

**Post war Sri Lanka: the role of International Justice in ending military oppression
and protecting the rights of the Tamil People.**

Thank you for the opportunity to speak today.

We meet today just when the drama of Russian intervention into Ukraine is unfolding before our eyes. US President Barack Obama has reportedly told Russian President Vladimir Putin that the latter has violated international law. He has gone one on to warn Russia not to use military force to change the fate of Ukraine.

What is it that is in the use of military force that immediately triggers a spate of international law concerns? Why did Russian Parliament have to authorise to use of military force before the Russian troops moved on the ground? What is the rationale for the requiring the authorisation by the UN Security Council for the use of force? And as some have asked in the past, who authorised them to authorise the use of force, or indeed to require such authorisation?

These questions inevitably lead us to an examination of the nature of the use of military force. To put it crudely, use of military force is really the use of violence to achieve our ends. The modern - or as we like to call it - the civilised world frowns, or at least claims

to frown upon the use of violence to achieve anything. That method is relegated to the age of barbarians. We like to think that our methods today are civilised and refined that violence ought not to have any place in the lives and in our interactions with people. That is how even corporal punishment has virtually been banished and parents, guardians and teachers who resort to it nowadays are named and shamed.

It would be true to say that until the great wars of the 20th Century, the use of military force for making conquests was thought to be the most legitimate method by which the fate of nations were decided. But as we know, with the establishment of the United Nations this assumption waned and although several military interventions did take place thereafter, their legitimacy, both moral and legal - under emerging international law regime - was always in question. Even so, barring a few countries, others have continued to maintain standing armies as a part of their most legitimate governmental functions. The justification for maintaining the availability for the use of violence is paradoxically in order to protect the country and its people from military interventions - violence - from the outside.

Thus the sole legitimate function of the military is to protect the sovereignty of the nation, its people and its borders. Though the use of violence to achieve an end has become antithetical to a free society, the use of that very same violence to protect a free society from outside incursion is considered to be within the bounds of international

law. If the sole justification for the use of violence is the concern for the territorial integrity of that country from violation from outside, it would then rule out any possible function for the military within that country itself. However the military's role in combatting and putting down internal armed revolts is also permitted under international law. The rationale for this also is the paradoxical approach of using violence to prevent violence being used as the means by which regime changes are enacted. That is why a *coup de tat* by the use of military force would be in serious danger of not being accorded recognition by the community of civilised nations.

The role of the military then has two aspects or perspectives: one external, which is to protect the country from violence from outside; the other is to protect the country from violence from the inside. The philosophical justification for both is the same. This is very clearly seen in the external element as both international law and international practice, security through military means is very definitely the last resort; it is the exception rather than the norm.

Chapter 7 of the United Nations Charter, for example, states in Article 39 that

The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.

Article 41 states, *inter alia*:

The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures...

Article 42, in turn, states *inter alia*:

Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security...

This thinking is also reflected in the 'Just War theory (*jus bellum iustum*)'. This theory recognizes that the violence of war is only justifiable if absolutely necessary to prevent atrocities or outcomes that are so undesirable that they justify war. According to this theory a war is only considered morally justifiable if it satisfies particular criteria. The criteria relate to the right to go to war itself (*jus in bello*) and the right conduct during

war (*jus ad bellum*). The Geneva Conventions, which also primarily relate to the proper conduct during war, are another example of the recognition by international law of violence being the exception rather than the norm when it comes to preserving order and security.

Military institutions in peacekeeping are treated as the exception and not the norm. This is reflected in international practice today, one example being the ongoing gradual withdrawal of US troops from Afghanistan following the ending of the war by the gradual return to civilian administration.

Today, there are calls for a third category within the Just War theory: *jus post bellum* – relating to the morality of post-war settlement and reconstruction. I will discuss this in more detail later on in my speech.

It is thus internationally accepted that the military cannot overstep its role. This often takes place in post war societies like Sri Lanka in which the military has now assumed the role of civilian administration. But the clear recognition in international law of the exceptional role of the military in its external role is sadly not present when it comes to the role of the military within the boundaries of its own country.

