



PERMANENT PEOPLES' TRIBUNAL

Bremen, Germany | 07 - 10 December 2013

**Peoples' Tribunal  
on Sri Lanka**

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## Permanent Peoples' Tribunal

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# Permanent Peoples' Tribunal

## Peoples' Tribunal on Sri Lanka

07-10 December 2013

### HOSTED BY

**Gemeindezentrum und Kirche St. Pauli**  
Bremen, Germany

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## Members of the Panel



### **Feierstein, Daniel** (Co-Chair)

Director of the Centre for Genocide Studies at the Universidad Nacional de Tres de Febrero, Professor in the Faculty of Genocide at the University of Buenos Aires and a member of CONICET (Consejo Nacional de Investigaciones Cientificas y Tecnicas - The Argentine National Centre for Scholars). He has been elected as the president of the 'International Association of Genocide Scholars'.



### **Halliday, Denis** (Co-Chair)

Former Assistant Secretary-General of the United Nations. He resigned from his 34 year old career in the UN in protest of the economic sanctions imposed on Iraq by the Security Council. Laureate of the Gandhi International Peace Award.



### **Garibian, Sévane**

An expert on Genocide and International Law. She is an Assistant Professor at the University of Geneva and Lecturer at the University of Neuchâtel, where she teaches Legal Philosophy and International Criminal Law. Her work focuses on issues related to law facing State crimes.



### **Gerger, Haluk**

A respected academic and a Middle East analyst who was imprisoned in Turkey for his political activism. He is known for his support for Kurdish people's right to self-determination.



### **Hinz, Manfred O.**

Professor for Public Law, Political Sociology and Sociology of Law at the University of Bremen. He has a long history of engagement in solidarity with liberation struggles in Africa, specially Namibia and the West Sahara. He, for several years, held the UNESCO chair for human rights and democracy of the University of Namibia whilst he was a professor there.



### **Jarvis, Helen**

She served as Chief of the Public Affairs Section from the inception of the the Extraordinary Chambers in the Courts of Cambodia (ECCC), the special Cambodian court which receives international assistance through the United Nations Assistance to the Khmer Rouge Trials (UNAKRT). The court is commonly referred to by the more informal name the Khmer Rouge Tribunal or the Cambodia Tribunal.



### **Molto, José Elías Esteve**

An international lawyer and legal expert on Tibet. He is the main lawyer who researched and drafted both lawsuits for international crimes committed in Tibet and a recent one for crimes in Burma. He is a Professor in International Law at the University of Valencia.



### **Moreno, Javier Giraldo**

Colombian Theologian and human rights activist based in Bogota. Known for his depth of analysis in contextualising genocide affected communities. He is Vice-President of the Permanent Peoples' Tribunal.



### **Morte, Gabriele Della**

A Professor of International Law at the Università Cattolica di Milano and an associate professor in International system, institutions and rules, Chargé de cours at the Académie de droit international humanitaire et des droits de l'homme of Geneva (2007-2008), counsel for the International Criminal Tribunal for Rwanda (ICTR) (2003-2004), Law Clerk for the Prosecutor Office of the International Criminal Tribunal for the former Yugoslavia (2000) and member of a government delegation for the establishment of the International Criminal Court (1998).



### **Tognoni, Gianni**

The Secretary General of the Permanent People's Tribunal, Rome.



### **Tveter, Øystein**

A Norwegian scholar of International Law and a member of the Permanent Peoples' Tribunal on extra-judicial killings and violations of human rights in the Philippines.



### **Zarni, Maung**

He is a Burmese democracy activist who founded the Free Burma Coalition in 1995. He is one of the few Burmese intellectuals who have come forward to unconditionally oppose the increased discrimination and violence against the Rohingya Muslims and publicly criticised Aung San Suu Kyi on this issue.

## 1. The Competence of the Permanent Peoples' Tribunal

**T**he Permanent Peoples' Tribunal (PPT) is an international opinion tribunal, independent from any state authority. It examines cases regarding violations of human rights and the rights of peoples.

Promoted by the Lelio Basso International Foundation for the Rights and Liberation of Peoples, the PPT was founded in June 1979, in Bologna, Italy, by a broad spectrum of legal experts, writers, and other cultural and community leaders (including five Nobel Prize laureates) from 31 countries. The PPT is rooted in the historical experiences of the Russell Tribunals on Vietnam (1966-67) and on the dictatorships in Latin America (1974-1976). The importance and strength of decisions by the PPT rest on the moral weight of the causes and arguments to which they give credibility, as well as the integrity and capability to judge of the Tribunal members.

The aim of the Permanent People's Tribunal is recovering the authority of the Peoples when the States and the International Bodies failed to protect the right of the Peoples, due to geopolitical reasons or other motivations.

Complaints heard by the Tribunal are submitted by the victims, or by groups or individuals representing them. The PPT calls together all parties concerned and offers the defendants the possibility to make their own arguments heard. The panel of judges is selected for each case by combining members who belong to a permanent list and individuals who are recognized for their competence and integrity.

From June 1979 to the present date the PPT has held some 40 sessions whose results and judgements are available at [www.internazionaleleliobasso.it](http://www.internazionaleleliobasso.it)

For this Second Session on Sri Lanka, the Secretariat of the PPT was first approached by representatives of a broad spectrum of NGOs, as early as December 2012. The specific competence of the PPT was considered necessary, given the substantial disregard of the matter by international institutions, which has accompanied the "disappearance" of the massacre of the Tamils from the attention of the international media.

The documents supporting the request to convene a session of the PPT were sent during the months previous to the Conference. The notification of the procedures and invitations to participate in the session of the PPT in Bremen were submitted to the representatives of the Governments of Sri Lanka, India, the United States of America and the United Kingdom through their embassies in Berlin and Rome in letters sent on 12 November 2013.

According to the Statutes of the PPT, and as specified in the notification, in the absence of a positive response to the request for formal representation of their positions, the PPT mandated a Rapporteur to present the views of the four accused governments. The work of the PPT took place in the facilities of St. Pauli Gemeinde, Bremen, Germany.

Due to security reasons, the members of the panel of the PPT heard some detailed eye-witness accounts in camera (in closed sessions).

The PPT certifies that the resources that have covered the organizational and financial needs of the sessions have been provided mainly by the voluntary work of the members of the NGOs supporting the initiative.

The written and visual documentation presented and examined by the PPT, aside from the oral hearings and cross-examinations, is listed in Appendix II and will be made available on the [ptsrilanka.org](http://ptsrilanka.org) website.

## 2. The Judgment of Session I on Sri Lanka, held in Dublin in January 2010

**I**n the First Session of the Permanent People's Tribunal on Sri Lanka, held in Dublin in January 2010 it was established that War Crimes and Crimes against Humanity had been committed by the Government of Sri Lanka and were continuing up to the moment of the judgment.<sup>1</sup>

The first Tribunal noted: "Although the charge of genocide was not included in the inquiry requested of the Tribunal, some of the organizations and persons that gave testimony insisted that it be recognized that genocide occurred, or may have occurred, against the Tamil population in Sri Lanka. There was not enough evidence presented before the Tribunal to determine that the crime of genocide be added to the charges of war crimes and crimes against humanity."<sup>2</sup>

So, the Dublin Tribunal concluded that,

"Some of the facts presented should be investigated thoroughly, as possible acts of genocide. Such facts include the following:

- A possible pattern of forced "disappearances" of Tamil individuals carried out by the Sri Lankan armed forces and by paramilitary forces with the acquiescence of the State, directed against crucial members of the Tamil community (journalists, physicians, politicians) to destroy, as Lemkin said, "the grounds for the continuity of the life of the group" (in this case, the Tamil group); and
- The persistence of the situation of the Tamil population in the IDP camps; the continuity of shootings, systematic rape and forced disappearances; the widespread destruction of infrastructure in those parts of the country where there is a concentration of Tamils; and the lack of food, medicine and other fundamental needs for the continuity of life of the Tamil people."

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1. Peoples Tribunal on Sri Lanka, Trinity College, Dublin, Ireland 14-16 January 2010. Rome : Permanent People's Tribunal, [2010].

2. *ibid*, p18-19.

The Dublin Tribunal concluded: "Although the facts listed above are current, we have not received enough evidence to include them as charges. However, The Tribunal acknowledges the importance of continuing investigation into the possibility of genocide."<sup>3</sup>

After three years of collecting evidence and due to the continuing serious situation of the Eelam Tamil population in Sri Lanka, the Irish Forum for Peace in Sri Lanka and the Internationaler Menschenrechtsverein Bremen requested a Second Session of the PPT on Sri Lanka, to deal with the accusations of genocide and the complicity of other States in the commission of genocide in Sri Lanka.

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3. *ibid*, p.19.

