

# The Application of Humanitarian Law and Ways Forward

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## 1.0 Introduction

Today, it is widely accepted, except by the Government of Sri Lanka (GoSL), that there is a humanitarian crisis in the North-East of Sri Lanka, the traditional Tamil homeland called Tamil Ealam.<sup>1</sup> The cause of this crisis is traced to the GoSL's imposition of economic blockade on the North by closing the A-9 highway On 11 August 2006, the only land route connecting the peninsula to the mainland.<sup>2</sup>

For the Tamil people, however, this is not the first time that they have experienced it. For instance, an economic blockade was imposed by the government on the North in 1991 with devastating effects. Heavy restrictions on fishing and the taking over of farmlands to set up military camps and high security zones have also made their contribution to the crises. The present crisis is only one of several such episodes of a long process of oppression since the time of independence, when the sovereignty enjoyed by the Tamil people with their kingdoms before the 450-year colonial period was not restored to them.

This paper looks at the post-independence incidence of State violence as a whole to see if it amounts to genocide. Acts of violence and human rights violations will be looked at from this perspective, that is, in so far as they are symptomatic or evidence of an underlying genocidal process.

## 2.0 Definition of Genocide in the Convention

The Convention on the Prevention and Punishment of the Crime of Genocide, 1948, (which came into force on 12 January 1961), defines genocide in Article 2 as follows.

*In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:*

- (a) Killing members of the group;*
- (b) Causing serious bodily or mental harm to members of the group;*
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;*
- (d) Imposing measures intended to prevent births within the group;*
- (e) Forcibly transferring children of the group to another group.*

To claim that the violence by the Sri Lankan state verifies the definition of genocide, it needs to be established that: (i) the state has committed such *acts*; (ii) the *intent* is present, and (iii) the Tamils form a *group* (people) as provided in the definition.

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<sup>1</sup> The name Tamil Ealam will be used in this paper to denote the North-East territory as understood in such names as Liberation Tigers of Tamil Ealam (LTTE) and Ealam People's Democratic Party (EPDP). It is to be noted that the concept of Ealam is recognized by the Sri Lankan state in that the EPDP is a party whose political wing is a member of the ruling coalition where its leader holds a ministerial portfolio.

<sup>2</sup> The A-9 route is used daily by 20,000 passengers and 200 lorries transporting the 5000 metric tons of food required for the 600,000 people living in Jaffna, as well as by vehicles carrying medicine, building materials, fuel, kerosene and other consumer goods.

Before proceeding with the task of establishing the claim, there are two concepts that it would be useful to consider, namely, cultural genocide and domestic genocide.

## 2.1 Cultural Genocide

Although the Convention defined genocide only in terms of physical destruction and did not adopt the proposal of the Ad Hoc Committee to include in the Act a provision on cultural genocide, the proposal is not without merit. It articulates the fact that a group can be suppressed through cultural genocide as well as by physical destruction,<sup>3</sup> and more importantly, provides clues to discover the presence of intent.<sup>4</sup>

The proposed provision reads as follows:

*Any deliberate act committed with intent to destroy the language, religion or culture of a national, racial or religious group on grounds of national or racial origin or religious beliefs as such: 1. prohibiting the use of the language of the group in daily intercourse or in schools, or the printing and circulation of publications in the language of the group; 2. destroying or preventing the use of libraries, museums, schools, historical monuments, or places of worship.*

One of the crucial factors causative of the political strife was the enactment of Sinhala in 1956 as the only official language with adverse effects for the Tamil people with regard to education, employment and communication with the government. A number of Tamil schools in the west of the island were turned into Sinhala-medium schools, with the result that the Tamil pupils were forced to follow their education in Sinhala (as the medium instruction) and have eventually 'become' ethnic Sinhalese.

Since the beginning of the anti-Tamil violence (from 1957), thousands of places of worship of Tamils have been destroyed or damaged as well as hundreds of schools and libraries, including the Jaffna public library with its 95,000 volumes.

