigations

Field Visit

Members of the COI visited Trincomalee on 28 April 2007 and acquainted itself with the location and surroundings in which the incident took place. On this visit, members of the COI also visited the scenes of crimes in two other cases under investigation and inquiry by the COI.



The members of COI visits the scene of crime

Investigations by the Investigation Unit

The Investigations Unit (IU) of the COI carried out fresh investigations based on a Plan of Investigation approved by the COI. In the course of these statements, the IU re-recorded statements in detail from some of those who had already made statements and recorded fresh statements. The IU recorded a total of 70 such statements.

Investigation sessions

The COI commenced its investigation in camera on 23 August 2007, held 17 sessions, recorded the statements of 8 persons and concluded it on 11 October, 2007.

The investigation was held before Justice N.K.Udalagama, Chairman, Dr. D. Nesiah, Ms. M. Muttetuwegama, Ms. J. Ismail, Mr. S. S. Wijeratne, Mr. A. J. Yusuf, Mr. D. Premaratne P.C., and Mr. K. C. Logeswaran, who participated in the investigation only from 05.09.07 onwards

Counsel assisting the Commission from the Unofficial Bar were Mr. Ranjith Abeysuriya P.C. , Mr. Nuwan Peiris, and Ms. Thanuja Rodrigo; Counsel from the Official Bar were Mr. Shavindra Fernando DSG, Mr. Yasantha Kodagoda DSG, Mr. Duleep Jayakody SSC, Ms. Lakmali Karunanayake SC.

The following members of the International Independent group of Eminent Persons (IIGEP) were present and the number of sessions observed by them is indicated against their names: Prof. Y. Yokota (2), Sir Nigel Rodley (4), Prof. I. Shearer (3), Prof. B. Mathews (1). In addition, at every session of investigation, at least one to three Assistants to members of the IIGEP were present.

Of the 8 persons who made statements, 4 were Navy Officers who manned the check points near the scene of the crime; 2 were police officers, one of whom was a Police Sergeant who manned a Roadblock near the Trincomalee Urban Council, and the other was the Inspector from the local police who arrived on the crime scene after the incident; the Judicial Medical Officer who conducted the post mortem examination; and the Registrar of the Trincomalee Magistrate's Court

The statements of the above witnesses enabled the COI to form a clear picture of the incident and its aftermath, the manner and sequence in which the investigations were carried out, the nature of the injuries found on the deceased and injured persons and how they were caused and the evidence recorded at the magisterial inquiry.

Inquiry Sessions

The inquiry was held before Justice N.K.Udalagama, Chairman, Dr. D. Nesiah who participated until his resignation on 24 June 2008, Ms. M. Muttetuwegama, Ms. J. Ismail, Mr. S. S. Wijeratne, Mr. A. J. Yusuf who participated until his resignation on 30 July 2008, Mr. D. Premaratne P.C., and Mr. K. C. Logeswaran ..

Counsel assisting the Commission from the Unofficial Bar were Mr. Ranjith Abeysuriya P.C., Mr. Nuwan Peiris, and Ms. Thanuja Rodrigo; Counsel from the Official Bar were Mr. Shavindra Fernando DSG, Mr. Yasantha Kodagoda DSG, Mr. Duleep Jayakody SSC, Ms. Lakmali Karunanayake SC.

Counsel representing the parties were as follows:

STF (from 18 Mar. 08) : Mr. S. L. Gunasekera, Mr. H.A.A.Prasanna, Ms. Sonali Jayasooriya, Mr. P. Jayawardena, Mr. Suren de Silva

Parent of a deceased person -Mr. P. Yogarajah (from April 08): Mr. K.S. Ratnavel, Mr. S M M Samsudeen,

Civil society (from April 08): Mr. P. Kumarage, Mr.S.Bandara, K. Poobalasingham, Ms. S. Ahilan, Mr. Sathyendran, Mr. U. Kumarapperuma, – civil society

The following members of the International Independent group of Eminent Persons (IIGEP) were present only during the period January to March 2008 and the number of sessions observed by them is indicated against their names:

Mr. M. Daruzman (1), Prof. Y.Yokota (1), Sir Nigel Rodley (1), Mr. Arthur Dewey (2), Prof. C. Fasseur (4), Prof. B. Mathews (3), Judge Jean Pierre Cot (1)

In addition, at every session of investigation, at least one to three Assistants to members of the IIGEP were present.

38 witnesses gave evidence and the breakdown is as follows:

A statement made by one of the youth injured in the incident to a member of IIGEP was produced at a video conferencing session but the youth himself did not give evidence, although he was present at the foreign location.

Two parents of the deceased youths and a brother also gave evidence at a video conferencing session from a foreign location. In addition 4 officers from the Navy,

23 officers from the Police including the ex- IGP, 3 DIG, 1 ex – DIG, and 2 SSP, the Judicial Medical Officer, the Deputy Govt. Analyst, 3 Medical Officers, the Registrar of the Magistrate’s Court, Trincomalee, and a gram seller gave evidence.

The evidence recorded revolved round the forensic examination; the ballistics examination; the court proceedings; accounts of the incident as given in a statement by one of the injured youth, and by 2 parents of deceased youths and a brother; steps taken by the navy and police officers who were near the scene or who arrived at the scene; and the action taken by superior police officers.

The Inquiry before the COI

The Public Inquiry commenced on 5th January 2008 and concluded on 15th September 2008. Thirty Eight witnesses (inclusive of the three witnesses interviewed through video link) came before the Commission to give evidence. Given below is a summary of the evidence by witnesses who attended the public inquiry.

SUMMARY OF EVIDENCE IN THE PROCEEDINGS OF THE PUBLIC INQUIRY

Evidence Obtained Through Video Link

The COI considered it a matter of utmost importance to record the evidence of some of the important witnesses who had sought asylum abroad.

The IIGEP in terms of paragraph 12 of the Working Arrangement between the IIGEP and the Commission facilitated the receiving of evidence of witnesses from locations outside Sri Lanka. The IIGEP facilitated and paid for the technical link in the foreign country. The COI is thankful to the IIGEP for making the necessary arrangements to receive evidence of witnesses via video link.

Six video conferencing sessions were held at the Auditorium of SLIDA in March 2008 in connection with this case. The evidence of 3 important witnesses was recorded and the statement of another was read out by an IIGEP Assistant.

Though their evidence revealed new material, inherent defects in the procedure and what actually took place at the time of recording the evidence rendered their evidence valueless and such evidence needs to be assessed with great caution

Counsel for one of the concerned parties focused his criticism of the process on the following matters:

- Two IIGEP Assistants, (one of them had recorded the statements of witnesses), were present right through the proceedings. In fact Mr. Milner one of the Assistant’s was seated near the witness apparently to give confidence to the witness;
- It was observed when Dr Manoharan was giving evidence one of the IIGEP Assistant’s was seen holding the hand of Dr Manoharan right through the proceedings.

- No action could be taken against a witness for perjury, as he is outside Sri Lanka;
- No proper cross-examination could be done to test the veracity of witnesses' testimony due to lack of time,
- Two IIGEP Assistants were near the witness and one could hear prompting quite often. A witness is expected to be free and independent and is kept in isolation when giving evidence, but such an atmosphere did not exist.

Kokularaj Pararajasingham/Injured Youth

This witness was present at a foreign location during the video conferencing session but did not give evidence through video link and David Savage, IIGEP Assistant and Witness Protection Advisor read out his statement, recorded by David Savage himself.

According to the uncorroborated statement read out by David Savage, Kokularaj had met up with his friend Hemachandran and proceeded to the beach front near the Gandhi statue. It was at sun set and they had been the first to arrive. The street lamp near the Gandhi statue was turned on and there had been about 100 people on the beach. Traffic was moving intermittently on the road. A green auto had come on the road at normal speed and shortly after it passed by an explosion had occurred. He had been hit on the left side of his head by shrapnel from the explosive and then he had become unconscious.

He had regained consciousness only after being treated in the intensive care unit of the Trincomalee General Hospital. About 7 to 8 bullets had been removed from his body along with metal pieces from the explosion.

He has stated that whilst he was in hospital he was interviewed by the Harbour Police, the Trincomalee Magistrate, and the CID, but that none of them had questioned him about the shooting. They had only wanted to find out about the explosion. Pooncalalon had told him that after the grenade explosion, STF dressed in camouflage uniform and masked had dragged the youth into the back of a vehicle and beaten them. After the beating, the youth had been thrown back onto the ground and then been shot several times.

However, in the statement he has given to the Magistrate, Trincomalee on 6th January, 2006 and signed by him, he has stated as follows, "At that time the five of us went to the beach. The time was about 7.00 p.m. Later Rajeehar came from the temple. After that Pooncalalon who received injuries in this incident came. All seven of us came to the wall erected near the Ghandi statue which looks towards the beach. At that time there were lot of people on the beach. We were eating the bites and things bought from the shop. Normal vehicles were moving. When I was looking down I heard a loud sound. Later I fell down. When I opened my eyes I was in hospital. I don't know what happened after hearing the large sound until I opened my eyes in hospital. Other than this I do not have anything else to say."

The JMO in his statement has given a detailed description of the injuries suffered by Kokularaj.

Kokularaj had been hospitalized for about 49 days following the injuries he sustained on 2nd January 2006.

This statement was recorded and read out by David Savage had detailed material on extraneous matters which quite clearly appears irrelevant and of no evidential value as it includes Savage's own views.

The video evidence of the following witnesses were received from 13th to 19th March 2008 at the Distance Learning Centre of SLIDA.

Dr Kasipillai Manoharan/Witness

According to the video evidence given by this witness from a foreign location, Dr Manoharan had a private medical practice at his residence at St Mary's Road, Trincomalee.

His son Rajeehar had left home at 6.00 p.m. to go to the Kovil. The Kovil was about a ¼ mile from his residence, adjoining the Koneswara Hindu temple. Rajeehar had left home on his bicycle.

Little while later he had heard the explosion of a bomb very near to his house. He had looked at the time on the wall clock, which had indicated 7.35 p.m. His son Rajeehar had informed him on his mobile phone that, "the army had encircled him". The time had been 7.30 p.m to 7.40 p.m. His son had spoken very briefly, as the telephone had got cut off. However, in his evidence to the Magistrate, Trincomalee on 10th January 2006, he has stated that, "his son's mobile phone was ringing but it was not answering".

Because of the bomb blast Dr Manoharan had decided to go to the spot. He had gone on his scooter towards the beach as the sound of the bomb blast came from that direction. From his home to the Gandhi statue there would be a distance of about 200 to 300 metres. He had gone from St Mary's Road to the Dockyard Road and then towards Koneswara school. He had been allowed to proceed up to the CR Hospital Junction. At this point he had been stopped by an army officer in commando uniform. From the point he was first stopped he was able to see his house and the street lamps were well lit.

Thereafter, he had taken his scooter back home and returned on foot to the Martyr's Memorial statue from where when he looked at the Gandhi statue, he saw that the lights were not burning. The service personnel he encountered at the first stop appeared to be very casual. They had their weapons slung on their shoulders. At the first stop there was a bend therefore, he could not see the Gandhi statue from that point. After leaving his motor bike he had walked up to the Martyr's Memorial statue. It was possible to observe the Gandhi Memorial statue from the Martyr's Memorial statue, He had heard the cries, "help us, help us!" (2 or 3 voices) coming from near the Gandhi statue. He could not see things very clearly as the single bulb near the Gandhi statue was switched off.

He had seen a vehicle coming from the direction of the Koneswara temple that is on the Fort Road, without the headlights but only with only the parking lights on. According to his observation it could have been a 'Land Rover'.

Dr Manoharan was able to see the flash of gun fire even though the area near the Gandhi statue was in darkness, at a distance of about approximately 75 to 100 metres. He has stated that he saw the flash of lights towards the ground. He had seen the gun fire at about 8.00 to 8.15 p.m.

According to the evidence gunfire took place about 10 minutes after the bomb blast. Dr. Manoharan had come on his scooter after the bomb blast, traveled up to hospital junction, and went back home, returned on foot up to the Martyr's memorial statue and seen the gunfire around 8 – 8.15 p.m. According to his own admission he had taken about half an hour, but the evidence is that he had seen the gunfire a maximum of about 10 minutes after the bomb blast. It seems unlikely that Dr Manoharan had seen all what he has described.

He further states that just prior the gunfire, a jeep with parking lights on had come from the direction of the Courts. He had also so seen a Naval officer with a motor bike unit moving about. He identifies the Naval officer as Udawatte Weerakkody. He had seen the motor bike unit moving about in the vicinity just before the gun fire. The Motor bike riders had been wearing commando uniform. He had seen Udawatte Weerakkody carrying two weapons on his shoulders. After the shooting incident the Pick- Up Cab was moving towards the Gandhi statue, and the vehicle had parked at the spot where he was standing. The naval officer who was close to him had spoken to another person in Sinhala, "the vehicle of Mr. Kapila Jayasekera is coming." The jeep that had come with the parking lights on and which had been parked near the Gandhi statue had taken a U turn and gone towards the Fort area after the shooting.

It is observed that if the lights were off and darkness prevailed Weerakkody or anyone else could not have been identified with weapons.

The Navy officer who was at the check point where Dr Manoharan was waiting had told him that some civilians have died and that some were injured. "If you want to see your son go to the hospital and see". He had returned home and gone on his scooter to the hospital.

When he went to the hospital he had seen persons in army uniform with head masks. They had not allowed him to go in, it was after a Muslim male nurse had intervened, that he had been allowed to go inside the ICU.

Since the son was not at the ICU he had proceeded to the mortuary. As he entered the mortuary he had seen his son lying dead in a pool of blood. After the initial trauma of seeing his son's dead body, he had taken photographs of the injuries on his son. When he retrieved the mobile from his son's body which was inside an inner pocket of his under pants, the missed calls were registered, as well as an SMS with one word, 'Dad'.

On the 3rd of January at the Magisterial inquiry he had met Inspector Zavahir. He had not lodged a complaint with the police regarding his son's death because he was severely depressed and also because he had to attend to the religious observances. Subsequently, after the Magisterial inquiry he had gone to the Harbour police to record a complaint. He had told Zavahir that, they have killed his son. Zavahir had answered, "no doctor, we did not kill, the people who came from outside, the STF committed this crime". Zavahir denied having made such a statement.