### 3. The Complaints

**T**he Irish Forum for Peace in Sri Lanka and the Internationaler Menschenrechtsverein Bremen submitted the following charges for the Bremen Tribunal to consider<sup>4</sup> :

**“1. In the island of Sri Lanka a Genocide is being committed against the Tamil people in the north and east of the island. The process of the Genocide has occurred in stages and is ongoing.**

**“2. The Sri Lankan state and its armed forces are guilty of carrying out the crime of Genocide against the Tamil people.**

The multifaceted offensive that is carried out by the Sri Lankan state, aimed at dislodging the people from their land, demonstrate the intent to destroy the foundations of national life of the Tamil people in the north and east. The genocidal intent of the Sri Lankan state is based on the motive of ensuring Sinhala rule over the Tamil homeland in the island.

**“3. The British state is guilty of being complicit in the crime of genocide against the Tamil people.**

During their colonial rule the British regarded the island of Ceylon as an important strategic post to maintain control over the sea routes and their Indian Raj. The militarily crucial deep sea harbour in Trincomalee (which Lord Nelson called the finest harbour in the world) was situated in the Tamil inhabited eastern part of the island. Due to their geographical proximity, Ceylon and India enjoyed close and strong cultural and political ties. The historical connection between India and the Ceylon was manifested through the existing relationship between the Tamils living in the island and the South Indian Tamil population. For the British these factors threatened their objective to develop the island into a strategic asset.

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4. Dublin Tribunal follows up on genocide and international complicity. The People's Tribunal on Sri Lanka – Session II, Bremen, Irish Forum for Peace in Sri Lanka and Internationaler Menschenrechtsverein, Bremen, October 2013 (Text quoted directly from this Accusation)

In the above context, the British foresaw the necessity to enhance the geographical separation that this military post had by virtue of being an island by creating a unified structural entity with a unique identity that would separate the people in the island from the people of India. The Sinhalese were the 'chosen people' to achieve this important task. In 1833, the British created a unitary structure by forcibly amalgamating the traditional Tamil homelands with the Sinhala areas thus laying the basis for a Sinhala dominated unitary state system. Subsequently through their work in the fields of historiography, archaeology and anthropology the British constructed a new 'Sinhala Buddhist Aryan' national identity which would see India as an 'invader' and the Tamils as the 'descendants of the invaders'. In sharp contrast to its brutal treatment of the Indian people across the water the British awarded universal suffrage in the island coupling it with an island wide census to instil the Sinhala identity with a majoritarian consciousness. Despite the repeated demands by the Tamils for constitutional safeguards that would preserve their collective rights as a nation, the British transferred the power to the Sinhala elite leaving the Tamils at the hands of the newly created Sinhala dominated state that regarded them as an 'alien threat.'

The unitary state structure and the Sinhala Buddhist chauvinism became the two fundamental components which laid the basis for the genocidal process against the Tamil people in the North and East of the island. In implementing their strategic policies the British acted with reckless disregard for the probability that genocide would result from their actions and created the motive for the Sinhalese to commit the genocide.

**“4. The USA is guilty of being complicit in the crime of Genocide against the Tamil people.**

After the second World War, the USA replaced Britain as the dominant power in the region. In partnership with Britain the USA maintained and developed the commitment to support and fortify the unitary structure in the island. The USA's involvement deepened as the Genocidal process was challenged during the 70's and the 80's when the Tamils expressed their resistance with the political demand for self-determination, for Tamil Eelam. As this undermined the unitary state structure, the USA became pro- actively complicit in the Genocidal process in the island by providing the military and political support, with the knowledge that it would be used to continue the said process. During the internationally backed peace process - that started in February 2002 - the USA with the assistance of the UK, deliberately took a series of calculated measures to alter the balance of power between the Sinhala State and the de-facto Tamil administration and succeed in destroying the negotiations process that had provided succour to the victims of the genocidal process. These US/UK measures created the conditions for the war to start and ensured its continuation until the Tamil resistance was physically exterminated – with genocidal results. With the elimination of the political/physical force that had hitherto shown the capability to halt the actions of the Sri Lankan State and its principal backers, the genocidal process was restarted and is proceeding with unprecedented tempo. Thereby, the USA borrowed the criminality of the Sri Lankan state, which is the principal perpetrator, and shared with it the intent to destroy the national foundations of the Tamil people. The motive of the US is to gain control over the island as a strategic asset in their global military power projection.

**“5. The Indian state is guilty of being complicit in the crime of Genocide against the Tamil people.**

In the late 1980's India intervened against the LTTE, in order to gain control over the Tamil population as a strategic asset, resulting in the death of 12,000 Tamil people. In the 90's India, as a junior partner, formed a strategic alliance with the US, and then on, increasingly subordinated its strategic policy approach towards Sri Lanka under the US war paradigm, becoming complicit in the genocidal process against the Tamil people.”

## 4. The Defence

**D**ue to the decisions of the four accused states to ignore the invitation of the PPT to participate, the Tribunal asked a Rapporteur to present their respective viewpoints regarding the situations involved in this case, as had been stated publicly up to the point when the Accusations were made. Acting as *amicus curiae*, the Rapporteur Dr. Iain Atack, Assistant Lecturer in International Peace Studies, Trinity College, Dublin, provided the following summary of these respective positions:

### 4.1.- Position of the Sri Lankan state:

1. The war was conducted to liberate the north and east from the Liberation Tigers of Tamil Eelam (LTTE) (Defence Ministry website).
2. Any civilian casualties were collateral damage and not intentional (Lessons Learned and Reconciliation Commission, LLRC, report).
3. Resettlement is taking place in areas from which the LTTE has been evicted (statement by the Special Envoy of the Sri Lankan President before the UN Human Rights Council 2012, 2013).
4. The government is engaged in development activities in the north and east from which the Tamils will benefit.
5. Any inquiries can be conducted internally, so there is no need for an international inquiry.

### 4.2.- Position of the Indian state:

(Foreign Minister S. M. Krishna, statement in the Indian Parliament, 4 August 2012)

1. The LTTE is a banned organization under Indian law.
2. The Sri Lankan government should launch an independent investigation into the violence during the final phase of the war.

3. There should be full implementation of the 13th Amendment of the Constitution regarding the North-East Provincial Council. Any solution should be within a united and undivided Sri Lanka.

#### **4.3.- Position of the United Kingdom:**

(From previous statements of position by the UK government, the Foreign and Commonwealth Office and by David Cameron at the Commonwealth Heads of Government Meeting, Sri Lanka, November 2013)

1. The LTTE is a terrorist organization.
2. The Sri Lankan government should launch an independent investigation by March 2014. If the government does not do so there should be an independent international investigation (preferably under the auspices of the UN).
3. Any solution should be within a united and undivided Sri Lanka.

#### **4.4.- Position of the United States of America:**

(State Department press releases, State Department Report to Congress 2009)

1. The LTTE is a terrorist organization. We welcome the end of the war.
2. There has to be an independent internal investigation concerning the violence during the final phase of the war in 2009.
3. The Recommendations of the LLRC should be implemented.
4. Any solution should be within a united and undivided Sri Lanka.

## 5. Judgement

### 5.1) The charge of Genocide

#### 5.1.1.) Why genocide?

One of the main questions for this Tribunal was to explain why the organizations involved in this case (and many victims of the whole process) asked the PPT for a Second Session, after the findings of the First Session of the PPT in Dublin in January 2010, which established that war crimes and crimes against humanity were committed by the Sri Lankan state against the Tamil populations.

What would be the importance for the victims of qualifying the facts they suffered as genocide, which would have no effect on possible actions by international and national bodies?

To understand that question, which commonly arises in many other historical situations, it is essential to comprehend that genocidal social practices are not only attempts to destroy individuals. Genocide is an attempt to destroy the identity of a group, alienating it from its experience and history, trying to strip it of the control over its own past, present and future.

The different stages of a genocide form a sequence, the central aim of which is to transform the society in which genocide takes place by destroying a way of life embodied by a particular group, thus reorganizing social relations within the rest of society. And the disappearance of the memory of the victims is an attempt to close the sequence.

The recognition that the Tamil people of Sri Lanka were persecuted, harassed and killed not just as individuals but as a group with its own identity, is fundamental in any attempt to confront the genocidal objectives of identity destruction and it is also a way to ratify the right of self-determination of any people.

#### 5.1.2) Genocide as a Social Process

It is organization, training, practice, legitimation and consensus that distinguish genocide as a social process or practice from other more spontaneous or less intentional acts of killing and mass destruction. Social practices are ongoing and under permanent construction.

The author of the concept of genocide, Raphael Lemkin, said that genocide, in essence, is "the destruction of the national identity of the oppressed group [and] the imposition of the national identity of the oppressor."<sup>5</sup>

If we analyse genocide as a process we can understand that some actions, even if not genocidal in themselves, imply the construction of the conditions which make the genocide viable. The construction of the Tamil population as alien to a unitary Sri Lankan state was a long process, which included legal and political decisions, as well as countless massacres, processes of discrimination, periods of armed conflict and finally, the implementation of an exterminatory project.