## 2.2 Domestic Genocide

Leo Kuper identifies the following features as being common to domestic genocide, which arises from divisions that exist within a society.<sup>5</sup>

*(1) inequality of participation, (2) growing polarisation in the form of communal and territorial separation, (3) a history of conflict expressed in the crystallisation of historic memories and in hostile and dehumanising perceptions of the other group, (4) the effect of which is total identities based on race, nationality, ethnicity or religion and i) in many cases there are differences of religion between the aggressors and victims, ii) the catalyst is often a situation of change and of threat, iii) the crime is committed mostly by governments, though not exclusively by them, iv) it is a phenomenon of plural societies, i.e. societies characterised by deep and pervasive cleavages between ethnic, racial and/or religious groups, v) Many of the highly destructive conflicts involve struggles for greater autonomy or for secession, and arise from the denial of the right to self-determination.*

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<sup>3</sup> Lutze Oette: The International Crime of Genocide: The Case of the Tamil People in Sri Lanka, p.10.

<sup>4</sup> See below the paragraph on 'intent'.

<sup>5</sup> L.Kuper, International Action against Genocide, p.7

All these structural elements are present in the case of Sri Lanka. Concurring with Kuper, Lutz Oette concludes that genocide is not accidental, but “...represents a systematic effort over time to liquidate a national population, usually a minority...”<sup>6</sup>

Now we turn to the three factors constitutive of genocide, to wit, acts, intent, and ‘group’.

### **3.0 Acts of Genocide:<sup>7</sup>**

#### **3.1 Art. II (a) Killing members of the group<sup>8</sup>**

##### **1956 – 1981**

The post-independence history of Sri Lanka is replete with acts that instantiate Art.II of the Convention. Having deprived one million Hill Country Tamils of their citizenship and franchise rights within months of gaining independence in 1948, the state introduced the Sinhala language in 1956 as the (only) official language.

When the Tamils reacted by engaging in peaceful demonstrations, Sinhala mobs attacked them, killing at least 150 Tamils. This pogrom was to be followed by other anti-Tamil pogroms.

The period 1956 – 1981<sup>9</sup> can be called a period of pogroms against Tamils in response to their Gandhian style non-violent protests. Paul Sieghart of the International Commission of Jurists observed that these were not sporadic incidents, but had become a pernicious habit of the Sinhala mobs.<sup>10</sup>

The following are some instances.

May 1958, over 1000 Tamil civilians were killed.<sup>11</sup>

April 1961, at least one was killed and many injured in Jaffna when the army was deployed there to suppress the non-violent civil disobedience movement, and opened fire on a crowd engaged in ‘satyagraha’, a peaceful sit-in demonstration.

January 1974: nine Tamils attending the International Tamil Research Conference were killed when police attacked the participants.

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<sup>6</sup>See L.Oette, op. cit., p.12

<sup>7</sup> Many of the incidents mentioned in this section are taken from ‘Lest We forget: Massacres of Tamils – Part I’ published by NESOHR, English edition, 2007.

<sup>8</sup> Details of disappearances, though thousands of them have taken place since 1983, have not been dealt with in this paper as the issue of killings itself is sufficient to establish ‘acts’ of genocide.

<sup>9</sup> Details of this period are important for their relevance to establishing the ‘intent’ discussed in para 4.0 below.

<sup>10</sup> Paul Sieghart, Sri Lanka: A Mounting Tragedy of Errors – Report of a Mission to Sri Lanka on behalf of the International Commission of Jurists, 1984

<sup>11</sup> “On the night of May 25, one of the most heinous crimes in the history of Ceylon was carried out...The Tamil labourers in the Polonnaruwa sugar cane plantation fled when they saw the enemy approaching and hid in sugar cane bushes---the goondas wasted no time. They set the sugar cane alight and flushed out the Tamils. As they came out screaming, men, women and children were cut sown with home-made swords, grass cutting knives and katties, or pulped under heavy clubs...” See: Tarzie Vittachi, Emergency ’58: The Story of the Ceylon Race Riots, London 1958

August – September 1977: The pogrom was carried out throughout the island, including, therefore, the Hill Country Tamils, who had no involvement at all in the politics of the Ealam Tamils. Over 1000 were killed.

July 1981: At least 7 Tamils were killed by the army and police in Jafna, while in the eastern province anti-Tamil violence started around the areas of recent state-sponsored colonization and spread to other parts of the country, killing at least 25.