The militarization of the Northern Province has been recognized by Sri Lanka's very own 'Lessons Learnt and Reconciliation Commission (LLRC)' appointed by President Mahinda Rajapakse in the aftermath of the war in May 2010 as a serious concern. The LLRC stated in its report that:

"...the Security Forces should disengage itself from all civil administration related activities as rapidly as possible" (para 9.134)

In order to ensure that:

"...the Northern Province reverts to civilian administration in matters relating to the day-to-day life of the people ... to enable the people to return to normal civilian life and enjoy the benefits of peace" (para. 9.227).

The Sri Lankan government has itself recognized that the role that has been assumed by the military in the North today is unacceptable. In response to this the National plan of action released by the Sri Lankan government in July 2012 stated that:

"95% [of security forces are] already withdrawn from civilian duties"

And further assigned the Ministry of Defence with the responsibility to:

"formulate [a] plan for further reducing involvement of Security Forces in civilian work"

The treatment of the military as an exception rather than the norm in civilian administration and peacekeeping is also reflected in the laws of Sri Lanka. For example, Section 12(1) of the Public Security Ordinance No. 25 of 1947 (as amended) states that:

"Where circumstance endangering the public security in any area have arisen or are imminent and the President is of the opinion that the police are inadequate to deal with such situation in that area, he may, by Order published in the Gazette, call out all or any of the members of all or any of the armed forces for the maintenance of public order in that area"

The United Nations Human Rights Council in its 2012 and 2013 Resolutions on Sri Lanka stated *inter alia* that it welcomed/recalled the recommendations of the LLRC report, including the need to '*demilitarize the north of Sri Lanka*'.

One of the important facts that has escaped attention is the monthly proclamation by the President under the above provisions of law, calling out the three armed forces by name to assist the Police in maintaining law and order in every one of the 25 districts in Sri Lanka. This is the act that brings the armed forces on to the road and gives the veneer of legality to all their activities, not only in the North or the East, throughout the length and breadth of the the whole country. It is to be noted that the Sri Lankan government actually declares, month after month, that the Police is incapable of maintaining law and order in every part of the country in order to utilise the military for all its activities.

The International Crisis Group's Asia Report of 20th February 2013 titled '*Sri Lanka's Authoritarian Turn: The Need for International Action*' stated (at pp. 18-19):

"While there appears to have been a slight reduction in the number of troops in Jaffna, overall troop levels throughout the province remain extremely high. According to the best available estimates, some 150,000 soldiers are stationed in the north and east. The military continues to be deeply involved in civilian administration at all levels in the north and plays a central role in managing economic development and physical reconstruction of the region, both directly and indirectly through retired Major General G.A. Chandrasiri, northern province governor, and the military-dominated Presidential Task Force for Resettlement, Development and Security Northern Province. The military has also deepened its economic role in the north, including through new tourist resorts, and it continues to closely monitor the work of humanitarian organisations and local NGOs, as well as the local population as a whole..."

The serious impact of the pervasive military presence in the North on the civil, political, social and economic rights of the Tamil people is all too clear. The most pressing issue is the subjugation and sexual violence against the women. There are more than 40,000 widows in the North, most of whom are the sole bread-winners for their families. The government's pre-occupation with building the infrastructure has left most of this very vulnerable section without any livelihood support. They are forced into situations where sexual favours are often the only bartering power they have in order to feed their

young children. With a large army continuing to be present in the North consisting mainly of young men away from their own families, overt sexual violence is also not an infrequent happening.

Many Tamil people – in both the Northern and Eastern provinces – also continue to lose their lands to the military for both military occupation and so called ‘development activities’ including agriculture and the running of tourist resorts. In some instances land owners are forced to sell their land to the military. More often, the military simply takes over possession of the land. The loss of these lands, often having been in families for several generations, also results in the loss of livelihood for many of these people. The army that cultivates their lands, also would seek to sell the produce from these lands back to the owners themselves! This has inevitably resulted in significant resentment in the Tamil community, making meaningful reconciliation – despite what the Sri Lankan Government says, even harder to achieve.