The Tribunal received and heard evidence that the structural and social constructs of "conditions which make the genocide viable" were introduced as far back as 1833 by the British, by the combined actions, firstly of the creation of the unitary structure by amalgamating the traditional Tamil and Sinhala areas and then the systematic engineering of society by the introduction of historiographical, archaeological and anthropological constructs that laid the basis for the creation of an "Aryan Sinhala Buddhist" identity amongst the Sinhala people, presenting India as an invader and the Tamils as the "descendants of the invaders".<sup>6</sup>

Each process has a genealogy and to choose a moment to start the comprehension of a social process like a genocide is always difficult but, even if there were many prior situations, the repressive and discriminatory practices to construct a unitary State in Sri Lanka reached an important turning point in 1956 when the Sinhala language was determined to be the only official language, after which anti-Tamil pogroms took place in response to non-violent resistance from Tamils.

In 1958, pogroms resulted from the Government's agreement to the compromise of the Tamil Language Special Provisions Regulations.

In 1961, it was the deployment of the Sinhala Army to the North-East, following the launch of the North-East wide satyagraha (Gandhian inspired non-violent direct action) by the Tamils protesting the official language policy.

In 1971, it was the 'standardization' of education through which Tamil students entry into Higher Educations Institutions was significantly cut down.

In 1972 it was the enactment of the first republican Constitution which gave constitutional status to Sinhalaese as the Official Language act and Buddhism was given the 'foremost place' in the Constitution.

In 1977, a pogrom was directed against the Tamil population, following the passage of the Vaddukoddai Resolution by Tamil moderate leadership calling for the establishment of a separate state.

The 1978 Constitution continued to give constitutional status to Sinhalese as the Official Language.

From that moment the situation began to turn more and more serious, including the burning of the Jaffna Public Library in 1981 and the pogrom against the Tamils in 1983 (known as Black July), in which more than 3,000 persons were killed.

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5. Raphael Lemkin, *Axis Rule in Occupied Europe*, Carnegie Endowment for International Peace, Washington DC, 1944, p.79.

6. For example, J.E Tennent, the British Colonial Secretary of Ceylon (1845-1850), consciously manipulated interpretation of the historical facts in order to create a 'native/invader' divide characterising the Sinhalese as aspiring to 'exalt and to civilise' and 'beautify or enrich', while the Tamil 'marauders and invaders' only 'impoverished and defaced' the island. (J.E. Tennent, *Ceylon: An Account of the Island - Physical, Historical and Topographical*. (Vol. 1, pp. 394-396). London: Longman, Green, Longman and Roberts, 1859.)

In addition to the killing of several thousands of Tamils living in the southern areas of the country during the racial pogrom, substantial evidence spanning over 300 pages was submitted to the Tribunal detailing systematic massacres carried out against the Eelam Tamils living in the north and east of the island.

For example, from July 1983 (Thirunelveli massacre) to May 1987 (Alvai Temple massacre), over 44 massacres were committed by the state armed forces where at least 2109 Tamils were killed. Similarly, during the 6 year period from May 1990 (Eastern University massacre) to May 1995 (Nagarkovil Massacre), at least 2,231 people were killed in 47 massacres carried out by the state military. In a number of incidents, over 100 people were massacred in a matter of 2-3 days (for example, 131 killed in the Kokkilai-Kokkuthoduvai massacre on 15 December 1984 and 226 in the Eastern University massacre on 23 and 24 May 1990, while 155 were killed in the Navali St. Peters' Church massacre on 9 July, 1995).<sup>7</sup>

The carefully documented evidence, which includes graphic eye witness accounts, affirms that these atrocities were committed with the intent to physically eliminate Eelam Tamils on the basis of their group identity. The state impunity provided to perpetrators further confirms that these acts of killing formed part of a calculated state policy implemented in the name of a counterinsurgency campaign. The methods employed in such campaigns, including rounding up Tamil villages and killing unarmed men, women and children; gunning down Tamil passengers who were separated from the rest after buses were stopped at road blocks manned by the state military; and abducting internally displaced people before disappearing them demonstrate intentionality and deliberate victimisation.

Extra-judicial executions (for example, the killing of 5 students in Trincomalee and 17 aid workers of Action Contre la Faim in Muttur) and selective assassinations (including prominent journalists, parliamentarians, priests, civil society leaders killed between 2004 and 2006) were carried out with absolute impunity even before the large scale military offensives of the state armed forces started in the east. The mass graves discovered in Natpiddymunai in the east (September 1990) as well as in Chemmani, Jaffna (July 1998), and Mirusuvil in the north (December 2000) where hundreds of bodies were buried stand out as stark examples.<sup>8</sup>

The detailed evidence and witness statements submitted to the Dublin Tribunal in January 2010 confirmed the widespread and systematic nature of the atrocities, and that they escalated in the last phase of the war starting in 2006. In an extremely shocking pattern, at least 30 attacks on permanent and makeshift hospitals in the combat area carried out by the state military after December 2008 were documented by the international rights group Human Rights Watch.<sup>9</sup>

The genocidal process reached its climax from September 2008 to May 2009 – the Mullivaikkal extermination –with a reported 146,679 victims unaccounted for and more than 70,000 people feared dead (some sources have higher figures).

This list of massacres does not even include various murders and disappearances committed throughout this period, aimed at systematically eliminating civil society leaders, journalists, political representatives,

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7. NESOHR, . "Lest We Forget: Massacres of Tamils, 1956-2001." The North-East Secretariat On Human Rights. 14 Aug 2007. retrieved from. <[http://nesohr.org/wp-content/uploads/HumanRightsReports/Lest\\_We\\_Forget.pdf](http://nesohr.org/wp-content/uploads/HumanRightsReports/Lest_We_Forget.pdf)>

8. NESOHR, . "Lest We Forget: Volume II" The North-East Secretariat On Human Rights. 25 Aug 2008. retrieved from <[http://www.nesohr.org/files/Lest\\_We\\_Forget-II.pdf](http://www.nesohr.org/files/Lest_We_Forget-II.pdf)>

9. HRW, . "Sri Lanka: Repeated Shelling of Hospitals Evidence of War Crimes." Human Rights Watch, 08 May 2009. retrieved from <<http://www.hrw.org/news/2009/05/08/sri-lanka-repeated-shelling-hospitals-evidence-war-crimes>>

grassroots political activists and ordinary civilians which would make the death toll considerably higher than those figures in the list referred to above.

From May 2009 onwards, after the Mullivaikal campaign, the facts will be analysed under the accusation that an ongoing genocide against the Tamils continues taking place in the north and east of Sri Lanka.

### **5.1.3.- Historical understanding of social processes**

The memory of Nelson Mandela, whose life has been celebrated worldwide for its unique symbolic and political significance during the session of this Tribunal, is the most appropriate reminder of the approach needed to look at what happened in Sri Lanka.

Like Mandela and the ANC, the Eelam Tamil national group tried to defend its identity and its self-determination, using nonviolence inspired by Gandhi. This non-violent political action continued for two decades after independence. But when the mass political and parliamentary protests were met with escalating violence by the Sri Lankan state, Tamil youth organised themselves into an armed guerrilla force. This armed movement, the LTTE being the dominant force, gained mass popular support after the 1983 Black July anti-Tamil pogroms. Although known for its unacceptably violent acts, the LTTE could not be accurately characterized as a “terrorist organization”. “Terrorism” does not have a definition in international law, and is in fact used to obscure the "recourse to rebellion as a last resort", recognized in the Preamble of the Universal Declaration of Human Rights. The decision of the European Union, under “high pressure from the US and Great Britain”<sup>10</sup> to characterise the LTTE as a terrorist group during the peace process that the EU itself had promoted and helped to underwrite, provoked the rupture of the process of negotiations and facilitated the restarting and the acceleration of the genocidal process.

Nelson Mandela and the ANC have shown that movements classified as “terrorist”, because of their rebellion against the terrorism and the denial of collective rights by a state, can develop in accordance with their identity as liberation forces, transforming themselves into political entities recognized by the international community.

### **5.1.4) The legal elements of the Crime of Genocide**

Considering that genocide can be better understood as a process including different stages, this Tribunal will make a joint analysis of the first two charges made by the prosecution:

1. In the island of Sri Lanka a Genocide is being committed against the Tamil people in the north and east of the island. The process of the Genocide has occurred in stages and is ongoing.
2. The Sri Lankan state and its armed forces are guilty of carrying out the crime of Genocide against the Tamil people.

According to the United Nations Genocide 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: killing members of the group; causing serious bodily or mental harm to members of the group; deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; imposing measures intended to prevent births within the group; forcibly transferring children of the group to another group”.

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10. Statement by the head of the Sri Lanka Monitoring Mission. Major General Ulf Henricsson, 23 March 2007, Französische Friedrichstadtkirche, Berlin. retrieved from <[http://www.friedenfuersrilanka.de/index.php?option=com\\_content&task=view&id=19&Itemid=27](http://www.friedenfuersrilanka.de/index.php?option=com_content&task=view&id=19&Itemid=27)>

#### 5.1.4.1) The acts

We consider that the evidence has established, beyond any reasonable doubt, that the following acts were committed by the Government of Sri Lanka.