### **June – July 1983**

This period also marks some of the heinous acts of violence Sinhala mobs and Sri Lankan armed forces (SLAF)<sup>12</sup> targeting the Tamil people, and also the growth of the armed militancy of the Tamil youth. This period also marks the beginning of the fleeing of thousands of Tamils to other countries as refugees from the terror unleashed on them by the Sri Lankan military under cover of oppressive laws.

The killings include the following massacres: 19 in Trincomalee<sup>13</sup> on 3<sup>rd</sup> June; at least 50 in Jaffna on 23 July; 51 at Thirunelvely (Jaffna) on 24<sup>th</sup> and 25 July; around 2000 throughout the country over a few consecutive days starting from 24<sup>th</sup> July; 35 Tamil detainees in the Welikade (Colombo) maximum security prison by Sinhalese prisoners on 25<sup>th</sup> July; likewise, 18 Tamil detainees in the same prison on 27<sup>th</sup> July.

### **1984 - 1987<sup>14</sup>**

This period continues the saga of terror in the form of torture, rape, arbitrary arrests, extra-judicial killings, enforced disappearances, incommunicado detentions, detentions for long periods without trial and wanton killings of civilians by the SLAF.<sup>15</sup> The following are some of the major massacres.

1984: 55 passengers at Sampalthoddam in late July; 19 young detainees at the Chunnakam police station in March; 15 passengers near Mathawachchi in September; 16 at Thikkam on 16 Sept; 32 villagers at Othiyamalai on 1<sup>st</sup> December; 7 at Kumulamunai on 2<sup>nd</sup> December; 52 men taken by the SLAF from Che ddikulam and hacked to death at Mathawachchi on 2<sup>nd</sup> December; 15 arrestees and 35 passengers at Thalladi and about 165 others from seven neighbouring villages;<sup>16</sup> 131, including 31 women and 25 children at Kokkilai and five neighbouring villages on 15<sup>th</sup> December.

1985: 17 hacked to death at Mulliyavalai on 16<sup>th</sup> January; 103 at Udumbankuam and Thankavelayuthapuramon on 19 Feb.; 52 at Vaddakkandal on 30<sup>th</sup> Jan.; 17 at Puthukkudiyiruppu on 21<sup>st</sup> April; 50 at Mahindapura and Dehiwatta on 3<sup>rd</sup> May; 75 at Valvettiturai on 9<sup>th</sup> May; 42 on the ferry 'Kumuthini' off the Jaffna coast on 15<sup>th</sup> May; 60 at

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<sup>12</sup> The SLAF comprise the Army, Navy, Air Force, Special Task Force, armed Police and Home Guards. The use of paramilitary groups by the forces, though officially denied is implicitly acknowledged in the Cease-fire Agreement of February 2002.

<sup>13</sup> In Trincomalee, some village or other was attacked every single day of the month of June by the military and hooligans supported by the military.

<sup>14</sup> Cessation of hostilities was effected with the Indo-Sri Lanka agreement at the end of July 1987. The IPKF withdrew in March 1990. Meanwhile thousands of Tamils were killed by the Indian Peace-Keeping Force (IPKF) when fighting broke out between the IPKF and the LTTE, while the SLAF were engaged in suppressing the armed insurrection of the Sinhala militant organization Janatha Vimukthi Perumuna (JVP), killing reportedly around 60,000. But these are beyond the purview of this paper.

<sup>15</sup> Several NGOs attest to these perpetrations, such as Amnesty International, International Commission of Jurists, International Alert and Law Asia.

<sup>16</sup> 90 bodies were collected and taken to the Mannar hospital by the local Bishop and the government agent.

Thambilivil on 17<sup>th</sup> May; 8 at Nilaveli on 23<sup>rd</sup> May; 9 at Pankulam on 24<sup>th</sup> May; 6 passengers and the driver at 52<sup>nd</sup> Mile Post in Mahidapura; about 150 in fifteen villages lying between Muthur and Kiliveddi in Trincomalee between 1<sup>st</sup> and 14<sup>th</sup> June;<sup>17</sup> 10 at Thiriyai on 8<sup>th</sup> June; 40 at Vayaloor on 24 August; 24 IDPs at Nilaveli on 16 September; about 200 in Vavuniya on 16<sup>th</sup> August; 11 at Piramanthanaru on 2<sup>nd</sup> October; 6 members of a family at Kanthalai on 9 November;<sup>18</sup> 35 at Kadatkarachenai in Muthur between 8<sup>th</sup> and 10<sup>th</sup> of November.<sup>19</sup>

