

## THE WAR IN SRI LANKA

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The International Community must appreciate that what is going in Sri Lanka is a war. The claim by the Government of Sri Lanka (GOSL) that it is “nothing but Tamil Terrorism” is unacceptable. The bottom line is the determination of a succession of Sri Lankan governments to make multiethnic, multilingual, multicultural, multireligious Sri Lanka into a Sinhala-Buddhist nation, by discriminating against the Tamils (18%) to gain the electoral support of the majority (74%) Sinhalese.

### The nature of the war

It is a war of national liberation of the Sri Lankan Tamils (12.5% of the population) in the defence of their right of self-determination.

### *Self-determination*

Self-determination is the collective right of a people to freely determine their own political status and to pursue economic, social and cultural development. It is a fundamental right enshrined in the UN Constitution (1948) and in all human rights conventions since.

To exert the right of self-determination, there must be

- 1) a history of independence or self-rule in identifiable territory,
- 2) a distinct culture,
- 3) a will and a capability to regain self-government.

All of these the Sri Lankan Tamils have.

### 1.A history of self-rule in a defined territory

When the Westerners (Portuguese) arrived in 1505, there were 3 Kingdoms – Jaffna Kingdom (Tamil) in the north, Kandyan Kingdom (hill-country Sinhalese) in the centre, Kotte Kingdom (low-country Sinhalese) in the south. These had existed for hundreds of years. They were gradually annexed by successive colonial powers and in 1833 ‘unified’ into one country by the British. This British colonial construct has failed, as has so many others, with disastrous results. What the Tamils are asking for is a reversal of this failed colonial construct.

### 2.A distinct culture

The Tamils have a distinct culture, which they share with the Tamils of South India, going back thousands of years.

### 3.A will and capability to regain self-governance

The Tamils, subjected to discrimination and violence by the Sinhalese, voted overwhelmingly in the 1977 General Election, for the establishment of a separate Tamil State, Eelam, in the North and East. With a failure of the political process (see below), Tamil youths decided on an armed conflict to achieve this.

After a series of battles, the Liberation Tigers of Tamil Eelam (LTTE), regained control of four large districts in the North (Vanni), which they have administered for more than a decade. Professor Kristian Stokke, University of Oslo, after a detailed study in this area, wrote *Tamil Eelam - a De Facto State. Building the Tamil Eelam State: Emerging State Institutions and Forms of Governance in LTTE-controlled Areas in Sri Lanka*.

To achieve self-determination there are usually two steps:

- 1) Peaceful negotiations
- 2) If they fail, a liberation struggle

### *1 Peaceful negotiations*

From the dawn of Independence (1948), there has been systematic discrimination against the Tamils. The Tamils have protested in Gandhi-style non-violent protests for years and tried to negotiate with a succession of Sinhalese-dominated governments, with no success.

The first, in this litany of discrimination, was the 1948-49 disenfranchisement and decitizenisation of a million 'Plantation' ("Indian") Tamils brought from South India in the 1850s by the colonial British to work on their tea plantations. Their disenfranchisement reduced Tamil representation in parliament by 40%.

Discrimination against the Sri Lankan Tamils (who had been there for as long as the Sinhalese, if not longer), followed.

In 1956 the Official Language of the country was changed from English to Sinhalese only. The Tamils, who speak an entirely different language were seriously affected, especially in government service, the forte of the Tamils.

In 1972, in an incredible act of educational discrimination, the bar was set higher for Tamil students to enter the University.

There was discrimination in employment. Between 1956 and 1977, of 186,000 recruited to the public sector, 95% were Sinhalese

There was discrimination in development, the Tamil areas in the North and East being deliberately neglected.

There were also attempts to change the demography of the Tamil areas, especially in the East, by relocating Sinhalese from the south, the electoral consequences being obvious.

As has been mentioned, the Tamils embarked on a series of non-violent protests for two decades at this blatant discrimination.

### The Government's response to these non-violent protests

1. To unleash violence by government-sponsored Sinhalese hoodlums, backed by the Police and Armed Forces (95% and 99% Sinhalese).