##### (a) Killing members of the group

During the first session of the Tribunal in Dublin in January 2010, a substantial amount of evidence was submitted detailing killings and massacres committed in the final phase of the war against the Eelam Tamil people. The Bremen Session looked into further documentation of 149 massacres starting from June 1956 (Inginiyagala massacre) to June 2008 (Puthukuddiyrippu bombing) in which in total at least 10,617 people were killed. It is important to take note of the fact that even by the beginning of 1986, the "Sri Lankan forces had been killing an average of 233 Tamil civilians every month or about 7 a day"<sup>11</sup> in the north-east of the island. A gradual escalation of the pattern of killing was reflected in documents submitted to the Dublin session of the Tribunal focusing on the final phase of the war, which revealed that "33 people were killed each day at the end of January 2009, a number that jumped to 116 by April."<sup>12</sup> During the final weeks of the state military onslaught, UN sources were quoted saying that "the toll surged, with an average of 1,000 civilians killed each day until May 19", 2009.<sup>13</sup>

In addition to the above mentioned massacres, indiscriminate shelling and the strategy of herding civilians into so-called "No Fire Zones" for the purpose of large scale killings, targeted assassinations to eliminate outspoken Tamil civil leaders who were capable of articulating the Sri Lankan genocide project to the outside world also demonstrate a calculated strategy employed by the state. Such selective assassinations include the killings of Fr. George Jeyarajasingham (13 December 1984), Fr. Mary Bastion (6 January 1985), Kumar Ponnambalam (5 January 2000), Chandranehru Ariyanayagam (7 February 2005), Darmaratnam Sivaram (28 April 2005), Joseph Parajasingam (24 December 2005), Vanniasingam Vigneswaran (7 April 2006), Sinnathamby Sivamaharaja (20 August 2006), Nadaraja Raviraj (10 November 2006), Prof. Sivasubramaniam Raveendranath (15 December 2006), K Sivanesan (6 March 2008), Fr. M X Karunaratnam (20 April 2008), Fr. Mariampillai Sarathjeevan (18 May 2009) among many others.

The same motive can be identified when scrutinising the killings of media personnel able to report and document atrocities. Among 39 journalists and media workers killed by the armed forces or state sponsored paramilitaries within the period between 2004 April and January 2010, at least 35 were Tamils (89.7%).<sup>14</sup>

##### (b) Causing serious bodily or mental harm to members of the group

As confirmed by the International Criminal Tribunals, "causing serious bodily or mental harm' (...) is understood to mean, inter alia, acts of torture, inhumane or degrading treatment, sexual violence

11. The figures were first published by Jaffna based English language weekly Saturday Review on 17 January 1986 based on the records of citizens' committees throughout the north-east. <<http://www.uthr.org/SpecialReports/spreport5.htm>>

12. Ravi Nessman, "UN says 6,500 Tamil civilians killed in Sri Lanka." Star, 24 April 2009 [Associated Press], retrieved from <[http://www.thestar.com/news/world/2009/04/24/un\\_says\\_6500\\_tamil\\_civilians\\_killed\\_in\\_sri\\_lanka.html](http://www.thestar.com/news/world/2009/04/24/un_says_6500_tamil_civilians_killed_in_sri_lanka.html)>

13. B. Farmer, "Sri Lankan army accused of massacring 20,000 Tamil civilians in final assault.." Telegraph, 29 May 2009, retrieved from <<http://www.telegraph.co.uk/news/worldnews/asia/srilanka/5405085/Sri-Lankan-army-accused-of-massacring-20000-Tamil-civilians-in-final-assault.html>>

14. Journalists for Democracy in Sri Lanka. Media workers killed in Sri Lanka (2004 - 2010), June 2012. retrieved from <<http://www.jdslanka.org/index.php/killed-media-workers>>

including rape, interrogations combined with beatings, threats of death, and harm that damages health or causes disfigurement or injury. The harm inflicted need not be permanent".<sup>15</sup>

At the time of drafting the Genocide Convention, the world was even more than today a male-dominated place, and rape and sexual violence were not among those acts considered as “serious bodily or mental harm”. Only several decades after the Convention was adopted that rape was recognized as a form of torture, confirming that sexual violence causes “serious mental harm”, and only in 1998 was rape, when integral to genocide, declared to be an act of genocide.<sup>16</sup> When acts of sexual violence are employed on a target protected group with state impunity for more than five decades and are used extensively, as shown below in the case of the Tamils of Sri Lanka, it is a clear case of genocide under the Convention.

The Tribunal took note of Sri Lankan state policies that caused serious bodily and mental harm to members of the Eelam Tamil population. Mass displacement, with consequent physical and mental harm had been a permanent characteristic of the north-east provinces throughout the whole period of the war, spanning well over 30 years. Forced starvation, food and medicine embargos, restrictions on livelihood and basic humanitarian needs also greatly contributed in creating appalling conditions in those areas.

Both in the Dublin and Bremen sessions, the Tribunal heard compelling evidence of sexual violence unleashed against Eelam Tamil women, which had caused tremendous and sustained physical and mental trauma for victims. In many cases the victims were killed after being sexually assaulted by the members of the state security forces, as was evident in the cases of Krishanti Kumaraswamy (7 August 1996), Arumaithurai Tharmaletchumi (11 February 1996), Murugesapillai Koneswary (17 May 1997), Ida Carmelitta (12 June 1999), Sarathambal Saravanbavananthakurukul (28 December 1999), Wijikala Nanthan (19 March 2001), Thambipillai Thanalakshmi (7 July 2001), Ilayathamby Tharsini (16 December 2005), Mary Madeleine (8 June 2006), Premini Thanuskodi (30 June 2006), Isaipriya alais Shoba (May 2009) and Santhakumari Krishnapillai (10 July 2011).

A detailed report published by Human Rights Watch in 2013, exposes “rape and other sexual violence committed by members of the Sri Lankan security forces from 2006-2012 against women and men in state custody. It documents 75 cases of rape—31 of men, 41 of women, and 3 of boys under age 18—which the evidence strongly suggests were perpetrated by members of the state security forces.”

The report said: “Sexual violence, as with other serious abuses committed by Sri Lankan security forces, was committed against a backdrop of deeply entrenched impunity....The Sri Lankan Supreme Court ordered compensation and costs in a fundamental rights application to be paid to Yogalingam Vijitha, a 27-year-old Tamil woman from Jaffna district, who was tortured and raped by police officers with a plantain tree flower while detained from June 21-27, 2000, at Negombo police station near Colombo. However, no prosecutions were carried out.

“Numerous cases of rape reported in a letter by the UN Special Rapporteur on Torture in 1997 went similarly unpunished. The cases include the 17 March 1997, rape of Velan Rasamma and her sister, Velan Vasantha, at their home in Mayilampaveli Colony, Batticaloa district, by four soldiers from a nearby army camp who were said to have forced their way into the victims’ home. Complaints were made to the local police at Eravur and to the joint operations commander, but they declined to initiate

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15. International Criminal Tribunal for the former Yugoslavia (ICTY), Brdjamin (Trial Chamber), 1 September 2004, para 690; Stakic, 31 July 2003, para 516.

16. International Criminal Tribunal for Rwanda (ICTR), Akayesu, 2 September 1998, para 598.

prosecutions. In another case in Batticaloa, Murugesupillai Koneswary was reportedly subjected to harassment by local police officers after she complained that officers had stolen timber from her house. On 17 May 1997, alleged police officers entered her home and raped her, then detonated a grenade at her genitals that caused her death. No one was convicted for the crime.”<sup>17</sup>

The physical harm caused by the state military onslaught also remains well documented.

According to media reports “up to 30,000 Tamil civilians have been left severely disabled by Sri Lankan army shelling in the so-called 'no-fire zone' during the final military onslaught. One such report quoted an aid worker who claimed that ‘conditions there and at other restricted camps in the north were the worst he had seen in a 20 year career of helping refugees in war zones around the world.’”<sup>18</sup>

The Tribunal is of the opinion that the Sri Lankan state employed a calculated counterinsurgency policy, which was exemplified by large scale land confiscation in the north east and the generation of large numbers of refugees. Such forced displacement imposed on the population throughout the war left deep psychological scars on the minds of Eelam Tamils as it deprived them of any sense of normal life. For example, as at December 2000, in Jaffna District alone, at least 40.2% of the population remained internally displaced.<sup>19</sup> But even three years after the war ended, in October 2012, large numbers of landless Internally Displaced Persons (IDPs) lived in 42 remaining IDP camps or in 11 closed camp locations in Jaffna<sup>20</sup> which remain intact to date.