1986: 12 at Kilinochchi on 25<sup>th</sup> January; 24 at Iruthayapuram on 19<sup>th</sup> January; 20 at Eeddimurinchan on 19<sup>th</sup> and 20<sup>th</sup> March; 18 at Periyapullumalai on 8<sup>th</sup> May;<sup>20</sup> 5 siblings (four of them being school children) at Anadapuram on 4<sup>th</sup> June; over 50 at Kanthalai on 4<sup>th</sup> and 5<sup>th</sup> June; 33 fishermen off Mandaithivu coast on 10<sup>th</sup> June; 21 at Seruvila on 27 June; 34 at Thambalakamam on 20<sup>th</sup> June; 48 IDPs at Peruveli on 15<sup>th</sup> July; 17 passengers at Thanduvan on 17<sup>th</sup> July; 44 (mostly IDPs) at Muthur Manalchenai on 18<sup>th</sup> July; 20 at Adampan on 12<sup>th</sup> October.

1987: 150 or more at Kokkaddichcholai on 28<sup>th</sup> January; 16 members of an extended family at Paddithidal on 26<sup>th</sup> June; 13 at Thonithiddamadu on 27<sup>th</sup> May; 40 ‘refugees’<sup>21</sup> at the Alvai temple on 29 May;

### **1990 – 2002<sup>22</sup>**

This period is also characterised by mass massacres, widespread torture, disappearances, rapes, large-scale arrests, large-scale displacements, economic blockade and other forms of inhuman and degrading treatment of Tamil civilians. Hundreds were killed in the Kilali lagoon while trying to escape to the mainland from the SLAF atrocities in the Jaffna peninsula. The following are some of the major massacres of the period.

1990<sup>23</sup>: 226 ‘refugees’ at the Eastern University, Batticaloa on 23<sup>rd</sup> and 24<sup>th</sup> May; 37 at Sammanthurai on 10<sup>th</sup> June; 137 at Siththandy on 20<sup>th</sup> and 27<sup>th</sup> July; 10 at Paranthan on 24<sup>th</sup> July; 125 burnt alive at Pothuvil on 31<sup>st</sup> July and 1<sup>st</sup> August; unknown number at Tiraikerny on 6<sup>th</sup> August; 37 at Kalmunai on 11<sup>th</sup> and 12<sup>th</sup> August;<sup>24</sup> 60 at Thuramilavni on 12 August; over 10 at Eravur hospital on 12 August; 16 at Nelliyadi on 29<sup>th</sup> August; 205 including 68 children at Saththurukkondan on 9<sup>th</sup> September; 23 at Natpiddymunai on 10<sup>th</sup> September; 158 and 16 at Vantharumoolai on 5<sup>th</sup> and 23<sup>rd</sup> August respectively; unknown number at Mandaitivu on 23 August;<sup>25</sup> 12 at Oddisuddan on 27 November.

1991: 28 at Puthukkudiyiruppu on 30<sup>th</sup> January; 9 at Vankalai on 28<sup>th</sup> February; 220 at Kokkaddichcholai on 12 June; 13 at Kinniyadi on 12<sup>th</sup> July; 9 at Uruthrapuram on 4<sup>th</sup> February;

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<sup>17</sup> The President of the Citizens’ Committee has documented 311 killings in June and 383 in September in Trincomalee. (See *The Saturday Review* of 21.12.1985)

<sup>18</sup> Two daughters were raped before being killed.

<sup>19</sup> In this incident, more than 70 civilians seeking refuge in temples were arrested and disappeared.

<sup>20</sup> In that massacre, 51 ‘disappeared’.

<sup>21</sup> On many occasions notices were airdropped from air-force helicopters instructing people to take refuge in schools and churches and temples; and then these places and ‘refugees’ were attacked.

<sup>22</sup> In February 2002, a Cease-Fire Agreement is concluded between the GoSL and the LTTE. A short period of lull follows, until the new President, Mahinda Rajapaksa, is elected and a new government is formed in 2005.