2. To enter into Pacts with the Tamils that if they called off their protests, some devolution of power will occur. Every one of these Pacts and Agreements was unilaterally abrogated by the Government, under pressure from Sinhalese political opportunists for political gain, and the Buddhist clergy. The Buddhist clergy see Sri Lanka as a Sinhala-Buddhist country and any concessions, however minimal, to the Tamils, as a "sell-out of the country to the Tamils".

### Political failure. The Armed struggle

With the documented failure of the Tamil political leaders to achieve anything by way of power sharing, and increasing violence unleashed on them by government-backed Sinhalese hoodlums and the Police, the Tamils in the North and East voted overwhelmingly (1977 General Elections) for the establishment of a separate Tamil State, Eelam. Eelam is not the creation of the Tamil people but the inevitable result of Sinhalese ethno-religious chauvinism, discrimination and violence unleashed on the Tamil people.

In the mid 1970s, Tamil youths took up arms in a liberation struggle to free the Tamil people from Sinhalese domination, discrimination, violence and the clear strategy to make them second-class citizens.

The Preamble to the UN Declaration of Human Rights (1948) recognises this possibility:

*“Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law”.*

The ‘Rule of Law’ and even the Constitution, was amended to discriminate against the Tamils. This included the tyrannical ‘Prevention of Terrorism Act’ (borrowed from apartheid South Africa), ‘Emergency Regulations’ which gave the police and armed forces power to inflict ‘tyranny and oppression’ and a gross violation of the human rights of the Tamils. The result was a ‘resort to rebellion’ – a liberation struggle.

### War

A ‘liberation struggle’ becomes ‘war’ when the criteria of war are met.

A war is an act carried out by military forces using the materials and methods of war, to defeat, by military means the military forces of the opponents.

This is what has been going on in Sri Lanka for the past two and a half decades. When multi-barrel rocket launchers, helicopter gun-ships and Kfir jet bombers are used by the Sri Lankan State, it is a war. If it looks like a war, and sounds like a war, it is a war.

If war is what is going on, then Humanitarian Law (the Laws and Customs of war, Law of Armed Conflict), must apply. There are two sections:

1.The conduct of combatants – what they can and cannot do (Hague Law based on the Hague Convention 1849 and 1907)

2.The treatment of persons affected by the war (Geneva Law based on the Geneva Convention of 1964).

If war is what is going on, the parties are ‘combatants’. To ban just one party and call them ‘terrorists’, is ill conceived. It is also counter-productive since one cannot negotiate with terrorists, as was the British experience with the IRA. The IRA was first banned, and then had to be de-banned, for negotiations to take place.

A declaration of war is unnecessary for there to be a war. In the US war with Vietnam, there never was a declaration of war. Many countries deny that a war is taking place to avoid the application of Humanitarian Law. Many donor countries restrict aid if there is a war. Insurance companies refuse cover in a war. So, the terms ‘Terrorism’ and ‘Counter-terrorism’ are used rather than what it actually is – a war.

Any Government's condemnation of 'terror' is credible only if it is responsive to the reasonable, closely argued, persistent, non-violent dissent. No Sri Lankan government since Independence in 1948, has been responsive to the very reasonable demands of the Tamil people to live with equality, safety, and dignity in the country of their birth.

### **Recent events of concerns**

1. In November 2006, Ambassador Alan Rock, Special Advisor to the UN Special Representative for Children in Armed Conflict, after a 10-day field trip reported that the GOSL was aiding and abetting the Tamil militant group working with the Government to conscript child soldiers. This is a serious indictment of the GOSL.

2. The 2007 Amnesty International Report on Sri Lanka with "*The human rights situation in Sri Lanka deteriorated dramatically*".

Commenting on the future of the UN Human Rights Council, Irene Khan, Secretary General of Amnesty International addressing the Council in Geneva on 15 March 2007, said that "*it dithered on Sri Lanka and took no action - with killings and abductions continuing with impunity*".