The Tribunal also finds that the continuous displacement and endless trauma caused by protracted war had a devastating impact on the minds of the younger Eelam Tamil generations. “The loss of home, a strange environment, the breakdown of family ritual, separation from parents, from familiar neighbourhood and environment, and from school and friends, the loss of toys and treasures, and crowded and strange accommodation are all likely to be stressful for the child. ....In the civil war that has been in progress in north east Sri Lanka for almost two decades children have been traumatised by common experiences such as shelling, helicopter strafing, round ups, cordon and search operations, deaths, injury, destruction, mass arrests, detention, shootings, grenade explosions, and landmines.... A detailed Canadian study of children in the Eastern Province of Sri Lanka found considerably more exposure to war trauma and psychological sequel in ethnic minority Tamil children.”<sup>21</sup>

The long term mental harm caused by the military onslaught on Eelam Tamils had been further confirmed by many humanitarian organisations including Médecins Sans Frontières who had worked in Sri Lanka since 1986: “A substantial number of participants had been directly exposed to war. Many had witnessed attacks on their village, aerial bombing, mortar fire, cross fire, and instances of torture, and had seen wounded people, and people being burnt in their houses. 20 (12%) had been attacked, 28 (18%) arrested or kidnapped, 27 (17%) taken hostage or detained, 28 (17%) maltreated by police or army personnel, and 17 (11%) tortured....Almost all had lost their homes or property (157, 97%) and faced starvation (152, 94%). 88% (142) described a constant feeling of being unsafe....Conflict and

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17. Human Rights Watch, "We Will Teach You a Lesson" : Sexual violence against Tamils by Sri Lankan security forces, . (2013). . (p.18-19) retrieved from <[http://www.hrw.org/sites/default/files/reports/srilanka0213webwcover\\_o.pdf](http://www.hrw.org/sites/default/files/reports/srilanka0213webwcover_o.pdf)>

18. D. Nelson, “Up to 30,000 'disabled' by Sri Lankan shells.” The Telegraph, 24 May 2009,. retrieved from <<http://www.telegraph.co.uk/news/worldnews/asia/srilanka/5378047/Up-to-30000-disabled-by-Sri-Lankan-shells.html>>

19. N. Sivarajah, Nutrition status of women and children in Jaffna. Tamil Times, XX (5), May 2001, p.21

20. “Sri Lanka: a hidden displacement crisis”. Internal Displacement Monitoring Centre, 31 October 31 2012, p.13. retrieved from <[http://www.internal-displacement.org/8025708F004BE3B1/\(httpInfoFiles\)/FCD38BA17999B30CC1257B1D002D88C7/\\$file/Sri Lanka - A hidden displacement crisis - 31 October 2012.pdf](http://www.internal-displacement.org/8025708F004BE3B1/(httpInfoFiles)/FCD38BA17999B30CC1257B1D002D88C7/$file/Sri%20Lanka%20-%20A%20hidden%20displacement%20crisis%20-%2031%20October%202012.pdf)>

21. D. Somasundaram, “Suicide bombers of Sri Lanka”, Asian Journal of Social Science, 38(3), 2010, p.416–441.

violence inevitably results in the loss of loved ones, and 12 (7%) of participants had lost their partner, 14 (9%) a child, 20 (12%) parents, 29 (18%) a sibling, and 16 (10%) a grandparent. More than a third had lost someone to whom they were close. Some had witnessed these deaths—16 (10%) had witnessed the death of their child or a child in their care. Around half (78, 48%) had been separated from family members. 39 people (24%) reported that someone in the family had attempted suicide.... It would be difficult to imagine a group of people suffering more from the psychological trauma of war. They have been the direct victims and witnesses of war and human rights abuses, they have been cut off from employment and the hope of self-reliance, and remain confined to squalid conditions that amplify the psychological trauma of the past and exacerbate mental health problems.”<sup>22</sup>

The Tribunal had also taken notice of post 2009 developments concerning mental trauma of the Eelam Tamil population who survived the final carnage. Apart from the eye witnesses who presented detailed testimony before the two sessions of the Tribunal in Dublin and Bremen, a substantial amount of documentary evidence was submitted to the Tribunal proving the extent of the psychological impact of the state policies on the surviving population, exemplified by a recent study carried out in the north . “The prevalence of PTSD (13%), anxiety (48.5%), and depression (41.8%) symptoms among currently displaced Jaffna residents is more comparable with postwar Kosovars and Afghans....Approximately 68% of Jaffna residents experienced at least 1 trauma event and most individuals experienced multiple traumas (mean, 2.76 trauma events). A dose-response relationship between the number of trauma events and psychiatric morbidity was evident. Chronic exposures to trauma events corresponded with higher levels of PTSD, anxiety, and depression symptoms and were significantly associated with displacement status.”<sup>23</sup>

While it was during the armed-struggle phase that the most gruesome violations were inflicted, reports indicate that some of these persist even in the present post-war phase.

#### 5.1.4.2) Special intent (*dolus specialis*)

The “specific intent” of destruction of a protected group in whole or in part, required under the Genocide Convention, is rarely proved by direct explicit evidence. Hence, according to the International Criminal Tribunals: "... proof of specific intent ... may, in the absence of direct explicit evidence, be inferred from a number of facts and circumstances, such as the general context, the perpetration of other culpable acts systematically directed against the same group, the scale of atrocities committed, the systematic targeting of victims on account of their membership of a particular group, or the repetition of destructive and discriminatory acts.”<sup>24</sup>

Indeed, it is sufficient to prove genocidal intent through “circumstantial evidence”<sup>25</sup> , for example:

- (a) The general and widespread nature of the atrocities committed;

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22. Kaz de Jong, , Maureen Mulhern et al. "Psychological trauma of the civil war in Sri Lanka." Doctors Without Borders, 27 Apr 2002. retrieved from <<http://www.doctorswithoutborders.org/publications/article.cfm?id=1397>>

23. 23. Farah Husain, Mark Anderson, Barbara Lopes Cardozo, Kristin Becknell et al. "Prevalence of war-related mental health conditions and association with displacement status in postwar Jaffna District, Sri Lanka", Journal of American Medical Association. 306.5, August 2011: 522 - 531. retrieved from <<http://jama.jamanetwork.com/article.aspx?articleid=1104178&resultClick=3>>

24. ICTY, Jelisić, "Appeals Judgment ", IT-95-10-A, 5 July 2001, para. 47. See also ICTR, Gatete, "Judgment", ICTR-2000-61-T, 31 March 2011, and para. 583.IT-95-10-A, 5 July 2001, para. 47.

25. ICTR, Nyiramasuhuko et al., "Judgment", ICTR-98-42-T, 24 June 2011, para. 5732 (footnote omitted). See also ICTR, Bizimungu et al, "Judgment", ICTR-99-50-T, 30 September 2011, para. 1958; ICTR, Ndahimana, "Judgment", ICTR-01-68-T, 30 December 2011, para. 804.

- (b) The general political doctrine giving rise to the acts;
- (c) The scale of the actual or attempted destruction;
- (d) The methodical way of planning the killings;
- (e) The systematic manner of killing and disposal of bodies;
- (f) The discriminatory nature of the acts;
- (g) The discriminatory intent of the accused.<sup>26</sup>

The systematic and widespread nature and the scale of the atrocities committed were established in the First Session of the People's Tribunal on Sri Lanka when it found the Sri Lankan state guilty of crimes against humanity.

Overt statements by the main actors in the Mullivaikal campaign, before, during and even after the campaign, provide evidence confirm such genocidal intent against the Eelam Tamils. Indeed, even from the earliest days of post-independent Sri Lanka up until today, on numerous occasions such intent was revealed by senior civilian, political and military leaders of the Sri Lankan state -- most frequently through hate speech, school textbooks and media, often couched in terms of mythological historical constructions.<sup>27</sup>

As examples we can quote the following:

“Today you are brought here and given a plot of land. You have been uprooted from your village. You are like a piece of driftwood in the ocean; but remember that one day the whole country will look up to you. The final battle for the Sinhala people will be fought on the plains of Padaviya. You are men and women who will carry this island's destiny on your shoulders. Those who are attempting to divide this country will have to reckon with you. The country may forget you for a few years, but one day very soon they will look up to you as the last bastion of the Sinhala.”

*The first Prime Minister D.S. Senanayake (1947 – 1952) addressing Sinhala colonists being settled in the Tamil inhabited east in the early days of Ceylon's independence, cited in H. M. Gunaratne, For a Sovereign State. Colombo: Sarvodaya Publications, 1988, p.201.*

“If parity is granted, it will mean disaster to the Sinhalese race....Tamil with their language and culture and the will and strength characteristic to their race...would come to exert their dominant power over us.”

*Prime Minister SWRD Bandaranaike, 13 November, 1955 cited in Ceylon Daily News, 14 November 1955.*

“We cannot allow the Federal Party supporters in the North and East, the estate workers in the plantations and their friends and allies in other parts of the country to dictate to the government with threats of paralyzing the economy, if it does not yield to their pressure... This is the hour of

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26. ICTY, Sikirica et al., "Judgment on Defence Motions to Acquit", IT-95-8-T, 3 September 2001, para. 46-61.

27. The Tribunal recalls that the term as such does not prohibit a conviction for genocide in a case which the perpetrator was also driven by other motivations that are legally irrelevant in this context. (ICTY, Goran Jelusic, AJ para. 49, citing Dusko Tadic, Appeal Judgment, Case No. IT-94-1-A, 15 July 1999, para. 269.)

everyone to unite against the enemy of the nation and of the people. You must be ready to answer the call of duty.”