<sup>23</sup> Refer footnote 12 for the period mid-1987 to march 1990.

<sup>24</sup> In the same incident, 25 young men were disappeared.

<sup>25</sup> Over 70 disappeared; in all, 92 have not been accounted for.

1992: 94 at Karapolla and Muthugalle on 29<sup>th</sup> April; 10 devotees at the Vattrapalai temple on 18<sup>th</sup> May; 6 refugees at Thellipalai on 30<sup>th</sup> may; 50 at Mailanthanai on 9<sup>th</sup> August;

1993: 30 bodies (of escapees from Jaffna to the mainland) were washed ashore with gunshot and stab wounds at Kilaly in January;<sup>26</sup> 13 at Maathalan; 30 at Sangathaanaai on 28 September;<sup>27</sup> 3 devotees at the Kokkuvil temple on 29<sup>th</sup> September; 10 devotees at St.James Church, Gurunagar, on 13<sup>th</sup> November;

1994: 10 fishermen off the Chundikulam shore;<sup>28</sup>

1995:<sup>29</sup> 20 school children at Nagarkovil School on 22<sup>nd</sup> may; 65 IDPs at Navaly St.Peters Church and another 90 in the surrounding areas on 9<sup>th</sup> July;

1996: 24 at Kumarapuram on 11 February; 16 at Nachchikuda on 16<sup>th</sup> March; 5 at Thambirai on 17<sup>th</sup> may; 9 at Mallavi on 27<sup>th</sup> July; 184 at Kilinochhchi in the military operation codenamed “Sathjaya-03”;<sup>30</sup> [A Lance Corporal, convicted of the murder of 3 persons at Chemmani, attested to the burial of some 300-400 arrestees in that area during the period July to december];<sup>31</sup> 4 at Vavunikkulam on 26<sup>th</sup> September; 5 at Konavil on 27<sup>th</sup> September.

1997: unknown number of fishermen and 3 road workers at Mullivaikal on 13<sup>th</sup> May; 7 IDPs at Mankulam on 8<sup>th</sup> June.

1998: 8 at Thambalakamam on 1<sup>st</sup> February; 6 at Old Vaddakachchi on 26<sup>th</sup> March; 25 at Suthanthirapuram on 10<sup>th</sup> June; 4 at Visvamadu on 25<sup>th</sup> November; 7 at Chundikulam on 2<sup>nd</sup> December.

1999: 25 at Palinagar on 3<sup>rd</sup> September; 25 at Manthuvil on 15<sup>th</sup> September; 40 IDPs at Madhu Church on 20<sup>th</sup> November.

2000: 28 at the Bindunuwewa Rehabilitation Centre on 25<sup>th</sup> October;<sup>32</sup> 8 at Mirusuvil on 19<sup>th</sup> December.<sup>33</sup>

### **2005 to date**

During this period, the genocidal process has been revitalised, with major military offensives including aerial bombardments practically on a daily basis, artillery fire and multi-barrel rocket launchers, bombardment from the sea, imposition of economic blockade, state sponsored colonization of Tamil lands and ethnic cleansing.<sup>34</sup>

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<sup>26</sup> 35 bodies were thus collected in the month of January.

<sup>27</sup> These were taking shelter in an air-raid bunker when a bomb fell squarely on it.

<sup>28</sup> The Sri Lanka Monitor, UK, has reported 60 killings in this year.

<sup>29</sup> Despite promises of upholding human rights, the new regime under Chandrika Bandaranayake continued the warfare with the slogan “war for peace.”

<sup>30</sup> When the LTTE recaptured such areas, hundreds of skeletons were recovered from wells and campsites.

<sup>31</sup> This is the widely publicised case of the schoolgirl Krishanthi Kumarasamy, her mother and a neighbour. The Chemmani Mass Graves are said to hold the secret of 648 such cases.

<sup>32</sup> 60 policemen appointed to guard the Rehabilitation Centre stood idle by as Sinhala mobs entered the Centre and wrought havoc.

<sup>33</sup> These bodies were exhumed six days later in the presence of the District Judge.

<sup>34</sup> See “Report on the Fact Finding Mission to the North & East of Sri Lanka to assess the State of Displaced Persons” by South Asians for Human Rights (SAHR), August 2007.