3. In October 2007, Manfred Novak, the UN Human Rights Council Special Rapporteur on Torture visited Sri Lanka and reported that torture was widespread. He commented on conditions in detention centres where 28,000 were being held in a system meant for 6,200.

4. A few days later (9-12 October 2007) the UN High Commissioner for Human Rights, Louise Arbour, visited Sri Lanka, focussing mainly on abductions and disappearances "which have been reported in alarming numbers in the past two years" Addressing the UN Human Rights Council meeting in December 2007, she said, "*I have suggested that the Government would benefit from the support of a presence of OHCHR in the country, with a full mandate incorporating technical assistance and public reporting*". More details of what she said is given below. The GOSL rejected her suggestion as "gratuitous".

5. On 16 January 2008, the GOSL unilaterally withdrew from the Ceasefire Agreement with the LTTE, paving the way for an escalation in the conflict, irrespective of the magnitude of the civilian casualties, almost all Tamil civilians in the North and East. The Nordic Sri Lanka Monitoring Mission was told that they were no longer necessary, and were asked to leave the country.

6. In just the past few weeks, foreign passport-holders have had their visas terminated. These included Dr Rama Mani, the Executive Director of the International Centre for Ethnic Studies. Her 'crime' was that she supported the concept of Gareth Evans (see below), that the State has a 'Responsibility to Protect' its people.

Others, including those working in UN agencies and the Berghoff Foundation have also had their visas terminated. Clearly the international witnesses are being expelled from Sri Lanka before a massive assault on civilians.

### **The cost**

1. 75,000 people, mainly Tamil civilians, have died.

2. Half a million Tamils and Muslims are refugees.

3. There has been extensive destruction of Tamil civilian property and infrastructure in the North and East.

4. The economic cost has been serious. The 'Defence' budget, for Sri Lanka to protect itself from its own citizens, has been staggering. In 1977 the Defence budget was Rs 0.75 billion. This has

increased in 2008 to Rs 166.5 billion (US \$1.5 billion.).The budget deficit is Rs 293billion, 7% of GDP. Half of this is financed by foreign borrowings and grants. This war cannot go on without foreign funds.

The cost of living is a staggering 20%

### **Light at the end of the tunnel**

There is a dim light at the end of a very dark tunnel. It is up to us in the international community to make the light brighter.

The 'light' is that foreign governments and others outside Sri Lanka are, at last, waking up to the brutality of the Government of Sri Lanka, its outrageous record of the violation of human rights, clear evidence that despite all its pretensions, it is determined to pursue a military 'solution' to the problem, irrespective of what it costs in terms of civilian casualties (mainly Tamils), and the economy of the country.

Some of this 'light' I have already briefly alluded to.

I have already referred to the reports of Ambassador Alan Rock, Special Advisor to the UN Special Representative for Children in Armed Conflict ((November 2006),and of Manfred Novak, the UN Human Rights Council Special Rapporteur on Torture (October 2007)

### International Crisis Group

I have already briefly touched on the comments of Gareth Evans. He is one of Australia's longest serving Foreign Ministers, now heading the Brussels-based International Crisis Group. He says that if a state cannot protect its own citizens from crimes being committed against them such as genocide, ethnic cleansing and other forms of human rights violations, the international community through the United Nations Security Council has a right to intervene, the last resort being even military intervention. This was adopted by the UN 60th Summit of 2005 by 160 heads of state.

This is what he said, "*It has taken the world an insanely long time to come to terms conceptually with the idea that state sovereignty is not a license to kill – that there is something fundamentally and intolerably wrong about states murdering or forcibly displacing large numbers of their own citizens, or standing by when others do so.*"

The concept is now referred to as the Responsibility to Protect (R2P).

Speaking in Colombo in July 2007, Gareth Evans stated that the human rights situation in Sri Lanka comes within his R2P concept. The implications are obvious.

### US action – the Millennium Challenge Account.

The US Government-funded Millennium Challenge Corporation (MCC) has funds for development, the Millennium Challenge Account (MCA). Sri Lanka was one of 16 countries that was selected in May 2004 as eligible to request development assistance funds from the (MCA).