- *Prime Minister Sirimavo Bandaranayake (1960 – 1965 & 1970 – 1977), in his 26 April 1961 address to the nation against the the non-violent direct action organized by Tamil Federal Party demanding language rights, cited in S. Ponniah, Satyagraha and the Freedom Movement of the Tamils in Ceylon. Jaffna: Kaniab, 1963, p182-186.*

“I am not worried about the opinion of the Tamil people... now we cannot think of them, not about their lives or their opinion... 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.”

- *President J.R. Jayawardane (1977 – 1988), cited in Daily Telegraph, 11 July 1983.*

“The majority community in this country are Sinhalese. Therefore the Sinhalese should govern the country. They governed the country in the past and will do so in the future. The minorities should assist and guide them...If we say that Eelam should be given to the North and the East and ask the Tamil people in the South to go there what would happen? What would they eat? Only the sand of the earth...If the majority (Sinhala) community is not divided, the minority communities would twine around the majority like the vines around a sturdy tree.”

- *President D.B. Wijetunge (1993 – 1994), 5 February 1994 while addressing election rallies in the Central Province, cited in Sunday Observer, 6 February 1994*

“I strongly believe that this country belongs to the Sinhalese but there are minority communities and we treat them like our people..... We being the majority of the country, 75%, we will never give in and we have the right to protect this country ... They can live in this country with us. But they must not try to, under the pretext of being a minority, demand undue things.”

- *General Sarath Fonseka, the Commander of the Sri Lanka Army (December 2005 – July 2009) cited in National Post, 23 September 2008.*

“We have removed the word minorities from our vocabulary three years ago. No longer are the Tamils, Muslims, Burghers, Malays and any others minorities. There are only two peoples in this country. One is the people that love this country. The other comprises the small groups that have no love for the land of their birth. Those who do not love the country are now a lesser group.”

- *President Mahinda Rajapaksa (2005 - ) during the ceremonial opening of the Sri Lankan Parliament on 19 May 2009, cited in The Sunday Leader, 24 May 2009*

“After defeating terrorism, no country in the world had provided space to the political front of terrorism. They have taken legal and political actions to defeat such political fronts. But the Sri Lankan state did not take any such action against the Tamil National Alliance. The consequences of it are now reflected through the results of the Northern Provincial Council election. If the Tamil National Alliance is preparing to challenge the Sri Lankan state, people and its sovereignty nationally and internationally using the political victory achieved in Northern Province, the Tamil society and their future generation will have to revisit Nandikadaal lagoon.<sup>28</sup>”

- *Patali Champika Ranawaka, Minister of Technology, Research and Atomic Energy and the leader of National Heritage Party (JHU) in a press statement following the election victory of the Tamil National Alliance, 23 September 2013.*

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28. Nandikadal lagoon was the site of the final military onslaught in May 2009 where many civilians and LTTE fighters alike, including their leader Velupillai Prabhakaran, were killed.

### 5.1.4.3) Group

Regarding the characterization of the victims as belonging to a particular national, ethnical, racial or religious group population, the Tribunal specifies that the victims are in this case the Eelam Tamils as a national group. The Tribunal considered carefully whether to determine the target group as “part of the Tamil national group” (as proposed in the Accusation) or, as eventually decided, to find that genocide had been committed against the “Eelam Tamils as a national group”.

According to both the objective and subjective approaches of the group accepted by the International Criminal Tribunals and the International Court of Justice, the protected group should be ‘stable and permanent, sharing a common national identity’ as with the Eelam Tamils (objective approach) ; it is also perceived as such by the members of the group themselves (subjective approach). The Eelam Tamil designation refers to the Tamils in the north and east of the island, and it is important to note that the Eelam Tamil identity pre-dates the armed struggle, emerging progressively and with increased intensity in recent years, indeed as a result of the oppression that compelled the Tamils to assert their right to self-determination in their traditional homeland. While the word “Eelam” had earlier been used by Tamils as the name for the whole of the island, it became increasingly used to denote the area and people of the desired independent north and east.

The documents and testimony presented to the Tribunal show clearly that the victim of this genocidal process is a group that has sought to preserve and protect its collective identity, through the claim of its right to self-determination. The former Secretary-General of the United Nations wrote, in his letter to the President of the Security Council, on 24 May, 1994: “It is the element of intent to destroy a designated group in whole or in part, which makes crimes of mass murder and crimes against humanity qualify as genocide. To be genocide within the meaning of the Convention, the crimes against a number of individuals must be directed at their collectivity or at them in their collective character or capacity.”<sup>29</sup>

In the same way, the Special Rapporteur on the draft Code of Offences against the Peace and Security of Mankind, in his fourth report, declared: A national group often comprises several different ethnic groups.... The concept of nation therefore does not coincide with the ethnic group but is characterized by a common wish to live together, a common ideal, a common goal and common aspirations.”<sup>30</sup>

It is clear that the main target of this particular genocide has been the Eelam Tamil national group, even if it did not constitute the whole of the Tamil group, but that part of it that expressed the will of living in common, with common ideals, goals and aspirations.

Its condition as a national minority claiming protection of its collective characteristics has made the group a target of persecution by the hegemonic power, which requires its exclusion as a collectivity and its submission to the dominant cultural, political, social, economic and religious patterns.

### 5.1.5) The continuity of the genocide through ongoing acts of genocide

As we have mentioned above, this Tribunal understands genocide as a process. Consequently, the genocide could have a continuity expressed in ongoing acts of genocide. If, during the process of extermination, the most generalized acts were killing members of the group (article 2.a UNGC), when the Sri Lankan forces took control of the Eelam Tamil territory after the end of the war, some of the other acts enumerated in Article 2 of the Genocide Convention were made possible.

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29. S/1994/674, May 24, 1994, par.97.

30. A/CN.4/398, March, 11th, 1986, par. 57.

***Regarding Article 2.b. Causing serious bodily or mental harm to members of the group***

These acts require the proof of a result, a harm.<sup>31</sup> They include “torture (...), sexual violence including rape, interrogations combined with beatings”. The International Court of Justice concluded that torture inflicted in “detention camps” meets the material element of article II.b.<sup>32</sup>

In the present case, the evidence presented before the Tribunal has shown through documentation and testimony by victims and witnesses that torture perpetrated by state actors within both the military and police has continued in Sri Lanka after the conflict ended in May 2009 and is still occurring. Sexual violence is widespread against former combatants and female relatives of the disappeared. Since 2009, civilians have suffered rape and other sexual violence committed by members of the Sri Lankan security forces, including against women and men in state custody, as documented by Human Rights Watch, whose report also refers to this practice as “widespread and systematic” and quotes the UN High Commissioner for Refugees report of December 2012 drawing attention to the need for protection of Sri Lankan asylum seekers abroad, noting also that “sexual violence, including but not limited to rape, against Tamil men in detention has also been reported recently, including reports of cases perpetrated in the post-conflict period.”<sup>33</sup>

In the same way, reports presented before the Tribunal’s in camera sessions revealed cases of torture after 2009, certified by photographs and other forensic evidence.

The totality of the facts presented as evidence proves that these acts are not isolated and therefore satisfy the requirement established by the international tribunals to be considered as genocidal conduct.<sup>34</sup>

***Referring to the conduct of article 2.c. Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part***

Article II. c refers to methods that do not kill immediately the members of the group.<sup>35</sup> This includes, “inter alia, subjecting a group of people to a subsistence diet, systematic expulsion from homes and the reduction of essential medical services below minimum requirement.” The ICTR has considered that “lack of proper housing, clothing, hygiene and medical care or excessive work or physical exertion” fulfills the material element of article 2.c.<sup>36</sup>

Similarly, the International Criminal Tribunals have stated that systematic expulsions of the victims from their homes constitutes a mean of inflicting conditions of life calculated to bring about the physical destruction of a protected group.<sup>37</sup>

According to evidence presented to the Tribunal, private lands belonging to Eelam Tamils are being confiscated by the Sri Lanka Government. A 2009 report, denounces “Government devised strategy

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31. ICTY, *Branin Trial Judgment*, 1 September 2004, para. 688; *Stakic Trial Judgment*, 13 July 2003, para. 514).

32. International Court of Justice (ICJ), *Case concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*. Judgment of 26 February 2007, para. 319).