A significant feature of this period is the situation of terror in Jaffna, which is under the control of the SLAF. Almost every day, at least one Tamil civilian is abducted or killed. This happens even during curfew hours, in spite of there being about 50,000 troops amidst a civilian population of just under 600,000, and military check posts at every street intersection. The notorious 'white vans' without license plates operate regardless of the curfew, unchallenged at military sentry points. Young Tamils are dragged from their homes and bundled into these vans, never to appear again alive.

According to NESOHR, 2748 Tamil speaking people have been killed since the CFA of 2002. Of these, 1776 were killed in 2006 and 578 between January and August 2007.

Some of the high profile cases are:

2006: 13 at Allapiddy on 13 May; an entire family of 4 members<sup>35</sup> at Vankalai in June; 17 employees of Action Contre le Faim (ACF) including 3 Muslims, at Muthur on 6<sup>th</sup> August;<sup>36</sup> 60 school children at Visuvamadu on 14<sup>th</sup> August.<sup>37</sup>

At present, it is extremely difficult to gather information from areas under SLAF control as heavy press censorship has been imposed; human rights activists are under threat and killed; humanitarian organizations are denied access.

### ***3.2 Art. II (b) Causing bodily or mental harm to members of the group***

With the use of military hardware that are not precision weapons, such as MBRL (multi-barrel rocket launchers), mortar shells, artilleries, naval and aerial bombardments, helicopter gunship and cluster bombs, combined with random firings and wanton attacks with swords and clubs on civilians, the number of those inflicted with bodily harm exceeds by far the 80,000 civilians killed.

The atmosphere of terror ensuing from the horrors described above over a protracted period - particularly rape, torture, abductions, disappearances, extra-judicial killings, random arrests accompanied by inhuman and degrading treatment and the sombre prospect of being killed any moment - speaks for itself about the mental harm wrought on the people. This has been testified by studies undertaken by psychiatric experts, which state that by and large the population in the war zones is suffering from mental stress.<sup>38</sup>

### ***3.3 Art II(c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destructions in whole or in part***

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<sup>35</sup> The children were less than ten years old. She and the mother had been raped before being hacked to death. The bodies, except that of the mother, were hung from the ceiling.

<sup>36</sup> Around 60 humanitarian workers have been reportedly killed during this period. In January 7 TRO aid workers were abducted, and, according to an ex-TMVP cadre, they were killed by TMVP cadres; one young woman was gang-raped by them before being killed. The TMVP enjoys the patronage of the GoSL.

<sup>37</sup> In this case cluster bombs were used by the air force. The children were reportedly attending a training course in First Aid. 42 of them were killed on the spot; others died while being treated for the wounds.

<sup>38</sup> Pro. Daya Somasundaram, speaking of the 'wide spread traumatization due to the war', 'psychological disturbances and depressive symptoms' says, "The effect on the family, the widow....and the children has been immense." See "Addressing the Psychosocial Problems of Women in a war ravaged Society," a paper presented at the 'People's Forum, University of Jaffna , 8-9<sup>th</sup> Feb., 2003

Examples of such conditions are economic blockades, depriving people of their livelihood by imposing heavy restrictions on fishing<sup>39</sup> and depriving farmers of their farmlands,<sup>40</sup> setting fire to houses<sup>41</sup> or destroying them with bombardments and multiple and prolonged displacement.

Economic blockade has had long-term adverse effects, such that they can cause genetic disorders in the future generations. Today, ‘...as a consequence of the want of adequate food and supplementary items, expectant mothers have become anaemic and there is an increase in miscarriages by 2%. Mothers with babies have complained that they are not breastfeeding them because these mothers’ body failed to produce milk owing to lack of adequate nourishment. Medical experts fear that, from a long term perspective, there is the danger of creating a generation afflicted with diabetes, hypertension and stunted growth, both mental and physical.’<sup>42</sup>

#### **4.0 Intent**

The attacks on the Tamils that started in 1956 continue now for the same reason as then, namely, the fact that they are Tamils. This is clear from the fact that the killing and wounding have been indiscriminate. They have been attacked, killed or maimed for the sheer reason that they are Tamils.

This cannot be disputed in the case of the several anti-Tamil pogroms between 1956 and 1983.