The same report of the International Crisis Group states :

"The military's ongoing seizure of public and private land, especially in the north, is one of the chief sources of anger among Tamils and a major obstacle to reconciliation. While there has been since the end of the war a significant reduction of the extent of land held as high security zones, an estimated 26,000 people remain unable to return to their lands due to military occupation, with at least 18,000 in the Jaffna peninsula alone. The government's much publicised closure of the once huge Menik Farm displacement camps in August 2012 was achieved only by forcibly

relocating to a new site the final 350 people whose land in the village of Kaepapulavu has been seized by the military. In spite of the LLRC's concern that private lands in the north and east continued to be held by the military and other government agencies, often without compensating the owners, the action plan did not commit the government and its agencies to refrain from using private lands. At the same time, there are increasing numbers of credible reports of military officials in the north and east pressuring residents to sell their land to the military or to business interests to which local commanders are believed to have links."

The increased military presence in the North has also contributed significantly to infringements on the right to Freedom of Expression. Several protests organized by Tamil political parties have been disrupted by the military. In November 2013, two days prior to the Commonwealth Heads of Government Meeting which was held in Sri Lanka, the military prevented busloads of Tamil families of those who had been disappeared from travelling to Colombo. These families from Mannar, Vavuniya, Mullaitivu, Kilinochchi and Jaffna were travelling to attend a gathering known as the 'alternate Peoples Forum to stress Commonwealth Values'. Military personnel stopped the buses and turned the families back to their home districts. The military and police also dispersed demonstrations in Mannar and Vavuniya staged by families of the disappeared during this time.

In late November 2012, the military and the police broke up lamp-lighting ceremonies conducted by students of the University of Jaffna University to commemorate deceased loved ones killed in the war. Protests against this by students held the next day were violently dispersed by the police and the military. Over the next two weeks several students were arrested or questioned in relation to this incident, with four student leaders sent for “rehabilitation” under the PTA. Just as arbitrarily as they were arrested, these students were later released on the orders of President Mahinda Rajapakse.

The police and the military also regularly carry out so called ‘investigations’ into Tamil politicians, including Tamil Members of Parliament. Such ‘investigations’ are clearly used as a means of intimidation in order to stifle dissent. Such ‘investigations’ also specifically target Tamil National Alliance (TNA) parliamentarians. On the 12th of January 2013, Tamil National Alliance Member of Parliament S. Sritharan had a so-called ‘raid’ conducted at his office by officers of the Terrorism Investigation Department.

Inevitably, the effect of Sri Lanka’s post war militarization has not been contained to the Northern peninsula. On the 1st of August 2013, soldiers shot unarmed Sinhalese protestors demanding clean drinking water in the village of Weliveriya.

In his article titled '*When public relations meets militarisation*' (dated 22nd August 2013)

Alan Keenan states:

"The army rampage in the village of Weliveriya resulted in at least three unarmed protestors shot dead, scores injured, journalists searched out and assaulted and protestors shot at and beaten by soldiers while they sought refuge in the local Catholic church. The incident was a particular shock for the many Sinhalese who have been convinced by years of government propaganda, and the 2009 military victory over the Tamil Tigers, to view the army as the unquestionable saviour of the nation."

The presence of the military in the North has also raised grave concerns relating to sexual abuse in the North. Post-war, Sri Lanka witnessed a rapid increase in the number of cases of sexual abuse in the Northern province. Members of the military forces are widely believed to be responsible for a large number of these cases of sexual abuse. Several women's organizations state that the victims of this abuse are afraid to take any action as the perpetrators are members of the military forces.

In November 2012 serious concerns emerged with regard to the so called 'recruitment' of young Tamil women into the military. The most serious concern was the apparent lack of informed consent. Those 'recruited' seemed to have been informed that they would be engaging in clerical work, or with the District Secretary, that work will only

be for a few hours, and that they would be able to work in the areas in which they lived. These women were not informed that they would be working for the military and would in fact be joining the military.

When they realized that they were to join the military, some women panicked and called their families, and also informed the military that they did not wish to join. For a certain period of time however, these women were prevented from communicating with their families. Some family members of these female recruits engaged in demonstrations near a military camp protesting against the recruitment of these women while the military conducted a function inside the camp for the 'new recruits'.

Commenting on the so called 'recruitment' of these women, a Statement of Concern by the Women's Action Network, a collective of women's groups from the North and the East stated that:

"This situation raises grave concerns regarding the role of the state and the military in the lives of women, particularly from Killinochchi and Mullaitheevu...the continued militarization of the North, and the continued security of these women while in service."