In November 2007, the MCC said that "*In light of the ongoing security concerns in Sri Lanka, MCC will consider a resumption of compact due diligence activities when there is a greater prospect for success of our mission,*" indicating that the proposed funding of nearly \$590million is on hold pending improvement in security situation.

### Louise Arbour - UN High Commissioner for Human Rights

As I have said, Arbour visited Sri Lanka 9-12 October 2007 and presented her findings to the UN Human Rights Council on 11 December 2007. Here is what she said,

*“Regrettably, the various national institution and mechanisms that could be expected to safeguard human rights have failed to deliver adequate protection. In particular, the Human Rights Commission of Sri Lanka, which had previously enjoyed a proud reputation internationally, has had its independence compromised by the irregular appointment of its Commissioners and the credibility of its work has suffered.*

*I have suggested that the Government would benefit from the support of a presence of OHCHR (Office of the High Commissioner for Human Rights) in the country, with a full mandate incorporating technical assistance and public reporting*

*We have reached no agreement on a formula by which independent, public reporting by OHCHR could be ensured. OHCHR will continue to assist the authorities in strengthening the national human rights system, but this will fall short of meeting the critical protection gap”.*

The message was very clear – the UN was more than a little concerned at the escalating violations of human rights, and the failure of the GOSL to do anything about it.

#### The British Parliament

On 17 January 2008, a scheduled ‘Adjournment debate’ in the House of Commons, turned out to be a full ‘debate’ which went on for an unprecedented hour and a half. It was not a ‘debate’ but an expression of serious concern from both sides of the House, at the escalating violation of human rights in Sri Lanka.

Kim Howells, Minister for the Middle East, expressed his serious concerns. Responding to a question as to whether he will hold discussions with the Ministry of Defence about cutting military assistance to the Sri Lankan Government “to try to ensure that such an escalation cannot happen”, here is what Minister Howells said,

*“ I assure my hon. Friend that we would not supply anyone with arms or dual use material that we perceived to be valuable in any military conflict such as the one that we are considering. There may be instances of humanitarian equipment, for example, de-mining equipment, being needed. Laying mines is an atrocity and an abuse of human rights and we do everything that we can to try to help clear them.*

*The Sri Lankan Government, having ended the ceasefire, bears a heavy responsibility to deliver their commitment to produce a just political solution that satisfies the legitimate aspirations of all Sri Lankans. That must happen soon.”*

It is now up to us to see that what has been “assured” by the Minister, is translated to reality.

#### The International Independent Group of Eminent People (IIGEP)

An International group of experts and professionals from Australia, Britain, Canada, Japan, France, Netherlands, US, European Union and the UN High Commissioner for Human Rights, headed by the former Chief Justice of India, P.N.Bhagwati, was appointed to monitor Sri Lanka’s Special Presidential Commission. The latter was appointed to investigate 16 cases of serious rights violations, including the August 2006 massacre of 17 local employees of the French charity Action Against Hunger (ACF).

Arriving in Sri Lanka in May 2007, they saw no progress being made. This was obvious from the Report tabled by the American member of the Group at the Human Rights Council meeting in June 2007, which I attended.

On 6 March 2008, the IIGEP decided to “terminate its operation in Sri Lanka” saying that The Presidential Commission’s Public Inquiry Process fell short of International norms and standards.

*“There is a climate of threat, direct and indirect, to the lives of anyone who might identify persons responsible for human rights violations, including those who are likely to have been committed by the security forces.”*

*“Civilian eye witnesses have not come forward to the Commission.*

*Security forces witnesses preferred to make themselves look incompetent rather than just telling what they know. Accordingly, it is evident that the Commission is unlikely to be in a position to pursue its mandate effectively,”* the IIGEP statement said, describing them as inherent and fundamental impediments of the Commission.