At about 7.00 to 7.30 p.m. he had gone near the Gandhi statue to take photographs. He had seen empty cartridge cases. However, the area was not protected.

Manoharan also states that a lady known to him who was a Bank employee had come to his house at about 6.30 p.m. and had told his wife that there were rumours that some incident is going to take place. She had advised them to call their sons to come home.

The son who was younger to Rajeehar had been passing the Beach Road on his way home. A police officer had stopped him and re-directed him to go from the Cross Road. So he had taken the Vanniyar Street route and returned home.

Dr Manoharan has stated that in April 2006 he had received a telephone call from Minister Samarasinghe. The Minister had said, "it may be that the forces suspected them as LTTEs and shot them. We are attempting to give some form of compensation from the Govt. If you like we can make some arrangement to give you a house in Colombo."

Dr Manoharan has also stated that in Trincomalee all the forces wore commando uniform at night including Home Guards. Therefore, it was difficult to identify to which of the tri services they belonged.

Dr Manoharan has also stated that just before the shooting commenced he had heard a voice giving an authoritative order. That soon after the authoritative voice was heard the shooting had started.

According to Dr Manoharan the people riding on motor bikes were naval personnel and not STF.

At the Magisterial Inquiry on 10th January 2006 Dr Manoharan has not made any of the above allegations except to state that, "on the night of the incident, a group of officers in army uniform who were near the morgue told me, as I was returning after seeing my son's body that the body would be released the same day, if I admitted that my son had links with the LTTE".

His long statement recorded by IIGEP Assistants long before the video link existence contain material obviously collected from outside sources.

Then again since the evidence via video link was monitored by the Assistants of the IIGEP there also appears a very strong likelihood of the witness being influenced.

Ponnadurai Yogarajah/Father of Hemachandran

This witness gave evidence via video link from a foreign location.

The statements recorded long after the incident and the testimony via video link appears to contain evidence collected from outside sources. He had lived on Customs Road, Trincomalee which was about 100 metres from the Gandhi statue.

Counsel drew his attention to a statement he had made which had been recorded by IIGEP representatives Dennis Milner and David Savage. Yogarajah admitted that his

answers in Tamil which was translated by his son into English language had been recorded by the two Assistant to the IIGEP.

Yogarajah in his statement has indicated that towards the latter part of the year 2005 that there had been tension between the Sinhala and Tamil communities in Trincomalee over the erection of a Buddha statue. Some sections of the Tamil community had objected to the Buddha statue. Around this time there had been a strengthening of security in the area. It was mainly the Navy that was in charge of security in Trincomalee. Just before Christmas one Weerakkody had been killed. After the killing security had been beefed up by deploying STF personnel. The STF were housed at the Old Police Station. Between his house and the Old Police Station there would have been a distance of 15 to 20 feet.

During this period two of his sons, that is his eldest son and his 2nd son were living with him. Eldest son's name was Kodeswaran and his second son was Baskaran. On the 2nd of January it was his 3rd son Hemachandran who had been killed.

At about 5.30 to 6.00 p.m. his son had been chatting with 5 or 6 friends near the gate in front of their house. At this time security personnel (STF) had walked up to the house and checked the IDs of his son and his friends. The security officer had told the son not to stand along the road and talk that as the beach was close by to go to the beach and chat. It was usual for his son and friends to meet in the vicinity of the Gandhi statue about twice or thrice a week. His son had usually returned by 7.30 or 8.00 p.m.

At about 7.30 p.m. he had heard the sound of a blast. He had gone on his bicycle to find out about the explosion as his son had not returned home. He had gone towards the front side of the Urban Council.

Whilst passing the Old Police Station STF personnel had pulled him off the bicycle by gripping by his shirt. He had been slapped on the face and dragged towards the junction. There had been other civilians herded together squatting and held at gun point. The UC check point had been guarded by the Navy, who had appeared to be in a relaxed mood. He had heard the cries of distress at this time. He had heard the sounds for about 4 to 5 minutes. Thereafter, sound of gun fire. The area around the Gandhi statue was in darkness at this time. Therefore it was very unlikely that he could see the shooting.

About 4 to 5 minutes after the firing he had heard a vehicle move towards the Fort area. Thereafter, he and the other civilians had been asked to leave the area. They had not been allowed to go to the side where the shooting took place. They had been asked to go back in the direction that they came. When he returned home another parent by the name of Shanmugarajah had come by, and they had gone together to the hospital. The time would have been past 8.00 p.m.

The doctors and nurses were waiting at the entrance to the hospital as they expected the injured to be brought in, as they too had heard the bomb blast. At this point a police vehicle had come with the injured.

From the hospital to the Gandhi statue the distance would have been a little more than ½ a mile. The Driver and the policeman did not help in taking the injured inside the hospital. He had helped with the intention of looking for his son.

Thereafter, 3 more police vehicles had come. These vehicles had brought the bodies of the 5 students who were killed. The following day when they came for the post mortem a policeman from the Harbour police had asked him to sign a document stating his son was LTTE and that it would expedite the handing over of the bodies to the respective families.

When he went for the inquest a Tamil police officer who was about 45 to 50 years old had told him pointing towards a police officer, "that person who was there was responsible for the killing". He had seen that person for the first time that day.

Three months later they had held a joint commemoration for the dead students near the Gandhi statue. While the commemoration ceremony was going on Kapila Jayasekara had driven past towards Fort Fredrick. Subsequently, he had returned with 4 or 5 policemen, had got down from the vehicle and had stood in an intimidating manner in front of the ceremony.

Answering Counsel Gunasekara, Mr Yogarajah confirmed that there were 3 checkpoints near the Gandhi statue. Viz:-

- (1) Near the Gandhi statue opposite the Kuttimany statue on Dockyard Road was the naval checkpoint. The purpose of this checkpoint was to check vehicles going towards the Dockyard.
- (2) Before the road enters Fort Fredrick there is the Koneswara Junction. The army checkpoint is between this junction and entrance to Fort Fredrick. The purpose of this checkpoint is to check vehicles going into Fort Fredrick.
- (3) Within the Post Office Road before it meets Dockyard Road there was a Navy cum Police checkpoint. The purpose of this checkpoint was to check people going towards the Old Police Station, Post Office, Divisional Secretariat and to the Jetty Police.

Defence Counsel pointed out that behind the Urban Council abutting the Fort Fredrick Road was Mcheyzer Stadium which has a big play ground. A gravel road went right across the Stadium and ended on the beach. There was no checkpoint on the gravel road.

There is a possibility for any assailants to come on the gravel road through the Stadium and do the shooting and get away in the darkness.

IIGEP Assistant, Urban's line of questioning with regard to the STF officer who had come into Yogarajah's house to check his son's ID, appear prima facie to be leading the witness to answer in a way so as to give a prejudicial view of the STF.

From the very manner of his questioning it is apparent that the witness was being manipulated by the IIGEP, his credibility is therefore in question. Therefore the proceedings of the video conferencing are tainted ab initio.

Baskaran Yogarajah/ Ponnadurai Yogarajah's Son

This witness gave evidence from a foreign location via video link.

On the 2nd of January at about 6.00 to 6.30 p.m. his brother had been chatting with his friends near the gate. Some STF officers had come by, and asked his brother and his friends for their ID cards.

When asked whether he had seen for himself whether the officers were from the STF he has replied, that at time the situation in Trincomalee was very tense, so his father and mother did not permit him to go out.

It must also be noted, that according to Baskaran he had continued to watch television unperturbed by the commotion created by the STF officer who had come into the house waving his gun threateningly at Hemachandran. This would not be the normal reaction of inmates of a house in such a situation.

According the Basakaran approximately 20 minutes after the bomb blast he had heard gun fire.

Defence Counsel questioned the credibility of the statement made by the witness, as it has been recorded that the statement had been read back to Baskaran in the Tamil language. This cannot be, since according to Baskaran himself the only parties present at the recording were himself, Milner and Savage from IIGEP, when the statement was given in English and there was nothing to translate. Baskaran has signed the statement acknowledging its accuracy.

At these sessions, detailed statements made by them to IIGEP Assistants were also marked. While the statements recorded indicate peripheral matters in detail, the COI did get the impression that the contents were influenced by the views/impressions of the IIGEP Assistants.

- It must be recorded that the conduct of the IIGEP Assistants at the other end during the video conferencing sessions was not in keeping with the high standards expected of them.
- At one stage one of the Assistants, Mr. Dennis Milner, caused a premature adjournment for tea though the witness himself did not make such a request,
- The Assistant, Mr. Milner, also interrupted the cross-examination by counsel in order to speak to the witness,
- One Assistant, Mr. David Savage interrupted the proceedings at one stage and took the witness away without the leave of the Commission stating: "I am concerned about the witness so have adjournment; this witness is not fit to go on."
- At another stage one of them, Mr. Milner, had the impertinence to overrule a question by Counsel for the STF and directed the witness not to answer the question.

- One of them, Mr. Milner introduced Dr Manoharan a witness as '*Our dear friend*'"

Members of the IIGEP who constantly referred to and insisted on adherence to international norms and standards by the COI would probably not approve of this procedure.

If the COI had the benefit of recording the evidence of those vital witnesses without interference, their evidence would have been very valuable. Unfortunately it was not so, and the interference was an embarrassment to the COI. and made the whole process a non-event.

The procedure followed at the video conferencing sessions came in for severe criticism in the media, and by letter dated 30 May, 2008, the Secretary to His Excellency the President informed the COI as follows: "in view of the doubtful status of the law pertaining to the receipt of video conferencing, the Attorney General has advised that, it would be prudent, for the Commission to await the enactment of the proposed Victims of Crime and Witness Assistance and Protection Act. The proposed law which has received constitutional clearance from the Supreme Court is to be tabled and debated in Parliament in June 2008".

Accordingly, the video conferencing sessions were suspended.

The COI regrets that it was unable to use the video conferencing facility to record the evidence of one of the survivors, Pooncalalon. The reception of such evidence would have satisfied the requirement to hold a comprehensive inquiry, and in assessing the evidence the COI would have taken into account the infirmities in the procedure followed, since the requirement of a fair hearing, which the concerned parties are entitled to cannot be dispensed under any circumstances and must be upheld.

The suspension of the video conferencing sessions did give the impression to the IIGEP and the countries that provided funds to the IIGEP, who were willing to fund the video conferencing expenses abroad, that the COI was no longer independent, an impression which the COI was anxious to avoid.

The COI was later informed that the video conferencing sessions could go ahead, subject to necessary safeguards and has since held discussions with Counsel assisting the COI and Counsel appearing for the concerned parties with a view to evolving a procedure acceptable to all parties to record evidence of Pooncalalon and certain other witnesses domiciled abroad and considered the feasibility of organizing such sessions, but was faced with the difficulty of making contact with these witnesses in the limited time available.

Due to the suspension of evidence through video link it was very unfortunate that the Commission could not obtain the evidence of Pooncalalon who was one of the victims who survived the incident. Nevertheless his evidence recorded before the Magistrate Trincomalee on 6th January 2006 was marked in evidence through the Registrar of the Magistrate's Court.

The manner in which the video conferencing has taken place and the way the statements of the witnesses have been recorded by IIGEP reflects the unwarranted

behaviour and prejudice of the IIGEP Assistance in pointing to the guilt of the armed service personnel before the commission can arrive at its own conclusions.

Able Seaman R.M. Asoka Pushpakumara

Pushpakumara stated that he was attached to the naval detachment called Tissa. It was located just behind the Harbour Police. He states their uniform was a camouflage uniform. He had been mainly engaged in guard duties. Guard duties were performed in camouflage uniform. He had commenced guard duty on the 2nd of January from 2.00 p.m. to 8.00 p.m. They were on guard duty at Koneswara point. He heard the bomb explosion and shortly afterwards he had heard gunfire. He had heard repeated gun fire for some time. He said he was about 20 to 25 metres away from the sound of the explosion.

When his duty turn was over the Navy transport bus had come at 8.30 p.m. to drop the relief officer and to take him back to the Navy quarters. The bus had come to the point at which he was on duty. When he was about to get into the bus he had seen the bodies lying on the ground, which meant that he had seen the bodies very close to his guard point. In other words he had been on duty a few yards away from the place where the bodies were lying on the ground.

He said that the bus had stopped near the road block which had another check point and not at Koneswara check point.

Able Seaman P.G. Indika Ruwan

He was on duty at the Koneswaran checkpoint on 2nd of Jan. 2006 from 2.00 p.m. to 8.00 p.m. He was wearing naval camouflage uniform. The difference between the naval camouflage uniform to the camouflage uniforms of other services was that the Navy uniform had the naval insignia of the anchor. He said the colour of the naval uniform was light green, brown and thick black and the anchor insignia was found all over the uniform. He said he carried a T81 gun which was usually issued to them by the Navy. He had been issued 150 rounds of 7.62 x 39 calibre bullets.

He and Pushpakumara had been assigned to guard duties at a point called Koneswaran Junction. They were expected to patrol a distance of 75 metres.

Whilst he was on duty at about 7.30 to 7.35 p.m. he heard a loud explosion. He said he had identified it as a sound of a bomb blast and along with that he heard some shooting as well. The noise came from a close by place. He had been doing guard duty about 75 metres away from the Gandhi statue. When he heard the bomb blast he had instinctively lain down.

Indika Ruwan in his statement made to the police soon after the killing stated that he heard a loud sound and immediately after that he had seen smoke going up. From where he was the place where the bomb blast took place would have been about 75 metres away. Along with the bomb blast he heard shooting in continuous bursts. It was the sound of firing from automatic weapons. It was something similar to an exchange of fire. He states he did not see anything to indicate an exchange of fire but that the continuous sound of shooting felt like an exchange of fire.

He was lying down for about 2 or 3 minutes, thereafter, he got up and went about 15 metres to where his supervising officer Surasinghe was located. At this stage he had seen police and STF personnel. He had not seen them arriving but he had seen them in the vicinity of the bomb blast.

In his statement to the police on the day following the incident, he has stated, that he had gone towards his supervising officer and at that stage, seen STF and police arrive and it was thereafter that he had heard the gun fire.

The Navy transport vehicle which had come to take them back and bringing the relief officer had been parked about 100 metres away from the Gandhi statue. When he was getting into the vehicle he had seen police officers near the place of the bomb blast and at the same time some people fallen on the ground. He said he had seen more than one person fallen down. He had understood that they had fallen down with injuries. He saw about 10 police officers standing about near the place of the bomb blast. He also saw STF and Naval officers standing nearby. He saw the STF, Navy and police officers only after the bomb blast.