It must be acknowledged that the international community's response to post war Sri Lanka has already yielded some positive results. To date the Sri Lankan Government continues with its angry rhetoric rejecting 'international intervention' which it claims is a result of what it terms an 'international conspiracy'.

However, following the resolutions at the United Nations Human Rights Council in 2012 and 2013 the Sri Lankan Government has, if only to deflect mounting international pressure, made some progress, however insufficient, on some of the concerns in post war Sri Lanka. In August 2012, the Government lifted the State of Emergency prevalent in the country for decades; In September 2012 the last of the internment camps housing IDPs was closed down; private lands are no longer legally demarcated as 'High Security Zones'.

The Sri Lankan Government has also fairly successfully thwarted the attempts by the OHCHR to include the concerns regarding militarisation and its evil consequences by using the fact that international law permits sovereign nations to deploy their military as they please within their borders. This was what was reported in the Island Newspaper two days ago:

"The OHCHR has changed its original demand that Sri Lanka establish a timeline for the demobilisation and disarmament of the armed forces in addition to stop them from performing civilian tasks.

"Following representations made by the External Affairs Minister, the OHCHR has dropped its unprecedented call for demobilisation and disarmament of armed forces as well as a time line to achieve the objectives. Responding to a query, sources said that Sri Lanka reminded the OHCHR that it had no mandate to make such demand of a sovereign state."

In the meantime, it is clear that the militarization of the North has resulted – and continues to result – in the violation of the civil, political, economic, social and cultural rights of the Tamil people. Despite the removal of High Security Zones, private land is still being illegally acquired and used by the military. Despite the lifting of the State of Emergency, the military is still involved in the administration of civilian affairs. As described above, this results in the violation of a host of international laws and standards, including the International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights and even the Universal Declaration of Human Rights.

The international community thus has a serious responsibility and a role to play in attempting to reduce and eventually eliminate this degree of militarization. This responsibility lies both at an organizational level as well as with individual countries.

Within the existing international justice mechanism, both individual countries, international donors, UN agencies and humanitarian organizations should recognize the dangers to the long-term stability of the north in permitting continuing militarization. They must use their influence to gradually reduce and eventually eradicate militarization in the North. The following steps need to be taken in achieving this:

- Clearly highlight and question the Sri Lankan government's failure to implement the recommendations relating to militarization of the Lessons Learnt and Reconciliation Commission.
- Ensure that the Sri Lankan government takes specific measures within a specific time period in order to reduce the presence and impact of the military in the Northern province both in terms of numbers of troops as well as in terms of immediate cessation of military engagement in civilian activities and administration.
- Refuse to officially recognize the appointment of former and current military officials in formally civilian roles - including the appointments to diplomatic roles, provincial governor, officials in the Presidential Task Force etc.

- Ensure that the Sri Lankan government and/or the military returns all private property that has been acquired from civilians by the military without adhering to the proper legal procedure.

The time has also perhaps come for the international justice system to consider the importance of engaging with the issue of militarization itself. Earlier in my speech I referred to the emerging calls to recognize within the Just War theory the concept of '*jus post bellum*' which fundamentally recognizes issues relating to the problem of the ending of war and the need for a proper organisation of post-war peace. This has become evident in the context of the aftermath of war/conflict in, for example, Bosnia and Herzegovina, Kosovo, Iraq, Afghanistan and now, Sri Lanka. Although the concept has an established tradition in the just war theory and is part of the ethics of warfare and writing on the law of nations, military ethics and moral philosophy it has been neglected in the crystallization of the modern laws of war. The need to properly address the issue of militarization, particularly post war, is part of this larger vacuum. The evil effects of militarization are sometimes equal to or worse than when active combat takes place. Crisis situation cannot only exist in acute conditions; it can very well be in chronic militarized environment as well. A good example of this is the Israel - Palestine conflict.

Nearly five years have passed since the end of the war. The people of the North are still living under the dark shadow of what is effectively, military rule. The Sri Lankan Government proudly declares to the world that it has successfully stamped out terrorism in Sri Lanka. For the Tamils of the North however, it has only meant that they are now being forced to live under the rule of the military. The Sri Lankan government has been asked time and again to change this, and it has failed to deliver. It is time the international community ensures that it finally does.

Thank you.