But it might be argued that thereafter the military activities were directed against the armed LTTE, and therefore the case of civilian casualties fall under IHL, not under the Convention on Genocide. Lutz Oette<sup>43</sup> responds to this objection thus: “...the International Court of Justice found in a recent judgement that the Genocide Convention is applicable in cases where the court would be impelled to take account of events that may have occurred in the context of a civil war” (see Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia-Herzegovina v Yugoslavia), Primary Objections, Judgment, International Court of Justice, July 11 1996, para 43).

Moreover, it is not the case that when civilian casualties occurred it was ‘collateral damage’. In many instances, civilians were the direct targets. This is especially so in the case of unprovoked attacks, particularly in the East, and retaliatory attacks by the SLAF for attacks by the LTTE; these were often directed, not against the LTTE, but against unarmed civilians. (Rape is a clear example). They were attacked for no other reason than that they were Tamils.

This demonstrates the intent of the perpetrators, which constitutes these acts as acts of genocide, over and above being acts of violation of IHL.

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<sup>39</sup> Restrictions on fishing were first introduced introduced in 1985.

<sup>40</sup> One third of the land in Jaffna, including the fertile western part, is taken over by the military, and thus rendered inaccessible to the people.

<sup>41</sup> Thousands of houses were thus burnt down particularly in the eastern part of Tamil Ealam. Further, ethnic cleansing has taken place in order to make way for state-sponsored settlements of Sinhalese from other regions.

<sup>42</sup> Taken from A.I.Bernard “The Five-Year CFA and the Humanitarian Disaster in the North-East”, a paper read at a seminar in Oslo on 22 February 2007

<sup>43</sup> Lutz Oette, op. cit, pp.50-51.



Amnesty International observed in 1993 that “Since June there have been several such arrests forming part of a pattern of human rights violations directed at the Tamil community, in which thousands of people appear to have been arrested solely on the basis of their ethnic origin.”<sup>44</sup>

State complicity in the form of active involvement of Ministers, of Members of Parliament and of the police, impunity,<sup>45</sup> biased judiciary and certain statements by representatives of the Sri Lankan state are further proofs of ‘intent.’

For instance, regarding the pogrom from 13 August 1977 to 15 Sept 1977, not only was no action taken despite the Sansoni Commission’s finding that the police either participated in the assaults or watched mobs ...without intervening, but instead, the UNP government of J R Jayewardene passed the Indemnity Act No.20 “with a view to restrict legal proceedings against Ministers, Deputy Ministers, or any person holding office in the government in any capacity, whether naval, military, police or civil, in respect of acts done during the period 1<sup>st</sup> August, 1977 to 31 August 1977.”

Again, in the context of the 1983 pogrom, the same President said to Ian Ward of the London Daily Telegraph in July 1983 -

"I have tried to be effective for sometime but cannot. I am not worried about the opinion of the Jaffna (Tamil) people now... The more you put pressure in the north, the happier the Sinhala people will be here.. ..really, if I starve the Tamils out, the Sinhala people will be happy.."<sup>46</sup>

## 5.0 ‘Group’/People

That the Tamils are a people with a shared history, culture, language and territory where they have been a sovereign nation for centuries needs no proof. The first secretary to the British Governor wrote thus in his Minutes:

“Two different nations from a very period have divided between them the possession of the island: First the Cinghalese, inhabiting the interior of the country in its Southern and Western parts, from the river Wallouve to that of Chilaw, and the Malabars [Tamils] who possess the Northern and Eastern districts. These two nations differ entirely in their religion, language and manners.”

It was only in 1833 that the British, unlike its colonial predecessors (the Portuguese and the Dutch), brought the entire island as a unified political entity for the sake of administrative convenience.

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<sup>44</sup> AI Index 27 Oct. 1993, 37/WU 04/93

<sup>45</sup> “Impunity for human rights violations by government security forces, long a problem in Sri Lanka, remains a disturbing norm. As the conflict intensifies and government forces are implicated in a longer list of abuses, from arbitrary arrests and “disappearances” to war crimes, the government has displayed a clear unwillingness to hold accountable those responsible for serious violations of international human rights and humanitarian law.” Human Rights Watch, Vol.19, No. 11(c).