According to him the lights in the vicinity had gone off with the sound of the bomb blast. He states that the road leading to the area where the bomb blast had taken place was barricaded to prevent people from going to the scene of the incident.

Petty Officer S.T.A.R. Surasinghe

Surasinghe had been in charge of Charlie's Division security. Charlie's Division comprised the area near the Rest House, Dockyard and Prisons Road and encompassed an area of 1 to 1 ½ sq. miles. He had a contingent of about 20 to 25 men under his command and this unit was called Tissa.

He states that from the Gandhi statue it was about 20 to 40 metres to the water's edge. Whilst he was on duty he had heard the sound of a bomb blast a short distance away. About 10 minutes after the bomb blast when he passed the place he had seen people fallen on the ground. After the bomb blast he heard gun shots. He heard the bomb explosion at about 7.20 p.m. When the bomb blast occurred all the lights in the area had gone off. However, he had observed that the other lights in the town area were on.

After the bomb blast when he saw people fallen on the ground, he also saw a police jeep that was parked nearby. It was a blue coloured jeep with white lettering and the men were in brown uniform. There were also 2 or 3 other police vehicles parked there as well.

It is strange that he had seen people fallen on the ground and he had not bothered to ascertain what had happened. He had carried on with his routine duties as if nothing untoward had taken place.

Police Reserve Sergeant Upali Gunawardena

He and police constable Jayantha were on duty at the UC checkpoint on the 2nd of January from 6.00 p.m. to 6.00 a.m. They left the Harbour Police station to go on duty at the UC checkpoint at about 5.50 to 5.55 p.m. The distance from the Harbour Police station to the UC checkpoint would be about 1 ¼ Km. The distance from the UC checkpoint to the Gandhi statue would be about 100 to 125 metres.

At about 7.50 p.m. he heard the sound of an explosion. He guessed it was a bomb explosion. The noise of the explosion had come from the side of the beach. He saw the dust and smoke rising from the place of the explosion. Soon after the explosion he had heard the sound of crackers or gun fire.

After the bomb explosion he had seen persons in camouflage uniform moving about near the Gandhi statue.

Police Sergeant H.F. Jayantha Ramyasiri

When he was walking towards the Charge Room from the barracks, he had heard on the Motorola the message of a loud explosion from the side of the beach. Then he heard an announcement saying those who are available to get ready to leave as soon as possible. He along with Actg. OIC Zavahir, Dayasiri, Gunawardena and Muthubanda had got into the jeep and proceeded to Urban Council Junction and parked the vehicle under a Tamarind tree about 100 metres from the Gandhi statue. At the road block there had been Sergeant Upali and a constable by the name of Jayantha.

According to him the place was in darkness when they reached the UC Junction. He had seen about 15 to 20 people in camouflage suits around the place. When they approached the Gandhi statue he had seen at two places persons lying on the ground covered with blood. He had heard faint voices of persons screaming and moaning in pain emanating from those persons lying on the ground.

Ramyasiri states that OIC Zavahir's jeep stopped under a Tamarind tree and from there they had to walk about 100 metres to the Gandhi statue. When they were walking that distance they had seen a group of about 20 persons in combat uniform and they appeared to be, " Arakshaka piyawara ganne akaraye," (i.e. they appeared to be guarding something).

They had left the site of the incident at about 11.00 p.m. to go to the hospital. Ramyasiri has stated that the agitated relatives of the victims had refused to make any statement to the police and that they had insisted on giving their statement to the Magistrate only.

Ramyasiri has stated that at the postmortem Dr Gunatunga had given him in charge of certain objects that the doctor had removed from the dead bodies.

They were:-

- From 3 bodies the nose part of T56 bullets and bomb shrapnel
- From the body of Manoharan Rajeehar copper coloured outer cover of a T 56 bullet
- Lohitadasan Rohan's body, nose of a bullet and bomb shrapnel
- Thangadurai Sivanandan body, nose of a bullet and outer cover.

On the 4th of Jan. he had gone with the regular OIC Janaka Mannapperuma to the site of the incident and had been handed 6 to 7 empty cartridges

H. Indika Prasanna/Able Seaman

On the 2nd of January, he was assigned road block duties at Charlie security zone from 2.00 p.m. to 6.00 p.m. He was on duty with 3 other officers. He did not have his weapon with him as he was the senior officer in the group, he had to search individuals and vehicles. The others had their weapons with them. He had left his

gun locked in his locker. He had been on duty near the Welikada prisoner's commemorative statue. He stated that he did not see the Gandhi statue from the checkpoint.

Whilst he was on guard duty at the checkpoint something unusual had occurred at about 7.30 p.m. He had heard a huge explosion. When such incidents happen they have been instructed to close the checkpoints and block the roads. He had abided these instructions. About a minute or two after the explosion he had heard rapid bursts of gun fire. About 10 to 15 minutes later he saw a group of civilians come running from the direction of the beach at a distance of about 60 to 75 metres away. However he had not bothered ascertain from the people the reason for their agitation.

Shortly after 8.00 p.m. the Navy bus had come to take them back to camp. Whilst passing in the bus he had seen two or three people fallen on the ground near the Gandhi statue. Before the arrival the Navy bus, Petty officer Surasena who was on duty at the UC junction had come to their checkpoint. UC Junction was close to the Gandhi statue. Surasena had informed him of an incident that had taken place and for them to continue their duties. Surasena had got into the bus at the UC Junction.

When passing the place of the incident he had seen police officers in khaki uniform.

A.K.A. Zavahir, OIC, Harbour Police, Trincomalee

On the day in which the incident in question took place he had been the Actg. OIC, Harbour Police, Trincomalee.

He has stated that the Gandhi statue was close to the beach about 80 to 100 metres away from the water's edge, and that it was customary for people to congregate and relax near the Gandhi statue. He estimated the distance from the Gandhi statue to the Harbour Police station to be about 1 Km.

The UC Junction check point was manned by two police officers from the Harbour police. The policemen were armed with T56 guns. There were also three naval officers manning this checkpoint. The distance between the Gandhi statue and the UC checkpoint was about 150 metres. Police sergeant Upali and police constable Jayantha were on duty on the 2nd of January 2006. It was the Navy that had maintained general security of the area. Welikada prison commemorative post was manned entirely by the Navy. This checkpoint is about 100 to 120 metres from the Gandhi statue.

On being informed of a bomb blast on his Motorola Zavahir had taken steps to visit the scene of the crime. He states that he had reached the site of the killings at about 8.15 p.m. He had received the news of the explosion on the walkie talkie from sergeant Upali who manned the UC Junction checkpoint. A few minutes after his arrival at the scene of the crime SSP Jayasekera and ASP Serasinghe had come to the place. SSP Kapila Jayasekera was in charge of Crimes and Operations at Trincomalee.

SP Kapila Jayasekera had ordered Zavahir to send for the Magistrate. When Counsel observed that normally as a practice a magistrate is requested to attend a crime

scene where a person is deemed to have died. Zavahir stated that the SSP had given him the order to summon the magistrate due to the bomb explosion. Zavahir said that he helped to send the 7 injured persons to hospital but strangely he did not observe any gun shot injuries.

Questioned further, as to who gave him the information about the incident, he states it was sergeant Upali who was manning the UC Junction checkpoint. Zavahir also stated that sergeant Upali had merely informed him that there was an incident of a bomb blast at the beach front and he had wanted Zavahir to inform the OIC.

He met sergeant Upali at about 8.10 p.m. on his way to the scene of the crime before reaching the Gandhi statue and Sergeant Upali had not visited the scene of the crime.

Zavahir stated that sergeant Upali had mentioned to him the fact that he heard gun shots, only in the morning at 6.00 a.m. on the following day, when he returned off duty to the police station. i.e. 3rd January. Upali had told him that along with the bomb explosion there was firing.

Zavahir had reached the scene of the crime at about 8.15 to 8.20 p.m. At this time he had seen STF personnel in the vicinity of Gandhi statue. IP Vaas Perera and about 13 STF officers had been near the statue.

SSP Jayasekera had reached the scene of the crime about 15 to 20 minutes after Zavahir. By the time Zavahir came to the scene of the crime the group of STF personnel 12 to 13 Nos. were already present at the site. According to Zavahir the STF has left the scene of the crime about 10 minutes after the arrival of Kapila Jayasekera. They had left on foot.

Zavahir had no previous experience in investigating a case of homicide, this being the first such case. He should have at least detailed someone to guard the scene of the crime.

Zavahir stated that there had been several persons in uniform both STF and Naval personnel in close proximity to the bodies on the ground, when he arrived at the scene. He stated that the Navy too were in camouflage uniform. They were also armed.

There had been about 15 service personnel, 13 STF and 2 Navy at the scene of the crime before IP Zavahir reached the place. Inspector Vaas Perera who was in charge of the STF had told Zavahir that by the time he came, it was all over and that he and the STF had arrived there a few minutes before Zavahir.

Zavahir also stated that the Naval personnel had told him that before they arrived on the scene there had been another group of persons, namely, the STF.

Zavahir states that when he dispatched the bodies to hospital he did not notice that anyone was dead as the bodies were moaning and groaning. Zavahir had dispatched the injured to hospital in his vehicle and another vehicle which had come from Head Quarters Police station before the arrival of SSP Jayasekera. After sending the injured, he himself had gone to hospital at about 11.00 p.m.

It is unusual that STF who had come in response to the bomb blast had not taken immediate steps to dispatch the wounded to hospital. Furthermore, Zavahir has not acted on the instructions given by ASP Serasinghe to look for spent cartridges. The STF personnel who had come from Katukurunde were billeted at the Old Police Station which was in close proximity to the place of incident. Only 13 of the STF officers were on duty at the relevant time. The rest were in their barrack at the Old Police Station. However, the police had not taken the trouble to examine the weapons of the STF who were housed in the Old Police Station nor have they been questioned. This reflects the incomplete nature of the police investigation.

Dr Gamini Gunatunga/JMO, Base Hospital, Trincomalee

Dr Gunatunga states that the post mortem carried out on the bodies of the 5 murdered youth had gunshot injuries as well as injuries caused by shrapnel from the bomb explosion.

Shanmugarajah Sajendran

He observed that the entry point had been made by a 8 mm bullet and that the fact it had passed through the body and exited meant that it was not from a long distance but from a close range firing. Severe damage to right lung, bladder and small intestine following firearm injuries. He had found blackening and burning on the bullet injury at the back of the chest. The blackening indicates that it was a close range shot. The shrapnel injuries were only surface ones, they could not have caused death. He states that from the wounds found on the deceased Sajendran the shooting would have been from more than one assailant, as one gunshot injury was from behind and the other from the right side.

Lohitadasan Rohan

Abrasion found on the face which may have been caused by some external violence as from a blunt weapon. Severe damage to liver and right kidney due to gun shot injuries. Deep wound below the neck. Bullet wound below left ear with wounds to the left rib. Wounds on left thigh and left hand elbow. Bullet has exited from the back shoulder.

Manoharan Rajihar

Rajihar had a gunshot injury on the head which had exited from the side of the head. There were 3 gunshot injuries to his head. His death had been due to severe brain damage due to gunshot injuries. Four bullets had entered Rajihar's body. He also had an abrasion on his elbow which could have been due to external violence from a blunt object. He also had fractures on both legs. He had four bullet injuries.

Thangadurai Sivanandan

The cause of death was severe injuries caused to the brain and spinal chord. One bullet had entered his head. There were 4 bullets lodged in the spine. Dr Gunatunga said it was most likely that the bullets were fired from automatic T56 guns. Sivanandan's body also had injuries caused due to the bomb explosion. Death was due to the gunshot injuries he had received to several parts of his body. Namely, back of his chest, his head and upper arm.

Yogarajah Hemachandran

Death was due to severe damage caused to the brain by gunshot injuries. Fatal injury was the gunshot injury towards the centre of his head and death would have been instantaneous. The bullet had exited from the forehead.

Yoganathan Poonkulalogan (Injured youth)

He had gunshot injuries as well as injuries caused by the grenade explosion.

Parajasingham Kokularaj (Injured youth)

He also had gunshot injuries and superficial wounds caused by shrapnel. Kokularaj had multiple shrapnel injuries. He had 2 gunshot injuries one on the abdomen and one on the upper arm.

Kokularaj had spoken to Dr Gunatunga on the 5th. He had said that he had been on the beach front near the Gandhi Statue at about 8.00 p.m. when he heard a bomb explosion. Then he had been shot? He had said some strangers shot him but that he could not identify them. He had been in hospital until the 11th of February 2006. He had spoken to Pooncalalon on the 5th morning. He had 2 gunshot injuries and multiple shrapnel injuries.

Both the injured had been admitted to hospital at about 8.30 p.m. on the 2nd of January.

Dr T. Jagath M.K. Wimalaratne

He had assisted Dr. Gunatunge with the postmortems.

Mrs G.M. Sharma/Registrar, Tricomalee Magistrate Court

Ms Sharma read the Magistrates Report which states that he was informed of the incident at 9.15 p.m. He had reached the site of the incident at 9.25 p.m. and SSP Jayasekera, ASP Serasinghe and IP Zavahir had been present.

The Magistrate had mentioned in his report that the lamp post light was burning near the Gandhi statue. He has also mentioned that lights on the street were also burning.

The Magistrate had directed Zavahir to take charge of all objects at the scene of the crime that can be used in evidence.

According to the report of the Magistrate on 3rd of January 2006 he had again visited the hospital at 8.45 a.m. The Magistrate had been accompanied by Zavahir and two other police officers. In his report the Magistrate has mentioned that the injuries on the deceased were caused by the bomb explosion and the gun shot injuries. That is, prior to the postmortem, he had made his observations at 9.40 a.m. on 3rd January.

On the 6th of January the Magistrate had taken a sworn statement from Pararajasingham Kokularaj and Yoganathan Pooncalalon the two injured youth.