33. HRW, “We Will Teach You a Lesson”, Human Rights Watch, February 2013. retrieved from <[http://www.hrw.org/sites/default/files/reports/srilanka0213webwcover\\_0.pdf](http://www.hrw.org/sites/default/files/reports/srilanka0213webwcover_0.pdf)>

34. ICTY, *Popovic et al. Trial Judgment*, 10 June 2010 (henceforth *Popovic et al.*, para. 829.)

35. ICTR, *Akayesu*, (Trial Chamber, 2 September 1998, para. 505-506)

36. ICTR, *Kayishema and Ruzindana*, (Trial Chamber), 21 May 1999, para. 115-116).

37. ICTR, *Akayesu*, (Trial Chamber, 2 September 1998, para. 506)

of declaring vast areas as military High Security Zone (HSZ) to facilitate the military acquisition of Tamil land ... The HSZ dispossessed the original owners of their land and water resources denying all civilian access, as those 'trespassing' could be subjected to detention, fines or even shot." Finally, "[o]ne of the main implications of large swathes of land and coastal areas being militarily occupied is that a large portion of the district population are denied access to their homes and livelihood practices, in effect rendered as Internally Displaced Persons (IDP). The abundance of IDPs lodging with relatives or friends additionally exacerbates difficulty in terms of livelihood prospects and cost of living on the large section of the Tamil population who provide shelter. Thus these processes target and affect the Tamil population collectively, as entire villages are subjected for similar processes of violence and whole communities are dispossessed and displaced."<sup>38</sup>

The Tribunal noted that, four years since the war ended, the plight of the Eelam Tamil people shows clear signs of continuing deterioration in terms of health, food and social security. The latest data reveals that the 'malnutrition level has reached 50% in North and East while the island-wide rate still stands at 29%. The rates from the districts in North and East as 53% in Batticaloa and 51% in Vanni (comprising 4 districts)... The malnutrition rate is corresponding also with the alarming poverty rate measured at 58.7% in the North and East... The World Food Programme itself has reported in June 2011 that 63% of resettled people were living below the poverty line."<sup>39</sup>

Evidence related to the escalation of militarization, colonisation and forcible imposition of Sinhala Buddhist culture in the Eelam Tamil areas also convinced the Tribunal that the Sri Lankan state intends to deliberately inflict on the group conditions of life calculated 'to bring about its physical destruction' in whole or in part.<sup>40</sup>

Referring to the conduct of the article 2.d. Imposing measures intended to prevent births within the group

According to the facts denounced in a recent report published in October 2013 coercive population control policies are taking place in three villages, namely, Veravil, Keranchi, and Valaipaddu. The field missions carried out by the organization The Social Architects on coercive contraception clinics in Kilinochchi District. "unequivocally conclude that government health workers coerced women into accepting Jadelle", a contraceptive implant.<sup>41</sup>

Further investigation must be conducted in order to confirm if this and other sterilization practices are also taking place in other villages and regions of Sri Lanka or whether they are targeting only Tamil Eelam areas. It should be noted that the insertion of such contraceptive implants would not, in and of itself, attain the requirement of the Genocide Convention for an act Imposing measures intended to prevent births within the group, as a doctor can remove the implant at any time, although The Social

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38. High Security Zones and the Right to Return and Restitution in Sri Lanka : A case study of Trincomalee District. Geneva, Switzerland : Centre on Housing Rights and Evictions, April 2009. Such conduct was also documented in Bhavani Fonseka and Mirak Raheem, Trincomalee High Security Zone and Special Economic Zone. Colombo : Centre For Policy Alternatives, September 2009

39. Alarm over malnutrition in North East." Tamil Net. 28 Oct 2013, retrieved from: <<http://www.tamilnet.com/art.html?catid=13&artid=36777>>.

40. Kirinde, Chandani . "The war as it was." Sunday Times [Colombo] 05 June 2011, retrieved from: <[http://sundaytimes.lk/110605/News/nws\\_20.html](http://sundaytimes.lk/110605/News/nws_20.html)>.

41. The Social Architects, Above the law: violations of women's reproductive rights in Northern Sri Lanka, retrieved from: <<http://groundviews.org/2013/10/11/above-the-law-violations-of-womens-reproductive-rights-in-northern-sri-lanka/>>

Architects assert that “the public health workers clearly failed to honestly discuss removal” or in other instances informed the women that they would have to pay for such removal.

In conclusion, the Tribunal finds that genocide against the Eelam Tamil group is a continuing process, one that has not yet accomplished the total destruction of their identity. The genocidal coordinated plan of actions reached a climax on May 2009, but it is clear that the Sri Lanka Government project to erase the Eelam Tamil identity, corroborated by the above mentioned conduct, shows that the genocide process is ongoing. The genocidal strategy has changed, the killings are being transformed into other forms of conduct, but the intention to destroy the group and its identity remains and continues, through causing serious bodily or mental harm to members of the Eelam Tamil group.

**On the strength of the evidence presented, the Tribunal reached the consensus ruling that the state of Sri Lanka is guilty of the crime of genocide against Eelam Tamils and that the consequences of the genocide continue to the present day with ongoing acts of genocide against Eelam Tamils.**

## 5.2) The charge of Complicity

Having determined that the crime of genocide against the Eelam Tamils was committed by the Sri Lankan state and its armed forces and that genocidal acts are still continuing, the Tribunal now turns its attention to the remaining charges of the Accusation, in which three other States (the United Kingdom, the United States of America and India) are charged with complicity in this crime.

Before addressing the specific charges, the Tribunal first considered the general requirements for state complicity that must be met for such a determination to be made, recalling that these requirements may not precisely be those that would be required for a determination of complicity by individuals under international criminal law.

The Tribunal considered the requirements for determination of state complicity under Article III paragraph (e) of the Genocide Convention, “Complicity in genocide”. The only directly relevant jurisprudence under international law is that made by the International Court of Justice in February 2007 (BH vs. Serbia-Montenegro), in which the Court concluded:

"there is no doubt that ‘complicity’, in the sense of Article III, paragraph (e), of the Convention, includes the provision of means to enable or facilitate the commission of the crime; it is thus on this aspect that the Court must focus. In this respect, it is noteworthy that, although ‘complicity’, as such, is not a notion which exists in the current terminology of the law of international responsibility, it is similar to a category found among the customary rules constituting the law of State responsibility, that of the ‘aid or assistance’ furnished by one State for the commission of a wrongful act by another State". (para. 419)

In this connection, reference should be made to Article 16 of the [International Law Commission]’s Articles on State Responsibility, reflecting a customary rule, which reads as follows:

*“Article 16*

*Aid or assistance in the commission of an internationally wrongful act*

A State which aids or assists another State in the commission of an internationally wrongful act by the latter is internationally responsible for doing so if:

- a) That State does so with knowledge of the circumstances of the internationally wrongful act;  
and
- (b) The act would be internationally wrongful if committed by that State.”

While the Tribunal is not able to charge individuals, and, as stated above, the requirements for a determination of individual responsibility complicity under international criminal law are somewhat different, it may nevertheless be instructive to refer to previous determinations by international criminal tribunals regarding the forms that complicity may take. In particular, we point to the determination of three distinct forms that complicity in genocide might take by the Trial Chamber of the International Criminal Tribunal for Rwanda in *Akayesu*:

- “ -- *complicity by procuring means*, such as weapons, instruments or any other means, used to commit genocide, with the accomplice knowing that such means would be used for such a purpose;
- *complicity by knowingly aiding or abetting* a perpetrator of a genocide in the planning or enabling acts thereof;
- *complicity by instigation*, for which a person is liable who, though not directly participating in the crime of genocide crime [sic], gave instructions to commit genocide, through gifts, promises, threats, abuse of authority or power, machinations or culpable artifice, or who directly incited to commit genocide (para. 536, *emphasis added*).

One further general matter to be considered in these preliminary remarks concerns intent.

The International Court of Justice in *BH vs. Serbia-Montenegro* determined that, in the case of genocide it is additionally necessary for the State to be aware of the specific intent (*dolus specialis*) of the principal perpetrator:

- ... there is no doubt that the conduct of an organ or a person furnishing aid or assistance to a perpetrator of the crime of genocide cannot be treated as complicity in genocide unless at the least that organ or person acted knowingly, that is to say, in particular, was aware of the specific intent (*dolus specialis*) of the principal perpetrator. If that condition is not fulfilled, that is sufficient to exclude categorization as complicity. (para.421)

Having made these preliminary observations, the Tribunal now goes on to consider the charges made in the Accusation against the three other states, and indeed whether any other states may have been and/or are still today complicit in the crime of genocide committed by the Sri Lankan state and its armed forces against the Eelam Tamils.

### 5.2.1) Alleged Complicity of the British state

The Tribunal was presented with documentary evidence and testimony that the British Government was complicit in the crime of genocide against the Eelam Tamils, long before the Liberation Tigers of Tamil Eelam (LTTE) was established in 1976 and right up to the final phase of the Sri Lankan state's decades-long war against the LTTE in May 2009.

On the material evidence presented to the Tribunal, the British Government appears to be guilty of two out of the three distinct forms of complicity in genocide as spelled out in the determination by the Trial Chamber in *Akayesu*, specifically “complicity by procuring means...” and “complicity by knowingly aiding or abetting a perpetrator of a genocide in the planning or enabling acts thereof”.

As early as April 1971, the British Government showed that it was fully aware of the “determination” by Colombo to “eradicate” any insurgents in the then Ceylon. In response to the direct challenge in the House of Commons about the appropriateness of Britain’s arms sales to Sri Lanka (then Ceylon), Foreign Secretary Alec Douglas-Home responded by insisting that “mediation (between Colombo and the JVP) is not required by the Ceylon Government, who are determined, if they can, to eradicate these extreme insurgents in their country”.<sup>42</sup>

The following day, Tam Dalyell MP sent a letter to the Foreign Secretary wherein was argued: “It is not good enough for the Ceylon Government to take the attitude that ‘mediation is not required’. If we make available helicopters, I do not see why we should accept the brush-off. Further, what on earth is meant by your use of the word ‘eradicate’? We really should know a good deal more before supporting any more to ‘eradicate’ anyone, even ‘extreme insurgents’ with the use of British arms”.