<sup>46</sup> As quoted in Nadesan Satyendra “The Charge is Genocide – the Struggle is for Freedom.” See [www.tamilnation.org](http://www.tamilnation.org)

As shown above, the entire Tamil nation is subjected to a genocidal process, though the age group 15 – 40 is often targeted for arbitrary arrests, detention, torture, extra-judicial killing and other crimes.

## Conclusion

I believe it has been established that the State of Sri Lanka has been carrying out a sustained, systematic and large-scale genocidal programme directed against the Tamil people over the past six decades.<sup>47</sup> It has committed acts with the intent to destroy the Tamil people, though the policy may not be explicitly formalized.

The crime of genocide alone is sufficient to legitimise secession. In the case of the Tamil people, this legitimacy is all the more forceful since they were once a sovereign nation.

The actualisation of this legitimacy does not depend on the approval of the oppressor State, (any more than in the case, for instance, of Indonesia vis-a-vis East Timor) or that of the super-powers (whether regional or global) or indeed on the approval of the international community. It depends solely on the will of the victim people.

This has to be acknowledged and respected as a matter of principle.

In practical terms, the Tamil people tried for internal self-determination in various forms<sup>48</sup> such as federalism and provincial councils.

But the successive governments have failed to accommodate any meaningful form of power sharing where the Tamils themselves can determine their political destiny within the parameters of a united Sri Lanka. Instead, the Sinhala majoritarian state resorted to increasingly repressive measures such as the ‘Sinhala Only’ Act and ‘Standardization’ of marks regarding university admissions.

Thus they were driven to express unequivocally their will to secede by voting overwhelmingly in the 1977 general parliamentary elections,<sup>49</sup> supporting the Vaddukkotai Resolution of 1976 to free themselves from the alien Sinhala domination and restore the sovereignty of the Tamil people by re-establishing<sup>50</sup> an independent state of Tamil Ealam:

*"What is the alternative now left to the Nation that has lost its rights to its language, rights to its citizenship, rights to its religions and continues day by day to lose its traditional homeland to Sinhalese colonisation? What is the alternative now left to a Nation that has lost its opportunities to higher education through standardisation and its equality in opportunities in the sphere of employment? What is the alternative to a Nation that lies helpless, as it is being assaulted, looted and killed by hooligans*

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<sup>47</sup> To call the war ravaging Sri Lanka a war against terrorism is therefore a category mistake. On the part of the Sri Lankan State, it is a war of genocide against the Tamil people; on the part of the Tamil people, it is a war for physical security and survival as a people, for freedom from an oppressive alien rule and for dignity.

<sup>48</sup> For instance the Bandaranayake-Chelvanayagam Pact of 1958 and Dudley senanayake-Chelvanayagam Pact of 1965 were unilaterally abandoned by the state.

<sup>49</sup> 97% in the North and 75% in the East voted supporting the secession manifesto.

<sup>50</sup> The words ‘restore’ and ‘re-establishing’ are deliberately used to allude to the pre-colonial independence of the Tamil Kingdoms, which the Sinhalese did not acquire whether by consent or conquest.

*instigated by the ruling race and by the security forces of the State? Where else is an alternative to the Tamil Nation that gropes in the dark for its identity and finds itself driven to the brink of devastation? There is only one alternative and that is to proclaim with the stamp of finality and fortitude that "we alone shall rule over our land that our forefathers ruled. Sinhalese imperialism shall quit our Homeland."<sup>51</sup>*

The will expressed in the 1977 general elections has never been revoked thereafter.<sup>52</sup>

Given the legitimacy and the will of the people, the way forward for a just peace, I suggest, is to make arrangements,<sup>53</sup> through international mediation, for the re-establishment of the sovereign state of Tamil Ealam.

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<sup>51</sup> As quoted in Nadesan Satyendra, op. cit.

<sup>52</sup> In this sense, the oft-repeated phrase 'the LTTE are fighting for a separate state' is misleading.

<sup>53</sup> These will include, inter alia, i) immediate cessation of hostilities and state-sponsored colonization of Tamil Ealam lands, ii) withdrawal of the army of occupation from Tamil Ealam, iii) expediting the resettlement of IDPs and refugees in their original locations from which they fled or were chased out and , iv) supporting the Tamil nation in state building.