Pooncalalon's Statement – That day went to the house situated near the prison where Kemachandran lives, we with Kokularaj, Gajendiran, Hemachandran, and Rohan who are injured in today's incident came to the beach from the above mentioned house at about 6.45 p.m. or 7.00 p.m. And all five of us were seated as usual on the wall erected round the Gandhi statue. Fifteen minutes after going to that place, Sivanandan and Rajeehar who died in the incident came. That day the news about the cut off marks of the University advanced level was released. We were discussing about that. I too got university admission to the Faculty of Medicine through the fixed cut out marks all were not seated on the steps. We were chatting while some being seated on the bicycle seat and I too seated on the bicycle seat. I was chatting facing, those who were seated on the wall, with my back turned towards the sea. Normally vehicles go and come along that road. At that time at the place where we were a green coloured three wheeler was coming slowly towards the fort. At that time suddenly granite came and fell between my legs. Later I ran in fear about ten meters towards the hospital. At that time my leg got injured. At that time I fell down. That three wheeler which hurled the grenade went towards the fort. In my side the injured Kokulan, Sajinthan and Sivananthan were lying fallen. They too were lying shouting. We told, save us, and take us to the hospital. Nobody came to that place. At the time of the incident, as there were normally that day too there were along the beach. There was a vehicle selling potatoes at that place. They were towards the beach. Most of those who were in the beach heard the sound and ran. At around the time of occurrence of the incident, as usual we were in the beach in that place even the fishermen ran away immediately on hearing the sound of bomb explosion. After about 5, 10 minutes 4, 5 people were seen coming as for help. At the same time saw a jeep also coming. Do not know whether they are army, navy or STF in army uniform. They came. Those who came shouting in Sinhalese language put me and three others who were by my side, in to the jeep and hit us by gun and hands. Regarding the other three, do not know what happened. They pulled us out of the jeep from the back side and pushed us and hit us and then pulled me, Kokularaj, Gajendran, and Sivananda and shot with gun. At the place they were loading us in to the jeep I saw 10, 15 standing in uniform. Later they shot. By that injuries (gun shot) were caused on left and right legs and left side of the back. After that I stayed still as if dead. I cannot remember how many gun shots sounds I heard.

Only 15, 20 minutes after the grenade explosion shooting by guns took place. Later that jeep left. I cannot remember in which direction it went. 10,15 minutes after that a police jeep came and took me to the hospital, Trincomalee and admitted. I cannot again identify those who shot me. I did not note correctly, with intent. But they used the guns on us. I do not know whether they are Army, Navy or STF. When they were putting four of us in to the jeep I was conscious. The others were not conscious. They fell down the four of us they fell us as they liked and aimed the gun shots to the place where we fell. Four of us came to the place of the incident on bicycles the other one by motor cycle and the one who came later came on a bicycle. I can tell only this.

The statement given by Kokularaj - On the day of the incident, I went to Kali temple, and that day the news related to the minimum marks in Advanced Level for admission to universities are released. From the temple I went to the house of my friend Yogarajah Kemachandran who died in this incident and lives near the prison talked with his mother, and went to the shop named Kumas situated near the post office junction and when were going after drinking tea there at about 6.00 o'clock, and the four of us, I and Gejendran, Kemachandran, and Rohan who died in this incident I met Sivanandan also. At that time the five of us went to the beach. At that time the time was about 7.00 p.m. Later Rajeehar came from the temple. After that Poongkovan, who received injuries in this incident, came. All seven of us came to the wall erected round the Gandhi statue looking towards the beach. At that time there were many there. At that time there were lots of people along the beach. Later when the bicycle of one of my friends, fell down, I lifted it. When we were eating the bites and things bought from the shop and brought, the normal vehicles were moving. When I was looking down, I heard some sort of sound. It was loud sound. Later I fell down after that, when I opened my eyes, I saw me in the hospital. I don't know what happened after hearing the large sound until I opened my eyes in the hospital. For me there are injuries on the left side of the head, left side of the jaw, left side shoulder, left chest left side of the body, stomach, lower part of the left elbow, left knee, right hand, lower part of the hand and right leg in connection with the incident, other than this I do not have anything else to say.

Mahinda Serasinghe/ASP Division 1, Trincomalee Police HQ & Harbour Police

He had been informed of the bomb explosion by the duty officer/ Harbour Police at about 8.20 p.m. He had been at his official quarters which was about 1 ½ Km from the Gandhi statue by road. He had heard the sound of the explosion about 3 of 4 minutes before he received the message from the duty officer re bomb blast.

When ASP Serasinghe arrived on the crime scene at about 8.20 to 8.30 p.m. he had seen 10 to 12 STF officers at the place. Police Inspector V.A.S. Perera was in charge of the group. According to Serasinghe as the STF were on operational duties they were wearing camouflage uniforms. He further states that there were about 2 to 3 Naval personnel as well at the site, and they too were wearing camouflage uniforms. The STF as well as Naval personnel were all carrying arms. There had been about 15 army personnel as well and they had been dressed in green camouflage uniforms.

The unexploded bomb that they found had been defused on the instructions of the Magistrate. According to the Govt. Analysts report the lever of the grenade found at the crime scene indicated that it was of South Korean make. He also states that when he visited the site with the Magistrate on the 3rd morning he had seen 7 holes similar to the one he had seen earlier.

Number of checkpoints surrounding the crime scene are as follows:

1. UC Junction checkpoint.
2. Checkpoints 30 yards from the Gandhi statue on the road to the Courts Complex.
3. Checkpoint along the road from the Gandhi statue and along the beach towards the Fort. This was about 150 to 200 yards from the Gandhi statue.
4. Checkpoint on the road leading to the prisons.

When counsel asked ASP Serasinghe, "Is it possible that this incident could have happened without the knowledge of all those people, namely, the STF, Navy and army personnel who were at the scene of the crime?" He answered, "No sir".

It is strange that ASP Serasinghe did not think it fit to examine the weapons of the STF, Army and navy personnel who were at the scene.

Serasinghe states that they were examined by SP Jayasekera a few days later. It was a useless exercise as there was no guarantee that the weapons were the same ones' that were in the possession of these officers on that day.

Immediately, after the incident whilst Zavahir was investigating, the case had been handed over to the District Criminal Investigation Division, which was headed by SSP Kapila Jayasekera. Thereafter, the case had been taken over by the CID.

Ananda Bulanawewa, SI/STF

He had reported to SSP Kapila Jayasekera at Trincomalee on 23rd December 2005. SP Jayasekera had asked him to perform duties with the STF officers.

He stated that there were 27 or 28 STF officers in Trincomalee on the 23rd of December. From the 24th of Dec. he had worked with the STF, until the 2nd of January 2006. He had been told to take orders from Inspector V.A.S. Perera whilst he was working with the STF. There were two other non-STF Sub-Inspectors, they were SI Karunaratne and SI Jayasinghe.

The 30 persons comprising the STF officers and non-STF officers had worked in batches. The groups changed from day to day.

He had with him a .38 caliber revolver. He stated that STF and non STF officers are issued with hand grenades when they are on road block duty at permanent police posts.

On the 2nd of Jan. he had joined up with the STF group at 9.30 a.m. at the Head Quarters Police station, Trincomalee. He had been in uniform and taken with him

the revolver which had been issued to him from the Uppuveli police station. He had also taken with him the 5 rounds of ammunition issued to him.

From 9.30 a.m. he had been at Anuradhapura Junction. After the mid day meal they had been ordered by IP V.A.S. Perera to proceed to Anuradhapura Junction checkpoint. Therefore, they had resumed duties for the 2nd time at the Anuradhapura Junction and had been on duty from 5.30 p.m. to 6.50 p.m. The STF officers had been dressed in camouflage uniform and carrying T56 rifles. Thereafter, they had been ordered to proceed to the Clock Tower Junction. IP V.A.S. Perera had also accompanied them and they had traveled in a STF jeep to the Clock Tower Junction. The driver of the jeep was STF driver by the name of Dissanayake. They had reached the Clock Tower Junction at 7.00 p.m. They heard the explosion at about 7.45 p.m. to 7.50 p.m. At the sound of the explosion IP V.A.S. Perera had ordered them to proceed towards the Old Police Station and had decided to go in the jeep up to some distance and then go on foot. Bulanawewa states that along with him IP V.A.S. Perera, 10 STF officers had got into the jeep.

Bulanawewa states that he could not see the place where they parked the vehicle as it was dark. It was about 200 to 300 metres away from the Gandhi statue. Thereafter, IP V.A.S. Perera had asked him to stay near the jeep with 3 others. IP V.A.S. Perera with 8 others had moved away. He had waited in the vehicle for about 5 to 10 minutes. Then he had started walking forwards. He had taken about 5 minutes to get to the Gandhi statue.

When they were proceeding in the jeep from the Clock Tower Junction towards the sound of the explosion the lights in the vehicle were off.

He has also stated that nobody checked his weapon or that of the other STF officers when they reported off duty.

Bulanawewa has further stated that 2 police vehicles came to the crime scene one from the direction of the Old Police Station and the other from the direction of the Fort at the same time that IP V.A.S. Perera reached the crime scene.

IP V.A.S. Perera

He had been OIC Administration at Katukurunde Training College on 23rd December 2005, when he got orders to proceed to Trincomalee with a contingent of STF officers. The contingent comprised 2 SIs, 22 PCs, 2 Police Drivers and himself totaling 27 persons. He had been asked to go on special duty for a few days. ASP Pathirana from the STF Katukurunde had accompanied them.

They had been provided with 2 jeeps and a small bus. One group had gone in one jeep with the ASP. The other group with IP V.A.S. Perera in the other jeep and the others with the 2 SIs in the bus.

V.A.S. Perera had made a log entry at Katukurunde before he left for Trincomalee stating, "that they are carrying arms, ammunition and personal goods." He has not entered the serial numbers of the weapons issued to each of the officers against their names. Neither has he mentioned the quantity of ammunition taken with them. He has also listed that he has taken 25 hand grenades. ASP Pathirana who went with them had returned to Colombo on the 24th.

Thereafter, he had reported to SSP Ambanwala and SSP Kapila Jayasekera. They had been given instructions by SSP Ambanwala. The special duties they were assigned were road block duties and cordon and search operations. The STF contingent had left Trincomalee on 6th Jan. 2006.

On the 2nd of January they had left for road block duty at 9.45 a.m. From 10.00 a.m. to 1.00 p.m. they were engaged in road block duty at the Clock Tower. They had returned for lunch to the Old Police Station and gone back on duty at 5.30 p.m. to the Anuradhapura Junction on road block duty. At 7.00 p.m. he had gone with 12 STF men to the Clock Tower Junction and another group with the balance STF officers with SI Karunaratne had gone towards the 3rd Mile Post.

At about 7.45 p.m. he had heard a loud explosion from the direction of the beach. He had gone with STF officers in the jeep towards the direction of the Bomb blast and seen civilians running away from the vicinity of the Gandhi statue. Therefore, they had gone towards the Gandhi statue and parked the vehicle. He had then gone on foot in single file with 8 STF officers about 200 metres and seen a group of injured persons lying on the ground.

V.A.S. Perera has stated that he gave orders for PC Bandara, and RPC Indika to help carry the injured to the police vehicles to take them to hospital. He has stated that the distance from the Old Police Station to the Gandhi statue was about 800 metres.

V.A.S. Perera stated that when they left Katukurunde for the assignment in Trincomalee, they took with them only T56 & M16 rifles. He categorically denies taking any pistols, though pistols were issued to officers of the rank of SI and above in the STF. This is contradicted in the statements made by Ranil Kumara Ratnayake who was one of the STF men on the special assignment to Trincomalee, where he has said that, "we went in the jeep No G1 8437. The IP STF and the SI took with them M16 type weapons and cartridges in addition to pistols." This was also corroborated in the evidence of PC Subasinghe Gamage Indika Thushara.

V.A.S. Perera also stated that the STF was a para military unit more like an army unit and that they do not perform normal police duties like investigation and traffic control etc. So that weapons issued to members of STF are personal to them and they are not returned to base when they return from operational duties. During the period Dec. 2005 the STF had been under the authority of the IGP.

When he heard the bomb explosion at 7.45 to 7.50 p.m. he was on duty at the Clock Tower, thinking that some harm may have come to his colleagues at the Old Police Station he had set out in that direction at 8.20 p.m.

Questioned as to why he had taken such an inordinately long time to set off, if he feared his comrades were in danger, he has replied that he had deployed his men to cover 3 roads, therefore it took some time to gather his men together.

He stated that at the time he set out on his assignment from Katukurunde each member of the contingent had taken the gun that was personal to him and 200 rounds of ammunition. But before they returned to Katukurunde on the 6th of Jan. 2006 the weapons of 12 men had been taken away from them. No entry has been made of the ammunition that had been with the confiscated guns which he says was by mistake. He also stated that when the guns were checked the ammunition was

also checked and they found that nothing was spent. So they had returned the ammunition.

He stated that by an oversight, he had failed to make an entry of the amount of ammunition which was brought back.

Senerath Dissanayake/Police Driver, STF

On the 2nd of Jan. they reported for duty at about 9.00 a.m. at the Trincomalee HQ Police Station. In the morning they had done road block duties at the Clock Tower Junction. After lunch they had been doing guard duties at the Anuradhapura Junction.

On the 2nd evening he drove the STF contingent on road block duty. They had come to the Clock Tower at about 7.00 p.m. from the Anuradhapura Junction checkpoint. A short while later he had heard the bomb explosion and the repeated sound of gun fire. IP V.A.S. Perera had got into the jeep with the STF officers and told him to proceed to the scene of the incident. That is towards the direction of the UC building. He had been asked to stop the vehicle about 200 metres from the scene of the crime. He had waited near the parked vehicle for about 20 minutes until V.A.S. Perera and his men returned. Thereafter, they had proceeded to Trincomalee HQ Police Station.

On the day he handed over his weapon they checked his ammunition. The magazines were removed and counted. The ammunition had been given back, but not the gun.

M.M. Indranath Janaka/OIC, Harbour Police

He had left for Colombo on the 2nd of January 2006 on the orders of SSP Ambanwala to hand over a terrorist suspect. He had left for Colombo at 4.00 p.m. on 2nd Jan.

He has stated that the distance between the harbour police station and the scene of the crime was about 1 to 1 ¼ Km. He had returned to Trincomalee towards midnight on the 3rd. i.e. towards the early hours of the 4th. On the 4th morning when he had visited the scene of the crime he had made a sketch of the place where he had scene pools of blood. He had also found empty cartridges concealed in the grass. He had picked up 7 cartridge casings. The cartridges belonged to a 7.62 mm caliber gun. They are usually discharged from an automatic weapon. The cartridges were scattered over a large area. He had also noted gunshot holes on the tarmac.