*“The IIGEP is therefore terminating its role in the process not only because of the shortcomings in the Commissions work but primarily because the IIGEP identifies an institutional lack of support for the work of the Commission,”*

They could *“no longer see how they can contribute further to the protection and enhancement of human rights in Sri Lanka and have regrettably decided to bring to an end their activities in this country”.*

This has been the most serious blow to the credibility of the GOSL. It is now up to us to contact the individual members of the former Commission and ask what further action they can take to stop the outrageous violation of human rights in Sri Lanka.

#### The German decision – putting Aid on hold.

The German Federal Minister for Economic Cooperation and Development Heidemarie Wieczorek-Zeul, in a recent interview, indicated that Germany plans to withdraw half of the personnel working in development cooperation and close the office of the German Development Bank in Colombo, if the government continues to pursue the war option.

Germany is also considering proposing to the European Union to withdraw the General System of Preference Plus (GSP+) concessions from Sri Lanka and the slashing of development cooperation unless the government stops the war and seeks a political solution to the ethnic conflict.

#### International Left-wing groups

In early March 2006, more than 30 international left-wing political parties and organisations met in Amsterdam appealing for ‘progressive forces’ to come forward on the defence of the just cause of the Tamil people. They demanded that the Government of Sri Lanka “stop imposing its will militarily on the Tamil people”.

Delegates pledged to lobby governments in their respective countries to call on the GOSL to restore the Ceasefire and stop the killing of civilians.

Although one can dismiss these groups as ‘marginal groups with little power’, this might be entirely wrong. Many of these groups have access to crucial Trade Unions which have the power

to impose a ban on the handling of goods to and from Sri Lanka. This will bring the GOSL to its senses in a very short time.

### **International action**

International action is urgent. If action is taken, it is certainly powerful enough to end this conflict in weeks.

An international observer group must be sent to Sri Lanka urgently to monitor the plight of civilians especially in the war-ravaged area.

The suffering of the Tamil and Muslim civilian in the North and East has been under-reported because of media censorship and the exclusion of independent reporters from the conflict zone. In an attempt to show what the GOSL is trying to conceal, I have recently released five 'information DVDs. These must be widely circulated to show the world the gravity of the situation. Public protests will almost certainly follow.

Human Rights activists, including Church groups, and civic society outside Sri Lanka, will have to act. There are Sinhalese peace activists in Sri Lanka, who strongly oppose this war and the attempt by the GOSL to crush the Tamil people.. They must be supported.

Sri Lanka is a cricket-mad country. For cricketers to refuse to play in that country until the human rights situation improves will send a powerful message, as it did with apartheid South Africa. Amnesty International had similar ideas when it distributed cricket balls to spectators at an international venue at which Sri Lanka was playing, with a printed message drawing attention to the abysmal human rights record.

Trade Unions, in particular those handling shipping in and out of Sri Lanka, have a crucial part to play. A refusal to handle shipments to of from Sri Lanka will send a powerful message, more powerful than any diplomatic pressure.

Massive diplomatic pressure can, and must, be exerted to abandon this pursuit of a military 'solution' as not being feasible or acceptable in view of the civilian casualties. There has to be a return to the negotiating table. To make this feasible, the ban on the LTTE as a 'terrorist organisation' will have to be lifted.

The U.S. and EU could consider withdrawing the country from the General System of Preferences, which applies reduced taxes and levies to certain Sri Lankan exports, such as tea and textiles. This will send the necessary message to the GOSL that its current pursuit of a military solution to a political problem is unacceptable. It will also reduce its capacity to wage war.

The UN Secretary-General Ban Ki-moon must back the Head of his Human Rights Council and insist that a UN human rights monitoring presence be established in the country. For the GOSL to refuse this is unacceptable.

The UN Security Council has recently dispatched a Special Envoy to Sri Lanka to report on the ground situation. There must be consideration given to what political and economic sanctions can be brought to bear to restart negotiations.

If these steps are not taken urgently, the world will be watching the genocide of the Tamil people, the economic decimation of the country, the emergence of a failed State and the establishment of a fascist dictatorship which would have disastrous consequences for all the people of that country.