During December 2005 there had been unrest in the Trincomalee town as, there had been a bomb blast at the Trinco market and 16 persons had died. Due to the unrest in Trinco, a contingent of about 20 STF officers had been brought from outside to maintain law and order. The STF had been housed in the Old Police station building. SP Crimes and Operations Kapila Jayasekera were in charge of Administration at that time.

On the 4th of January the investigation into the crime had been taken over by the District Criminal Investigations Unit. It was only subsequently, that the main CID had taken over the investigation.

He had been informed by the CID in Colombo through a fax message the names of the 12 STF officers who had been taken into custody over the killings. He had included the names of 12 STF officers and the name of the SI attached to the Uppuveli police who were first at the scene of the crime on the day in question, who were taken into custody when he submitted his B report to the Magistrate' Court on 27th of February 2006. ASP Samarasinghe, CID Colombo was the OIC of the Investigating team.

IP Samoon Mohammed Razik/Harbour Police, Trinco

He had been informed of the incident at about 12.15 a.m. on the 2nd of January while he was resting in the police quarters of the Harbour police station. He had been directed to go to hospital and record the statements of the injured youth, Kokularaj and Pooncalalon.

He had found the two youth in the intensive care unit who were not in a fit state to be disturbed. However, he had questioned the parents of the 2 injured youth who had no idea what had happened. On the following day 3rd January he had been directed to record the statements from the naval personnel who had been on guard duty at the checkpoints at the time of the incident. He had found that S.P.A.R. Surasinghe had been the OIC of the naval personnel at the checkpoints. He had ascertained that 20 Navy men had been on checkpoint duty. Surasinghe had been the OIC of Charlie HQ Division. The checkpoints near the scene of the incident fell within this Division. Surasinghe had been near the Welikada Memorial prisoner's statue. Surasinghe had heard the bomb explosion and had seen the black smoke and the subsequent sound of gunfire. He had also questioned 2 other naval officers. Viz: Indika Ruwan and Pushpakumara. These two had been on duty in front of the University canteen, at a place called Koneswara point.

However, he had not known the location of the Gandhi statue and since he had assumed duties only on the 1st of January 2006 in Trinco he was not familiar with the area.

He had been instructed by IP Zavahir to examine the weapons of those who were at the checkpoints. He had examined the weapons of OIC Surasinghe which was a T 56. He had examined 6 other weapons along with that of Surasinghe's. There had been 20 Navy personnel under OIC Surasinghe. Questioned as to why he had not examined the weapons of the others, he replied that he had examined the weapons that were available at that time.

Witness admitted that he was aware of the deployment of STF personnel in Trinco town and that they were under the direction of SSP Operations. He had been promoted IP and posted to Trinco w.e.f. 1st Jan, 2006. According to Razik usually an officer was expected to serve in a police station for 1 year. However, he had been transferred to Kurunegala after serving 1 month and 10 days at Trinco by the police Department.

IP H.M.D. Sebastian/Harbour Police, Trinco

In January 2005 he had been transferred to the District Crime Investigation Unit in Trinco. The OIC of the District Crime Investigation Unit was OIC Podiappuhamy. IP

Sebastian had been on long leave at the end of December and had reported to work on 4th Jan. 2006.

The District Criminal Investigation Unit was entrusted with the investigation into unsolved grave crimes in Kantale, Ampara and Trincomalee police Divisions. At 9.30 a.m. on 4th Jan. SSP Kapila Jayasekera had given him verbal instructions to record statements with regard to this incident. SSP had brought with him certain persons whose statements he had wanted recorded. These persons were from the STF. There had been about 12 persons from the STF, who were in their special uniforms and they had brought their weapons with them.

SSP Kapila Jayasekera had examined the weapons. The SSP had examined the guns in the usual way that is by smelling the extreme end of the gun. So that if the gun had been used you would get the smell of gun fire. The SSP had gone through this exercise over 48 hours after the incident.

On the 6th of January he had taken into custody 8 T 56 guns and 4 M 16 guns and a revolver belonging to Ananda Bulanawewa.

He had recorded the statements of the following persons. 1) SI Ratnayake Mudiyanalage Upul Bandara Ratnayake/STF 2) W. Roshan Saliya de Silva/RPC STF 3) Y.B. Eranda Kirithi Yapa/PC STF 4) Dissanayake Mudiyanalage Abesinghe Banda/PC STF. The above person's statements were recorded because they were the first to reach the scene of the crime.

On the 5th he had taken down the statements of the following persons. 1) Jayasekera Mudiyanalage Nimal Bandara/PC STF 2) Ananda Bulanawewa/SI Uppuveli Police 3) Ratnayake Mudiyanalage Udaya Bandara/PC STF 4) M. Nilantha Kumarasinghe/Lt. 11th Unit Sri Lanka National Guard.

On the 6th of Jan. he had taken into custody the weapons of the persons from whom he had taken statements. He had taken into custody the other 5 weapons as well. He had handed 13 impounded weapons to PC Priyantha/RPC, CID. On the 8th of Feb. 2006 he had taken them to the Govt. Analyst in Colombo. All together he had handed over 26 firearms to the Govt. Analyst. The balance 13 weapons were taken into custody by the harbour police. These guns had been in the custody of the Harbour Police which had been handed over to the Magistrate Court. He had collected the guns from the Magistrate's Court.

According to IP Sebastian he had examined the weapons of the STF group who had been near the vicinity of the crime as well as those of a motor cycle group of the army who had come to the scene of the incident.

A.V. Jayantha/Police Constable

In January 2006 he was serving in Trincomalee at the Harbour police station. On 02.01.2006. he was on duty at 6.00 p.m. at the UC Junction road block. Along with him on duty was police sergeant Upali. They had taken T56 weapons with them.

They had been checking people and vehicles going in one direction. The vehicles that go in the opposite direction are checked at another road block. At about 7.55 p.m. a large noise was heard from the direction of the beach. They had informed the

police station on the walkie talkie about the explosion. They had continued manning the checkpoint.

People were seen coming running towards the checkpoint, they appeared to be scared and they seem to running away from the incident. When they had asked the people about the explosion they had indicated that they did not know anything about it.

Actg. OIC Zavahir was the first person to come in a vehicle to their checkpoint after the explosion. Until the Magistrate came they had remained at the checkpoint.

Upon the arrival of the Magistrate the Actg. OIC had directed him to leave the guard point and come to the Gandhi statue, to give protection to the Magistrate. Jayantha had not seen any other senior police officer at that time.

He had seen a motor cycle party arrive at the scene of the incident. He has said there were about 5 motor cycles. They were mostly ridden by single riders. However, certain motor bikes had 2 riders. He had seen the army motor cycle riders carrying T56 weapons, when he went to give security to the Magistrate.

When he was at the checkpoint on duty, after the bomb blast, he had heard people shouting that there are injured people who need to be taken to hospital. He had heard the shouting before Zavahir came to the site.

The navel officers who came to the scene of the crime had been wearing camouflage uniform. He states there were about 4 or 5 naval men who had come from the checkpoint.

In his statement made to SI Chandrasiri of the Harbour Police Trincomalee on the 4th Jan. 2006 he has stated as follows:-

"At 7.50 p.m. all of a sudden an explosion occurred from the sea beach side along with that a number of gun shots were heard. At the same time, I saw people wearing jungle clothes running here and there."

He had seen this from a distance of about 100 metres from where he was on checkpoint duty.

According to other witnesses, the street lights had gone off during the bomb blast, but according to this witness the street lamps were burning.

IP N. Podiappuhamy/District Crime Investigation Unit

He was head of the District Crime Investigation Division. The Senior DIG Trincomalee Division had given him orders to hold an independent investigation. This had been conveyed to him by SSP Kapila Jayasekera on 3rd of Jan. The SSP had also provided him with a plan of investigation.

Podiappuhamy has admitted that the place at which the crime took place was a well secured area. He had first visited the scene of the crime at about 5.00 p.m. on 3rd Jan.

The road blocks/checkpoints from the scene of the crime (indicated as X).

XB Road block of the Navy officers - the Bo tree to the Navy checkpoint is	= 81 m
XC Road block jointly manned by the army & police	= 106 m
XP The distance to the Thiruvalluvar statue	= 90 m
XE The distance to the UC wall is	= 20 m
XH Paradise cool spot	= 56 m
XR The distance to the Bo tree	= 75 m

From the Gandhi statue there are 3 roads going in 3 different directions. One road leads towards the hospital. On that road the closest guard point is at a distance of 81 metres.

Another road from the Gandhi statue was towards Trincomalee town. There was a road block on this road 100 metres away manned by the Navy and the police. The 3rd road from the Gandhi statue leads to Fort Fredrick. The road bisects into two, one leads to Fort Fredrick and the other leads to the bus stand. There was a road block on the branch that leads to Fort Fredrick. This checkpoint is manned by the army.

According to Podiappuhamy when he visited the scene of the crime on 4th Jan at 7.15 a.m. and examined the place he did not find any productions relevant to the crime. Podiappuhamy had not bothered to trace the green coloured 3 wheeler from which the grenade had been lobbed. The green coloured 3 wheeler is mentioned in the deposition of Pooncalalon. His excuse was that there are a very large number of three wheelers in the Trincomalee district and therefore it is a difficult task to trace the 3 wheeler!

However Sgt. Upali Gunawardena in his evidence has stated that he had noted down the numbers of the vehicles that went past his checkpoint on 2nd Jan. The numbers when checked with the RMV has revealed that one number tallied with a green three wheeler. As head of the District Criminal Investigation Unit he has carried out the investigation in a very unprofessional manner.

SI M.Y. Kudagodage/District Criminal Investigation Unit

In June 1999 he had been attached to the CID Colombo. On 10th July 2006 he had been transferred to the District CID Unit at Trincomalee as OIC. His superior officer at Trincomalee was ASP Wimal Samarasekera who was the Head of the Unit. His office was located at the Old Police Station in Trincomalee. On 12th July ASP Samarasekera had come to Trincomalee and entrusted him with the investigation into the killing of 5 youth. He had been given copies of the Island Newspaper dated 17th, 19th and 20th of Jan. 2006 and asked to investigate the case on the basis of the Island Newspaper allegations.

He had questioned the civilians who had been near the scene of the crime. Therefore, he had questioned the owner of Paradise Cool spot which was about 300 metres from the Gandhi statue from where one could definitely see the scene of the crime. He had questioned the Cool Spot owner Mohandas. However, he had found the owner of the cool spot reluctant to come out with anything he knew. Thereafter, he had questioned Subashini Chitravel and aunt of the deceased youth Thangadurai

Sivanandan. Ms Chitravel too had declined to give a statement. Even from the relatives of the deceased he had been unable to get any information.

He states that he had visited the houses of the 5 youth who were killed and the three who were grievously injured. His observation is, "all these people whom we met in these houses were scared and they were very fearful." And in one instance they had gone to the house of a youth who was killed, and in a day or two when they again visited the house they had found the inmates had gone to India leaving the country.

SI Kudagodage has stated that the relatives of the deceased youth had not told them directly that they were in fear. However, he had observed that, "when they were talking to him they appeared frightened." He further stated that they had located the youth who had been injured but who had not been hospitalized. This youth and his family too had told him, "that they did not want to get involved in this case as they were living in fear," At the time he interviewed the inmates of the house the injured youth had not been present. The injured boy's name was Valayutham Kartheepan. He was a youth of about 22yrs. He had recorded Kartheepan's statement on 16th July 2006. Kartheepan has stated that, "he was having a chat on the beach with the other youth, when all of a sudden at about 7.30 p.m. he had seen a three wheeler coming and then he had heard a sound of a big explosion. Then he had seen his friends fallen on the ground. He was injured on the leg and as he was scared he had run along the beach and managed to get to his house." He had not gone to the hospital to get treatment for his injuries and he had not attended the funerals of his friends.

He had also questioned a gram seller Muniyandi Vadivel who had been about 20 metres from the scene of the crime. He too has said that when he heard the explosion and seen the fallen boys he had pushed his gram, cart towards the prisons and moved away.

Kudagodage has been given in charge of investigating the case on the basis of the directive sent to Mr Wimal Samarasekera by DIG Asoka Wijetilleke, which states, "Please find annexed information bulletins issued by UTHRJ and Mr Wijetilleke goes on to say, IGP directed me on 06/07/2006 to conduct fresh investigations into the above incident by the CID and to go into all matters of relevance by questioning parties concerned who could provide further material and based on these revelations to apprehend those responsible."

When questioned he stated that it has been stated by the DIG, but what I did was to act on the instructions I got from the ASP. When questioned whether the civilians he had interviewed had cooperated with him, he has answered in the negative. It appeared that civilians were afraid to cooperate with the Police.

SI W. Gunaratne/Harbour Police

When he heard about the explosion from Reserve PC Yasapala he had decided to walk to the scene of the crime, which was about 1 ¼ Km away from the Harbour Police Station. He had walked with a few police officers and reached the place at about 8.25 p.m. When he arrived at the site SSP Kapila Jayasekera was already there.

The SSP had directed him to go to the hospital and attend to the security. Therefore he had left the scene of the crime and proceeded towards the hospital. At the hospital he had encountered the next of kin of the deceased who were very agitated and in an excitable state.

D.G.S. Gunatilleke. Deputy Govt. Analyst

The Deputy Analyst had examined the productions from the scene of the crime, forwarded to his Dept. for analysis by the Trincomalee Magistrate. With regard to the lever of a grenade found with items pertaining to explosives, he has stated that the lever of the hand grenade found was of South Korean make and the type of model that is used for training purposes because it won't explode. "It just makes a sound and is very similar to a real grenade in weight and size." When questioned as to whether he has seen grenades of this type previously, he replied in the affirmative that he has seen practice grenades and that in this country they are used by service personnel for training purposes. "This type of grenade won't explode but it will make a noise"

He has also examined the soil samples for any chemicals. He has examined the damaged pieces of metal found in the soil and has found parts of 3 separate types of grenades. Namely, one was of the type used for practice purposes (K400) which does not explode but is used only to create a noise. The second one was that of a type 82 2S Chinese make of which there were several fragments. He believes that this type of grenade is officially used by the service personnel but is available outside. The third was a SFG 87 (Singaporean Fragmentation Grenade) which was more lethal than the Chinese one. In other words there had been fragments of 3 grenades.

He had received 26 firearms for examination. They were all automatic weapons. However, there had been one revolver. There had been 3 types of T56 automatic rifles. Viz: T56 -1, T56- 2 and T81. They were all of Chinese origin. There had been 4 rifles of American origin. He has stated that T56 of Chinese origins are used by the armed forces and the police.

When questioned as to how he would determine whether a firearm had been used recently, he has explained that they take a swab from the inner surface of the barrel and chemically test it.

However, it is difficult to establish when it was last fired. So it was not possible to determine when these 25 rifles were last used. With regard to the spent cartridges in his opinion they had been fired from different firearms. Furthermore, it was revealed that the firearm marks on the spent cartridges marked P4D1A to P4D16 of the 7 spent cartridge cases did not agree with the firearm marks on the test cartridges fired from above mentioned rifles. "I am of the opinion that the 7 spent cartridges marked P4D1A and P4D16 had not been fired from P1A1 to P1A4 4 rifles, P1A9 + P1A16 8 rifles and P1A18 to P1A26 9 rifles. P4D1A to P4D16 spent cartridges had not been fired from P1A5 to P1A8 rifles and P1A17 and P1A17 .38 special revolvers."

According to the Deputy Analyst the spent cartridges appear to have been fired from 7 separate firearms.

It is probable that the firearms submitted for examination may not have been the one's used in the shooting.

DIG N.S.G. Lewke

DIG Lewke has stated that it was under the direction of the IGP that the team of STF officers had been sent to Trincomalee.

When STF was first established in 1983 it was known as SS Squad and was under the IGP. When it was termed the STF in 1984 as a separate unit, it functioned under the Secretary/Defence. For all administrative matters the IGP was responsible and for all operational activities it was the responsibility of the Secretary/Defence. The STF functioned under Secretary/Defence from 1984 to 1995. In 1995 it was brought back under the IGP.

Mr Lewke had informed the Director in Charge at Katukurunde Training Centre to send a team to Trincomalee. In the month Dec. 2005 the IGP had brought to his notice the need to send STF personnel to Trincomalee.

Whenever police stations want to implement operations or any other security measures the STF has been supporting the conventional police in this manner. As the security situation in Trincomalee was tense at that time due to terrorist activity the STF was needed there for a short time. The IGP had wanted him to send about 2 platoons i.e. about 60 persons but due to constraints with regard to man power, he was able to send only 1 platoon i.e. about 20 persons. They were sent on the 23rd of December 2005.

He goes on to state, "generally the platoon is under the charge of a Chief Inspector; but in this case I sent this platoon under an ASP because it was a Division." "The name of the ASP who is now a SP is Ruwan Pathirana. The STF wear 2 types of uniforms. One is a sand coloured uniform which is worn outside operational areas and the other is a camouflage uniform. The camouflage uniform is worn by the armed services as well." During the period of December 2005 M16 rifles and T56 rifles were issued to the officers. The IGP had requested Mr Lewke to instruct the platoon detailed to proceed to Trincomalee to report to DIG Trincomalee. Viz: DIG Rohan Abeywardena who was in charge of Eastern Range. The IGP at that time was Mr Chandra Fernando.

DIG H.N.B. Ambanwala/DIG Uva Range

He had been SSP Trinco from 15th March 2005 to 16th February 2006. SP Kapila Jayasekera had informed him that a group of 28 STF officers along with IP Sarathchandra had arrived in Trinco. SSP Kapila Jaayasekera had deployed IP Bulanawewa of Uppuveli police to work with the STF contingent as he was familiar with the area. On being informed by Kapila Jayasekera, Ambanwala had communicated the arrival of the STF to DIG Rohan Abeywardena. The STF had performed their duties under the supervision of Kapila Jayasekera /SSP Operations.

The DIG Eastern Range had given instructions to SSP Kapila Jayasekera to engage the STF in operations.

He states that when he arrived at the scene of the crime at about 8.20 to 8.25 p.m. he had seen about 50 people comprising STF, Naval, Army and police personnel.

He made a report with regard to this incident and forwarded it to Senior DIG Balasooriya through DIG Eastern Province on 8th February 2006. In this report he has stated that on the 2nd of January 2006 that some of the STF contingent who came to Trinco were engaged in performing road block duties from 7.00 a.m. to 8.00 p.m. about 750 metres away from the clock tower. The group comprised 1 SI, 1 police sergeant, 8 police constables, 1 RPC and 1 PC driver. There was also a jeep released for this mission of performing guard duties near the clock tower.

In this report he had made the following observations:-

"On the orders of SSP Operations Mr. Kapila Jayasekera the STF were engaged in road block duties from 19.00 hrs to 20.00 hrs near the Clock Tower. The distance from the place of duty to the place where the explosion took place was about 750 metres. Without any orders they had gone a distance of 750 metres away from their place of duty."

The second thing he had observed was that near the place where the explosion and shooting had taken place, there had been road blocks jointly manned by both Navy, and the Army in front of the UC building. There had been another road block manned by the Navy about 75 metres away from the place of incident. It was the responsibility of the Navy officers to go and investigate the incident when it happened as they were the nearest to the scene of the crime. But it was the STF officers who had gone to that place, passing these road blocks. However, if it was done in good faith it can be overlooked even though it had been done ignoring their duty, law and regulations."

In his statement to the Commission, DIG Ambanwela had stated that he gave instructions to SSP Kapila Jayasekera to examine the weapons of STF, Army, Police and Navy officers who were on duty at Post Office junction and Hospital junction. But Kapila Jayasekera had inspected the guns only of STF officers on the 4th.

Asoka Wijetilleke/Senior DIG

He was DIG in charge of CID from 6th February 2006 to 5th March 2007.

From the reports submitted by the subordinate officers, he had learnt that the STF had arrived at the scene shortly after the incident.

He gave the names of the Special Task Force officers as follows:-

- (1) IP V.A.S. Perera
- (2) SI B.P.A. Bulanawewa
- (3) SI Vijitha Kumara
- (4) Police Sgnt. M.P Jayalath 29041
- (5) PC Amal Pradeep 17707
- (6) PC R.K. Ratnayake 39820
- (7) PC Chaminda Lolitha 33703
- (8) PC Mihira Bandara 25323
- (9) PC Hettige Sanjeeva 38663
- (10) PC K. Tharaka Ruwansiri 20742
- (11) PC Nimal Bandara 15732

- (12) Reserve PC Indika Thushara 99500
(13) Police Driver Senerath Dissanayake

He said that Senerath Dissanayake the police driver was detained because he drove the vehicle which transported the STF officers to the scene of the crime that night.

He said that the best way of identifying the guns issued to the aforementioned STF personnel and as to how the numbers could be checked, it is a matter of checking the records and finding whether it is the exact firearm he had in his possession which he had been issued with by the place of issuance. *This had not been done.*

It has very justifiably been pointed out that since all 27 STF officers who came to Trincomalee from Katukurunde had been billeted at the old police station there could be the possibility of a mix up with the guns. DIG Wijetilleke has answered, "the possibility would be there."

Muniandy Vadivel/Gram Seller

He had been selling gram from his cart in the vicinity of the Gandhi statue on the beach. The Gandhi statue was about 50 ft from where he was selling gram.

Immediately after the bomb explosion he had wanted to get away from the place. When he passed the location of the Gandhi statue he had heard sounds of distress from the people lying on the road. He had not gone near but had looked in the direction from which the cries emanated.

Former IGP Chandra Fernando

He states that in the months of December 2005 and January 2006 the law and order situation in Trincomalee was deteriorating with several killings and abductions. Then he goes on to say that he never ordered the STF to go to Trincomalee. He states that the IGP was responsible for the administration with regard to STF. Deployment was mainly done by the DIG/CID and sometimes may be from the Defence Ministry.

According to him the IGP was never directly involved in the investigation into the case. He has stated that he cannot recall whether the decision to send STF personnel from Katukurunde to Trincomalee was taken by the Ministry of Defence with or without his knowledge.

It was Mr. Fernando as IGP that had got the STF to leave Trincomalee after the incident on the 2nd of January 2006. When the incident occurred they were asked to stay in the barracks and then directed to return to their substantive station.

His evidence contradicts the position of DIG Lewke who stated that STF officers were deployed on the instructions of the IGP.

Dilruksha Perera/Chief Inspector/CID

On the 4th of Jan. 2006 he had accompanied ASP/CID Wimal Samarasekera to investigate the Trincomalee incident.

IP Zavahir had told him that there had been service personnel present when he went to the site. Dilruksha Perera had been requested to record the statements of the Navel personnel. Later he had recorded the statements of the army personnel as well.

He had subsequently arrested the STF officers. They had been taken into custody on the 14th of February. He had come to know that the STF had come to Trincomalee as a team consisting of about 25 to 26 officers. He had also ascertained that the STF were the first to arrive at the scene of the incident and after recording their statements he had come to a decision to arrest the STF officers.

13 of the STF officers stationed at the old police station had gone out on duty and those 13 persons had made entries to the effect that they had gone out and they were the people who had visited the scene of the crime, therefore, those 13 had been taken into custody. IP V.A.Sarathchandra Perera had come in charge of this team. Questioned as to what duties the STF were engaged in at Trincomalee, Chief Inspector Perera has stated that the STF had put up a road block near the clock tower and had checked suspicious vehicles and persons. The clock tower was about 1 Km from the Ghandi statue.

The 12 STF officers and 1 police officer taken into custody were:-

1. IP V.A.S. Perera
2. Rserve Police Inspector B.P.A. Bulanawewa
3. Reserve Police Inspector P.M.R. Wijayakumara
4. Police sergeant 29042 Jayalath
5. PC 39820 Ranil Kumara Ratnayake
6. PC 15732 Nimal Bandara
7. PC 20742 Tharaka Ruwansiri
8. PC 33783 Chaminda Lohita
9. PC 38963 Hettige Sanjeewa
10. PC 25303 R. H. Udayaweera Mihira Bandara
11. PC 17707 Amal Pradeep
12. RPC 39500 Indika Thushara
13. PC Driver 13049 Senerath Dissanayake

Questioned as to on what basis the police driver was taken into custody, he had answered, "on the basis of certain statements which revealed that these officers have visited the place as a team and the police constable driver was one of the parties who visited the scene of the crime."

The statements made by the Navy officers and the police officers had been recorded. According to these statements it was revealed that STF officers were there before they arrived at the scene of the crime.

This group of 13 STF officers had been assigned to be on duty close to the clock tower.

The reasons given by Dilruksha Perera for the detention of the 13 STF Officers & SI Bulanawewa were:-

- (1) When Able Seaman Indika Ruwan, and Able Seaman Asoka Pushpakumara who were on duty at St. Mary' Church Road, heard the sound of an explosion followed by gunfire they had gone in that direction. When they reached the Gandhi Triangle, there had been a group of STF personnel near this junction where the incident took place. On the same day a group of Navel persons doing patrol duty in Trincomalee town including Petty Officer Danawatage Don Sunil, Able Seaman J. Bandara, Naval Rating Bandara and Transport Asst. Illangasinghe had gone to the place of incident and seen a group of STF personnel.
- (2) The officers who were on security duty at the entrance of the old police station had informed him that a group of STF officers had been out of the old police station at the relevant time.

It transpired that Police and CID had failed to check whether the amount of ammunition issued to the STF officers tallied with the ammunition returned.

He states that he has taken the decision to take into custody the 13 STF men after discussing the matter with his senior officers, but not with SSP Kapila Jayasekera. .

When he visited the scene of the crime on the 4th, the scene of the crime was not cordoned off. At the time he visited the site on the 4th, there had been present DIG Balasuriya, DIG Rohan Abeywardena, DIG Asoka Wijetilleke, SP Kapila Jayasekera, ASP Wimal Samarasekera and IP Zavahir.

Dilruksha Perera stated, "It was not like a scene in a crime which has happened in Colombo, where these things are correctly cordoned off." He apparently meant that given the circumstances and the availability of material it may not have been possible to guard the place.

Dr Mrs P.K. Gnanagunalan/Medical Suptd. Trinco Hospital

Dr Gnanagunalan affirmed that Dr Gamini Gunatunga had been functioning as the JMO Trincomalee hospital. His correct designation is Medical Officer/Medico Legal Service. She explained that, when the MO/Medico-Legal Service was on leave, Senior Medical Officer/OPD takes over postmortems. She had requested Dr Jagath Wimalaratne SMO/OPD who was conversant in Tamil to assist Dr. Gamini Gunatunga with the postmortems on the dead bodies; as Dr. Gunatunga was nervous due to the fact that he was a Sinhalese doctor, because the relatives and parents of the dead youth were extremely restive.

Dr G. Bernard Devanayagam/General Hospital, Trinco

He had commenced duties on the 2nd of Jan. at 8.00 p.m. He had heard the bomb blast at about 7.30 p.m. when he was in his quarters. After about 5 – 10 minutes he had heard the sound of gun fire. He had heard the bomb blast and the gun fire from the direction of the Trincomalee beach. He had heard multiple gun fire.

SSP Kapila Jayasekera

SP/ Jayasekera said that he did not make a request for additional resources to be sent to Trincomalee to deal with the deteriorating situation.

He denied any advance notification of the arrival of the STF contingent on 23rd December. The STF had reported their arrival to SSP Ambanwala. On the 24th Dec. SSP had given a briefing to the STF officers, he too had been present at the briefing.

The STF were expected to perform road block duties, spot road block duties and cordon and search operations.

When asked who decided where the STF officers performed their duties whilst in Trincomalee, he answered that it was he who instructed them on the locations of their duties.

At 8.20 p.m. he heard about the bomb blast whilst he was at the Trincomalee HQ Police Station. He proceeded to the place of the incident with SSP Ambanwala, in his Pick-up cab. He stopped the vehicle near the UC Junction. He had seen STF officers near the Gandhi statue, also some Navy personnel and some officers from the Harbour police. He had seen at a distance the injured people being transported in vehicles to hospital.

He had found out that the victims were killed by gun shot injuries at the postmortem held on the following day.

On the 4th of Jan. he examined the firearms of all the STF officers who were billeted at the old police station. That is, STF officers plus SI Bulanawewa's revolver. Thereafter, on the 5th he had examined the firearms of the 13 army officers who had arrived at the scene of the crime, soon after the bomb blast on motorcycles. According to Jayasekara the motorcycle party of army officers had come after his arrival at the site. He had also inspected the weapons of 20 army officers who had been on checkpoint duty at the Clock Tower.

When questioned whether it was he who had requested to bring the Magistrate to the scene of the crime. He denied it. He had examined 27 firearms belonging to the STF contingent. He admitted that he had not examined the revolver of IP V.A.S. Perera. He said the delay in examining the guns was because of the delay in obtaining the JMO's report.

SP/Jayasekera says that he had obtained statements from the officers manning the checkpoints near the Gandhi statue and had failed to get any information regarding the green three wheeler. He said that it is difficult to trace as most of the 3 wheelers in Trincomalee are green in colour. He has failed get any statements from the officers manning the security checkpoint near the Fort who could have given valuable information regarding the green 3 wheeler.

A green 3 wheeler that has passed the checkpoint during the relevant time has been noted in the records kept at one of the checkpoints near the Gandhi statue. This could have been followed up and identified. But he has not done so. This shows the indifferent manner in which the police have conducted the investigation.

The pick-up cab used by SP/Jayasekera was an unmarked vehicle. He has however, explained that it always carried a placard with the word police, which was placed on the dash board against the windscreen.

According to SP/Jayasekera there were no checkpoints on every access road to the Gandhi statue. That it is practically impossible to have road blocks on all the access roads passing the Gandhi statue. Between Fort Fredrick and the Gandhi statue there is a play ground and Weber stadium and there is a gravel road that goes across the play ground. On the gravel road there is no checkpoint. It was possible for a vehicle to come and go without passing the road blocks.

He stated that he received orders from SSP Ambanwala to send back the STF, but SSP Ambanwala has denied this.

H.W. Channa Lohitha/STF Katukurunde Training School

During the period December. 2005 the Director of STF Training School was SP K.H. Jayaweera.

He had received instructions in Dec. 2005 to go on a special assignment. Orders were given for him to leave on a special assignment on 23rd Dec. The OIC/Training School had made a note in which his name had been included. The Reserve Officer had informed him that his name was entered in the Order Book.

IP V.A.S. Perera was in charge of the group and addressed the group before they left on the mission. They had been informed that the assignment would be for about one week.

When they reached Trincomalee they had first gone to Head Quarters Police Station. They had reached Trincomalee on 23rd night. SP Kapila J. had come for briefing on the following day. That is, the 24th of December.

On the 2nd of January, they had performed road block duties and had gone for their mid day meal to Trincomalee HQ Police Station. At 5.30 p.m. they had resumed duties. They had traveled by Land Rover. 13 STF officers comprised the group. They had first performed checkpoint duties at A'pura Junction. At 7.00 p.m. they had come to the Clock Tower. The STF were dressed in jungle uniform. It was only when they came to Trincomalee they found that they were required to perform duties in the town areas.

He states, at about 7.45 p.m. he heard the sound of a bomb explosion and after about 2 minutes later the sound of gun fire. The gun fire came in a series of shots, a continuous sound which came in rapid succession.

IP V.A.S. Perera had asked them to get into the jeep and proceed towards the sound of the bomb blast. The time was 8.10 p.m. by the Clock Tower watch. They had proceeded toward the Urban Council and had seen some people coming towards them. They had passed a Police barrier, gone about 10 metres and stopped their vehicle. They encountered 5 or 6 civilians come running towards them in an agitated manner.

IP V.A.S. Perera had asked Lohitha and 4 others to remain in the vehicle, and taken the other officers with him towards the scene of the crime. They had moved in single file. After about 10 minutes 2 jeeps had arrived, overtaken them and passed on. The jeeps were the type used by the services.

At about 8.45 p.m. the group that went with IP V.A.S. Perera returned. They had reversed the jeep and returned to Trinco HQ police station.

S.N. Rupasinghe/Police Constable, STF Armoury Katukurunde

He had received an Order Form dated 22nd December 2005, from I.P. V.A.S. Perera requesting the requisition of weapons. The reason for the requisition was stated as, "for special duty at Trincomalee." The application for requisition of weapons has been approved by the ASP Upul Seneviratne, OIC Katukurunde Training College.

The number of weapons requested were as follows:-

6 M16 guns
21 T56
1 Browning pistol

However, only 5 M16 guns and 14 T56 guns had been issued. He has explained the reason for the lesser quantity being issued. That is, when weapons are being issued the signature is obtained from the officer to whom it is issued. In this instance they had found that some of the officers had already collected the automatic guns from the armoury. The officers had personally come to collect the weapons handed to them.

It is the usual practice in the STF that when an officer completes his STF training, he is immediately issued with a weapon, which would be personal to him and will remain with him until he left the service. So the 27 officers who were sent on special duty to Trincomalee would already have been issued with weapons. When queried as to the reason for the additional weapons, when they already had their own. Rupasinghe has explained this by saying he has verified what weapons had been issued to each of these officers and that he had made sure that he issued the same weapon.

He had subsequently received an order form stating that weapons issued to 3 officers were defective. He had noted down the numbers of the defective weapons and had issued them with new weapons from the armoury. However, he had not taken back the defective weapons but had marked them as condemned.

He has replaced the guns as follows:-

V.A.S. Perera issued with M16 weapon No 8001945 in place of M16 No 8004759. PC 20742 Ruwansiri issued with T56 weapon No 1500971 in place of T56 1512412. PC 25323 Bandara issued with T56 weapon No 1512506 in place of T56 weapon No 1512506.

He has further stated that if a weapon supplied by Gonahena Armoury is found to be defective it could be exchanged for a gun from the Katukurunde Training College Armoury. However, it would be only a temporary issue that would be done by the

Katukurunde Armoury. A permanent replacement could be made only from the Gonahena Armoury.

DIG W.D.R.B. Abeywardena

From January 2005 to beginning of year 2006 he was functioning as DIG Eastern Range. He had offices in Trincomalee, Batticaloa and Ampara. Senior DIG Balasuriya was in charge of supervising the DIGs in the Eastern Range as well as the Northern and Wanni Ranges.

He too has stated that he had no advance information with regard to the arrival of the STF officers. ASP Pathirana who had been working under him during the period when Mr. Abeywardena was in the STF had come and told him that the STF contingent had come to Trincomalee to assist the local police. He says that he was not informed of the number of STF personnel who came to Trincomalee but remembers it as a section, that is, 1 Inspector of Police, 1 sergeant, 7 police constables or close to that number. The STF personnel had come in a jeep. However, he states that he took steps to find accommodation for them. Nevertheless, he states that he could not remember the exact number of STF personnel that came to Trincomalee.

As DIG of Eastern Range he should have been fully cognizant of the deployment of the STF in Trincomalee and should have been aware of the strength of the STF contingent. The perfunctory manner, in which he has paid attention to the presence of STF in his area of authority, shows a lack of commitment to duty.

When questioned as to why he did not interest himself in trying to find out what the STF were going to do in Trincomalee, his answer was that operational matters were under the SSP and SP who were in charge of the Division and therefore do not come under his purview.

DIG Abeywardena's explanation was that during this period there was escalating violence in Trincomalee area, therefore the army, Air Force, navy and police were all engaged on duty in Trincomalee and that Sri Lanka army comes number one in commanding situations, so SSP operations were daily meeting with the representatives of the Tri services, to discuss operational activities. The police role was mainly to maintain law and order and assist the 3 forces in maintaining law and order. Therefore, when the STF came to Trincomalee he had given directions to SSP Operations to deploy the STF personnel in consultation with the operational command of Trincomalee.

4. **The Identities, descriptions and backgrounds of persons and groups of persons, who may have been responsible for the incident.**

MATTERS OF SIGNIFICANCE

- (1) In the statement made to the Magistrate, Yoganathan Pooncalalon has described what happened shortly after the bomb blast and this was referred to earlier – arrival of a vehicle carrying uniformed personnel; used abusive Sinhala language; men in camouflage uniform pushed them into the back of a jeep and assaulted them with rifle butts; then pushed them out of the vehicle and shot them. Pooncalalon's evidence is crucial as he was an eye witness to the incident.

Zavahir has said that the STF, Navy and Army personnel were already at the scene of the crime when he reached the place.

- (2) Zavahir in his evidence has stated that he was the first police officer to reach the scene of the crime. And he had observed that although there were 7 people lying on the ground dead, dying or badly injured, not one of the service personnel had made any attempt to render assistance to the victims. This seems very strange and beyond comprehension.
- (3) According to the Govt. Analyst's Report the 7 cartridges that he had examined indicates that they had been fired from 7 different firearms. He has stated that the lever of the hand grenade found near the place of incident was of South Korean make and the type of model that is used for training purposes because it won't explode and that in this country they are used by service personnel for training purposes.
- (4) It is also noteworthy that SP/Jayasekera or ASP/Serasinghe did not think it necessary to check the weapons of the STF, Army and Naval personnel who were present in the vicinity of the crime.
- (5) There were 3 checkpoints manned by service personnel (Police/Navy) around the vicinity of the crime. Therefore, it is very unlikely for any outsiders to have been the attackers and then make their escape, even if they had come across the stadium as suggested. .
- (6) It is unlikely that IP Podiappuhamy verified whether the weapons handed over by the STF personnel were actually the weapons issued to them by what ever unit they came from.
- (7) From eyewitness accounts it appears there was total indifference and an atmosphere of casualness among the security personnel manning the checkpoints, whilst the incident was taking place near the Gandhi statue.
- (8) After the inquest proceedings relating to this incident in Case No BR 11/06 the productions consisting of the firearms belonging to the 13 STF personnel were sent to the Govt. Analyst's Department on 08/02/06. However, the 13 STF personnel were arrested only on 14/02/06.

- (9) The 13 Special Task Force personnel detained under emergency regulations were subsequently released as there was no evidence to charge them.

5. Having regard to relevant circumstances the efficacy of the investigations conducted into the incident.

General Conclusions

The above tragedy has occurred in the heart of the Trincomalee town in the area demarcated as the high security zone, bristling with security checkpoints manned by the army, navy and police.

A.K.A. Zavahir, Acting OIC/Harbour Police had not acted on the instructions of ASP Serasinghe, who had requested him to look for spent cartridges at the scene of the crime. This highlights the negligent manner in which the investigation has been conducted.

Poonculalon one of the youth who survived the shooting in his statement to the Magistrate has said that he had seen a green coloured three wheeler coming slowly towards the Fort and the bomb was thrown from the green coloured three wheeler. The three wheeler from which the grenade had been hurled had gone towards the Fort. The identity of the green coloured 3 wheeler could have been followed up as the numbers of all vehicles passing through the checkpoints were noted down by the security officers manning the checkpoints. The failure of IP Podiappuhamy who was in charge of the District Criminal Investigation Unit, not to have done so, reflects on the lackadaisical manner in which the investigation has been conducted.

According to Able Seaman Indika Ruwan Perera, when confronted with the statement he had made to the police on the day following the incident in which he has said, "with the bomb explosion he had lain down and when he got up he had gone towards his supervising officer Surasinghe, and at that stage he had seen STF, Naval, and Police personnel arrive and it was thereafter that he had heard the gun fire." The witness did not corroborate the statement in his evidence before the Commission. However, when cross examined as to the veracity of the statement, he answered in the affirmative. This indicates that even prior to the arrival of Actg. OIC Zavahir the STF and naval men were already at the scene of the crime. Petty officer Surasinghe has that soon after the bomb explosion he saw persons in camouflage uniform moving about near the Gandhi statue.

A.V. Jayantha, Police Constable has stated that, "at 7.50 p.m. an explosion had occurred from the sea beach side and along with that a number of gun shots were heard. "At the same time, I saw people wearing jungle clothes running here and there." There is evidence of witnesses to indicate the involvement of the navy, STF and army.

Police Sergeant Ramyasiri of the Trincomalee Harbour Police has stated in his evidence, that when he arrived on the scene with OIC Zavahir he had seen a group of about 15 persons dressed in camouflage uniforms guarding something. V.A.S. Perera of the STF has stated that when he arrived on the scene with his men he had seen the injured lying on the ground and his reaction had been to order his men to give all round protection. When IP Zavahir arrived on the scene with personnel from the Harbour police, the STF men were standing in a circular formation. Their explanation was that this was a strategic formation to give all round protection fearing a counter attack by the unknown assailants. .

Chief Inspector/CID Dilruksha Perera has stated that on 4th January when he visited the scene of the crime, he had found the place had not been cordoned off. The

investigation has been carried out without observing the requirements of basic investigation procedure, such as cordoning off the scene of the crime to safeguard evidence.

In the submissions of Counsel representing the STF they have stated, "yet the medical evidence only reveals that there were some fractures caused by gun shots and shrapnel from a bomb explosion and not by blows with a blunt weapon/s." However, according to the postmortem evidence as stated by Dr Gamini Gunatunge the deceased Lohitadasan had, "Abrasions on the face which may have been caused by some external violence as from a blunt weapon." "Rajeehar had an abrasion on his elbow which could have been due to external violence from a blunt object." The fact that the youth were assaulted is corroborated by the statement made by Poonculalogan to the Magistrate.

Even though the incident had occurred on the 2nd of January, SP Kapila Jayasekera had belatedly examined the guns of the STF personnel; who had been at the scene of the crime only on the 4th of January. It is basic knowledge in police training that the smell of firing recedes as time passes. The failure to check the guns without delay is indicative of improper investigating procedure or else done on purpose to stifle evidence.

According to the Govt. Analyst the 7 spent cartridges found at the site had been fired from different firearms. As there was a time lag of two days there was a possibility of the firearms being changed. The firearms submitted for examination may not have been the ones used in the shooting.

S.N. Rupasinghe, Police Constable/STF Katukurunde Armoury has stated that 3 of the STF personnel who comprised the STF contingent on assignment to Trincomalee had reported their guns to be defective. He had noted down the numbers of the defective weapons and issued them with replacements but had not taken back the condemned guns. It is blatantly apparent that the issue of firearms has not been done in a regular manner which highlights systemic deficiency.

SI M.Y. Kudagodage of the District Crime Investigation Unit had been instructed by ASP Wimal Samaraskera to investigate the case on the basis of the allegations in the Island Newspapers of 27th, 19th and 20th of January 2006. Kudagodage had ignored the instructions and had failed to follow up the veracity of the Newspaper articles. One of the injured survivors, Yoganathan Pooncalalon in his recorded statement to the Magistrate has stated, "that shortly after the bomb blast a vehicle carrying armed service personnel had come and they had used abusive Sinhala language." This is eye witness evidence as he was one of the victims who survived the incident. IP Zavahir too has stated that STF personnel were already at the scene of the crime when he reached the place. However, the Commission was unable to proceed with recording the evidence of this crucial witness, through video link due to instructions received from the Presidential Secretariat, to suspend obtaining video link evidence until the enactment of the proposed Victims of Crime and Witness Assistance and Protection Act.

The failure of the Magistrate to attend the public inquiry due to the obdurate stand taken by the Judicial Service Commission, in not granting permission for him to appear before Commission of Inquiry, affected the findings of the Commission. Furthermore, this impasse resulted in an inordinate delay in the proceedings.

Nevertheless, the Commission has taken action under Section 12 of the Commission of Inquiry Act to report this matter to the Court of Appeal and Case No 1044/2008 is presently pending before the Court of Appeal.

Mr. Chandra Fernando who was the IGP at the time has stated that during this period the law and order situation was deteriorating with several killings and abductions taking place in Trincomalee. However, he has denied taking the decision to deploy STF personnel from Katukurunde to Trincomalee. It is significant that it was the IGP who had taken the decision to withdraw the STF from Trincomalee after the incident.

The senior police officers from the IGP downwards, namely senior DIG Balasuriya, who overlooked the Eastern and Northern Ranges, DIG WDRB Abeywardene, DIG Eastern Range, have all stated that they had no prior knowledge of the deployment of the STF in Trincomalee. This is a glaring instance of superior officers denying responsibility for the acts of their subordinates. Sri Lanka has incorporated the principle of command responsibility enshrined in the Geneva Convention into domestic law by Act No 4 of 2006.

The former IGP's statement is contradicted by DIG/STF Nimal Lewke in his statement before the Commission where he has stated that the STF officers were deployed in Trincomalee on the instructions of the IGP. Taken together with the fact that personnel from an elite fighting unit should be sent post haste from Katukurunde to Trincomalee, to strengthen the law and order situation but later deployed to perform mere road block duties is very mystifying. In Trincomalee town the checkpoint duties were carried out by the army, navy and the police. This being so, to utilize the services of the STF as well seem an unnecessary exercise, given the fact that the senior police officers at Trincomalee had not made a request do so.

As many of the material witnesses have left the island as asylum seekers the Commission was confronted with the problem of recording their evidence. The IIGEP facilitated the process of obtaining video evidence from witnesses in locations outside Sri Lanka and the Commission received the evidence at public inquiry proceedings through the facilities provided at SLIDA. The Commission and the counsel representing all the parties, including the STF were afforded an opportunity to test the veracity of the evidence.

The video evidence was recorded from 13th March to 19th March 2008. However, before completing the evidence of surviving victim Pooncalalon, on a later date, the Commission received a letter dated 30th May, 2008 from the Secretary to His Excellency the President suspending the arrangements made by the Commission to receive further evidence and was advised to await the enactment of the proposed Victims of Crime and Witness Assistance and Protection Act. He has stated that, "in view of the doubtful status of the law pertaining to the receipt of evidence through video conferencing, the Attorney General has advised me that, it would be prudent for the Commission to await the enactment of the proposed Victims of Crime and Witness Assistance and Protection Act. The proposed law which has received constitutional clearance from the Supreme Court is to be tabled and debated in Parliament in June 2008."

The Commission regrets the fact that they were unable to use the video link facility to obtain the crucial evidence of Pooncalalon one of the surviving injured youth, as the above mentioned Bill is still pending before Parliament.

However, in the assessment of the Commission the video evidence given by witnesses are tainted to a great extent due to the visible manipulation of the witnesses by IIGEP Assistants David Savage and Dennis Milner. It is sad that the Government interfered with the stopping of the video evidence which is considered by the Commission as an interference with the independence of the Commission.

Whatever faults encountered no party should block any evidence that is called for by the COI. It is the Commission and the Commission only that should decide the acceptance or rejection of the evidence.

The inability of the Commission to record the evidence of Pooncalalon one of the injured youth who survived the incident was a severe setback to the Commission's proceedings. This was due to the fact that Pooncalalon has left Sri Lanka after this tragedy and is currently said to be residing in a foreign country. Although the Commission was making arrangements to obtain the evidence of Pooncalalon through video link the endeavour was aborted by the letter received from the Presidential Secretariat requesting the suspension of video conferencing.

In the circumstances it was crucial to examine the Magistrate evidence pertaining to the statement made by Pooncalalon. Issues such as the rationale for the Magistrate to be summoned to the scene of the crime when there was no death; or the reasons for his instructions to defuse the second bomb found at the scene of the crime was relevant. The probative value of the inquiry proceedings before the Commission was stymied due to the ruling by the Judicial Service Commission, preventing the Trincomalee Magistrate from appearing before the Commission of Inquiry. As a result the Commission was unable to have access to vital evidence.

The Commission has to draw attention to the fact that as a comprehensive investigation into the case had not been carried out by the police; the Commission had to first undertake investigations into the case before commencing public inquiry proceedings. This resulted in an unwarranted delay, as the investigation process preceded the public inquiry stage.

The 26 STF who came from Katukurunde were billeted at the Old Police Station and on the evening of 2nd January 2006 13 STF personnel were out on road block duty. The Police have failed to record statements from the Special Task Force personnel who were billeted in the Old Police station barracks on that fateful day. Sergeant Ramyasiri of the Harbour Police in his recorded statement to the police; soon after the incident has said that he had seen about 20 persons in camouflage uniform near the place of incident, when he had gone with IP Zavahir to the crime scene on hearing the bomb blast. At the public inquiry before the Commission he has been evasive and guarded in his answers and has retracted what he has said earlier by saying that he had seen only 3 to 4 people.

In Able Seaman Indika Ruwan's statement to the police on 3rd January 2006, soon after the killing he has said, "With the bomb blast he had lain flat on the ground and after 2 or 3 minutes had got up and walked towards his superior officer Surasinghe, and at that time seen police and STF personnel arrive and it was only thereafter that he had heard the gunfire.

IP Zavahir has stated that when they arrived at the Gandhi statue at about 8.10 p.m. he had seen the bodies of the injured students and nearby there had been several

people in camouflage uniform from the Navy and the Special Task Force. He has further stated that along with IP VAS Perera there had been 13 STF personnel at the scene of the crime. There were two naval officers as well in camouflage uniform. IP Zavahir has stated that naval personnel has told him that before they arrived on the scene there had been another group of persons, namely the STF.

Taking into consideration all the aforesaid convoluted facts in this case there are strong grounds to surmise the involvement of uniformed personnel in the commission of the crime.

6. Recommendations

- (1) Given the volatile political situation and the polarization among the Sinhalese, Tamil and Muslim communities, it is imperative that the police and the armed services should take steps to diffuse simmering resentment and build bridges of rapprochement and trust.
- (2) The police and the security forces should act with restraint and impartiality devoid of parochialism. The majority of the personnel in the police and the armed services comprise Sinhalese who are of the majority community. All communities, Sinhala, Tamil and Muslim are Sri Lankans and have equal rights before the law. Therefore, when the police and the armed services carry out their duties and responsibilities they must do so with even handedness. So that people perceive there is fair play. Justice must not only be done but should also be seen to be done.

In this context it is very important that the police and the armed services personnel are given awareness training in the psychological, historical and social repercussions of the implications of their conduct and the need for restraint and discipline in carrying out their duties especially in the conflict zones.

- (3) If the objective that motivated this crime was to inflict fear among the communities already traumatized and brutalized by the ravages of war, this strategy has proved to be counter productive. It would further fuel the flames of hatred and divisiveness. Measures must be taken to prevent this at any cost. What is needed is honesty, sincerity, discipline and commitment.

If these killings have been part of a strategy of weakening the LTTE, it is ill judged and depraved and those responsible should have the courage to admit that they have erred and tender a public apology which could be a catharsis for reconciliation.

- (4) The police as well as the three armed services must at all times act with due restraint and they must observe the principles of accountability and transparency. The training programs of the police and the armed services should place emphasis on the best practices of professionalism in their respective services.
- (5) The training programmes of the police and the armed services should place great emphasis on professionalism in their conduct. This is of paramount importance in the modern inter-connected globalized world. For what happens in any part of the world is immediately communicated around the world and uncivilized, brutal conduct will draw the censure of the world community and Sri Lanka would be considered a pariah state. Today no country can claim to live in isolation. The well being of Sri Lanka depends on the goodwill of the world community. Our failure to observe human rights and fundamental rights of all Sri Lankans will engender the opprobrium of the world community.

- (6) The need for reparation for victims and their families. For reasons of equity and social justice it is necessary to deal with the situation of victims of intentional crimes of violence who have suffered bodily injury, or impairment of health, and of dependents and next of kin of persons who have died as a result of such crimes. It is necessary to introduce or develop a scheme for the compensation of such victims by the state in whose territory such crimes were committed, in particular when the offender has not been identified. The state should compensate –

Those who have sustained serious bodily injury or impairment of health directly attributable to an intentional crime of violence;

Attorney General. The dependents and next of kin of persons who have died as a result of such crime.

Compensation should be awarded in the above cases even if the offender cannot be prosecuted or punished.

The "Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Violations of International Human Rights Norms and Humanitarian Law"(E/CN.4/200/62) defines a victim in the following terms: "A person is a 'victim' where, as a result of acts or omissions that constitute a violation of international humanitarian law norms, that person, individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or impairment of that person's fundamental legal rights. A victim may also be a dependent, or a member of the immediate family or household of the direct victim, as well as a person who, intervenes to assist or prevent the occurrence of further violations has himself suffered physical, mental or economic harm." Reparation should be proportional to the gravity of the violation and the harm suffered. In accordance with the domestic laws and international obligations a state should provide reparation to victims for acts or omissions which can be attributed to the State. In the case of injured victims compensation should be provided for the following:-

- c) Physical or mental harm;
- d) Lost opportunities, including employment, education and social benefits;
- e) Material damages and loss of earnings including loss of earning potential;
- f) Cost of medical services.

In the present case the next of kin of the five deceased victims, as well as the two injured youth and possibly the third injured person who has not come forward to give evidence, should be granted appropriate monetary relief. Furthermore, victims and their next of kin should receive compensatory and exemplary damages.

The Cabinet Memorandum of 11/10/06 has stipulated the payment of compensation for those who have died or being injured by terrorist attack and to their next of kin. Bearing in mind the present day cost of

living and inflation rate the Commission is very strongly of the view that a more realistic compensation payment should be made to the victims and their next of kin. It is recommended that the cabinet Circular of 11/10/2006 should be revised and the payments stipulated therein enhanced by an overall increase of 25%.

Government should adopt laws and procedures to ensure that the right to redress is readily available to victims and their next of kin. They should publicize procedure for obtaining redress and should ensure that those who are entitled to redress receive it with as little difficulty as possible. Once official responsibility is established redress should follow.

- (7) This case has highlighted the glaring weaknesses of the investigation process carried out by the police at the time of incident and soon thereafter. The investigation process is shrouded in acts of omission and commission. So much so, the people have lost faith in the sincerity and integrity of the police service, further alienating an already polarized society.

In inquiries of this nature the question of command responsibility plays a significant role. The question of command responsibility which focus not only on the responsibility of superior officers for issuing illegal orders which are carried out by subordinates but also refers to the responsibility for omission to act. In 1977 the principle of command responsibility was formally codified, in Protocol 1 additional to the Geneva Conventions. Its articles 86 and 87 enumerate the responsibility of commanders in cases where they fail to act and their positive duties, respectively. Sri Lanka has ratified the Geneva Conventions on 28th February, 1959. However, it was necessary to make legislative provision to give effect to Sri Lanka's obligations under the aforesaid Geneva Conventions. Therefore by Act No 4 of 2006 the principles of the Geneva Conventions were incorporated into the domestic law of Sri Lanka. Nevertheless, the provisions of the Act has overlooked one aspect of the Geneva principles. Namely the culpability for the acts of omission of subordinate officers which needs to be included. So that senior officers in hierarchically structured services such as the police and armed services cannot shrug off responsibility for the acts of commission or omission of their subordinate officers. This must be taken cognizance of to ensure that senior officers are held responsible for such acts of commission and omission of their subordinates.

- (8) The need for effective legislation for Victim and Witness Assistance and Protection is of the utmost importance, in order to obtain the evidence of witnesses. Especially vis a vis cases involving serious violations of human rights; where state officers are answerable, witnesses are reluctant to give evidence through fear of reprisals, as was evidenced by this Commission. It is of vital necessity, with the international focus on Sri Lanka's observance of human rights law as well as for good governance and transparency to approve the Bill on Victim and Witness Assistance and Protection, which has been languishing before Parliament since June 2008.

- (9) There is a need for a permanent Commission of this nature as the Commission acts as a deterrent to serious human rights violations. The Commission recommends that a new Commission should be constituted and directed to also complete the balance pending cases before the Commission.

Though these recommendations are made in respect of matters that took place in January 2006, it appears that present day armed forces are much more disciplined and act with restraint and responsibility in as much as no such incidents have been reported in the recent past especially after the appointment of the Commission of Inquiry.

The Commission feels that the appointment of the Commission of Inquiry by the President has had a collateral effect as a deterrent against this type of incidents.

These observations are confined only to the present case under review but is in no way applicable to the other cases referred to the Commission in the Schedule of the Mandate as the perpetrators in those crimes may in no way be connected to the armed forces but who were at the receiving end.

7. Acknowledgements

The COI wishes to convey its appreciation of the services rendered by the Panels of Counsel from the Official and Unofficial Bar, the Head and staff of the Investigation Unit, the Head and staff of the Victim and Witness Assistance and Protection Unit, including the Advisors, the Secretary to the COI and his staff, and the translators and interpreters and thanks them for the cooperation and assistance extended to the COI in the performance of the onerous task entrusted to it.

The COI also conveys its thanks to the Presidential Secretariat and the Director General and staff of the BMICH for providing the necessary facilities for the smooth performance of the work of the COI.

Although the IIGEPs left prematurely they and their assistants have been helpful in many respects and the Commission wishes to thank them for their valuable contributions.

Considerable coverage and publicity was given to the proceedings of the COI by the print and electronic media and the COI wishes to convey its appreciation to all media personnel who were involved in this exercise.

The Commission wishes to express our appreciation to His Excellency the President, Mahinda Rajapakse for the confidence placed in us and entrusting this task to the Commission.