On the same day, in a letter to senior civil servants, the Head of the British Foreign and Commonwealth Office South Asian Department elucidated the Government’s strategic rationale behind British arms supplies to the Government of Ceylon:

“from the point of view of both British commercial interests in Ceylon and our general politico-strategic interest the right course is to seek to preserve our influence by maintaining a generally helpful and sympathetic posture: by continuing, as Mr Mackintosh (British High Commissioner in Colombo) advises, to supply such arms and equipment as we can and as we consider to be genuinely needed by Ceylon.”<sup>43</sup>

Historically, and right up to the last phase of the war against the Tamils in May 2009 and to today, irrespective of who is in power in Colombo and other external developments, Britain’s policy towards Sri Lanka, including its internal affairs, has been solely anchored in its dogged pursuit of British strategic and commercial interests. Nothing, not even its awareness that “eradication” is Colombo’s stance towards any internal group that it deems a threat to its Sinhalese unitary state, be they Sinhalese oppositionists or Tamil self-determination seekers, has altered this British policy.

On the eve of Ceylon’s independence, a document marked “Top Secret” produced by the Chief of the Air Staff, the Chief of the Imperial General Staff and Vice Chief of the Naval Staff pointedly warned:

“Although the Ceylon Government should be responsible for internal security, in the event of the situation becoming beyond her capacity to control and our defence interests being threatened, we should reserve the right to introduce forces, and to take action as necessary to protect our interests.”<sup>44</sup>

Britain’s primary strategic interests in Ceylon or Sri Lanka have always concerned assuring access to Trincomalee, a deep sea harbour which is crucial for its Royal Navy. In the wake of the British-French-Israeli invasion of the Suez Canal on 29 October 1956 when London and Colombo were engaged in the negotiations about the withdrawal of Royal Navy facilities from Ceylon, the British Admiralty wrote to the Commonwealth Relations Office thus;

“[to] emphasize that from the naval point of view of it would not be acceptable to be denied the use of Trincomalee for fuelling, ammunitioning and storing after hostilities [with Egypt] had

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42. Hansard HC Deb 26 April 1971 vol 816 cc33-4.

43. The British National Archive FCO 37/787

44. Document prepared for the Cabinet 9 June 1947, marked ‘Top Secret’, reference CP (47) 179. <[http://www.tamilnet.com/img/publish/2013/12/1947\\_06\\_09-CAB:129:19.pdf](http://www.tamilnet.com/img/publish/2013/12/1947_06_09-CAB:129:19.pdf)>

commenced. We might well bring destroyer reinforcements from Singapore and these could not reach Aden without refueling at Trincomalee.”<sup>45</sup>

Again in 1971, the Foreign Secretary for the Cabinet and Defence and Overseas Policy Committee emphasized the vital importance of Sri Lanka to Britain's interests in the following terms:

“So far as the security of the Indian Ocean shipping lanes is concerned, our interest is that powers hostile to us should continue to be denied the use of bases in Ceylon.

In formulating our future policy towards Ceylon we should therefore consider the cost of an actively hostile Ceylon. In terms of its effect on the stability in the sub-continent and on security of the Indian Ocean shipping lanes, this could be damaging to important British interests. My conclusion, therefore, is that we must continue to do what we can to maintain a satisfactory bilateral relationship with the Ceylon Government.”<sup>46</sup>

Maintaining “a satisfactory bilateral relationship” with Colombo would require that Britain aid the central state, and particularly the Sri Lankan armed forces in their avowed mission to eradicate any security threats to the central Sinhalese Buddhist unitary state.

In 1983, when the LTTE's armed resistance had gained much support among the Tamil people, Sri Lankan police requested the UK's assistance in training security troops in 16 different fields, including “para-military [training] for counter-insurgency operations” and “commando operations training”. The British Foreign and Commonwealth Office (FCO) replied, “we should like to help the Sri Lankan Government (discreetly) as much as we can with these courses”.<sup>47</sup>

According to the FCO file entitled “UK Assistance to Sri Lankan Police” (1983), two senior police officials, namely Senior Deputy Inspector General H.W.H.Weerasinghe and Assistant Superintendent K.S. Padiwita, went on a study tour to Belfast in June 1983 “to see at first hand the roles of the police and army in counter-terrorist operations”.<sup>48</sup> In addition, these officers requested a visit to the Special Branch (Metropolitan Police, London) “to learn counterterrorist measures and the activities of the organizations based in the UK agitating for a separate state in Sri Lanka.”<sup>49</sup> Their visit, during which they observed Royal Ulster Constabulary operations against the Irish Republican Army, came one month before the Black July pogrom against Tamils, the episode widely regarded as a key turning point in the escalation of the conflict.

The official website of the Sri Lanka Police Special Task Force records that, in addition to the direct involvement of British government agencies, “an Institution in the United Kingdom known as the “Keeni Meeni Service” (K.M.S.) comprising of British ex-SAS officers provided training to the Special Task Force officers at the very beginning. Among the subjects taught were tactics adopted by riot squads, weapon training, firing practices, counter terrorism search, handling of explosives, mapping and use of compass equipment and first aid. Also the introduction of the world renowned American

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45. The National Archives, UK, DO 35/6571.

46. The National Archive FCO 37/790.

47. UK Assistance to Sri Lanka Police, FSC 382/1, SECRET, <[https://www.dropbox.com/s/2ar7uqfg4beweio/UK-assistance-to-Sri-Lankan-Police\\_1983.pdf](https://www.dropbox.com/s/2ar7uqfg4beweio/UK-assistance-to-Sri-Lankan-Police_1983.pdf)>

48. *ibid.*

49. *ibid.*

made M16 Automatic Rifle. This entitled the Special Task Force to the Green Beret which was awarded to internationally renowned Special Forces personnel".<sup>50</sup>

Britain's assistance to the Government of Sri Lanka in the latter's attempts to build up its security, military, intelligence and police capacity vis-à-vis the LTTE continued right up to the final phase of the war against the Eelam Tamils in May 2009. According to the FCO's own record, "in April 2006, GoSL (Government of Sri Lanka) formally requested UK assistance with Security Sector Transformation (SST) in the following areas: Higher Defence (MOD) Management, Security Policy Development and Intelligence and Policing".<sup>51</sup> A year before the final phase of Colombo's war against the Tamils, the Royal Navy in Britain was training one of President Mahinda Rajapaksa's sons.<sup>52</sup>

**The Tribunal found that UK complicity in the genocide against the Eelam Tamils during the period of the armed struggle and its repression was overt and explicit and qualifies as "aid or assistance' furnished by one State for the commission of a wrongful act by another State", under Article 16 of the International Law Commission's Articles on State Responsibility.<sup>53</sup> Further, the Tribunal views the events of 2009 as the logical manifestation of the structural genocide that had been put in place during the colonial period and in the construction of the newly independent unitary Sri Lankan state.**

### 5.2.2.- Alleged complicity of the USA

The United States of America has had a deep structural relationship with Sri Lanka, starting with a 1951 agreement between the government of Ceylon and the US Information Agency to provide facilities for a Voice of America relay station, in 1983 expanded to become one of the largest in the world and covering an area of 500 acres, with the capacity to reach much of the Asian region.<sup>54</sup>

Since the 1950s, US military reports have identified Trincomalee as a naval/military base deemed to be "available" to them.<sup>55</sup> The 1977 election of the United National Party opened new opportunities for deepened US involvement, albeit covert. In 1982, General Vernon A. Walters, Ambassador at large and former Deputy Director of the CIA, visited Sri Lanka in order to establish an Israeli interests section

50. History of the Special Task Force, <<http://www.police.lk/index.php/special-task-force>>

51. <<http://www.fco.gov.uk/servlet/Front?pagename=OpenMarket/Xcelerate/ShowPage&c=Page&cid=1062157895923>> (This article is no longer found at the above address on the FCO web site, but has been referenced in various sources, including "British State Complicity in Genocide against the Tamil People", Part 2: After 1945, written testimony submitted to the People's Tribunal on Sri Lanka, Bremen, Germany, 7-10, December 2013).

52. Sri Lanka Daily News, 14 January 2008

53. See section 5.2 above.

54. Ramesh Somasundaram, Strategic significance of Sri Lanka, Colombo: Stamford Lake, 2005, p. 137.

55. Maps entitled "Available naval facilities to the US & USSR in the 1950's" and "Available naval facilities to the US & USSR in the 1980's", marked Trincomalee, United States Military Posture FY 1981, compiled by General David C. Jones, Ex-Chief of Staff of the US Air Force and senior military advisor to the President, National Security Council and to the Secretary of Defense, p. 49. The publication of these maps provoked a parliamentary debate in Sri Lanka in which the inclusion of Trincomalee was described by Prime Minister Ranasinghe Premadasa as a "printing error". However, the publication was not withdrawn by the US, and this view of the role of Trincomalee was also noted in a contemporary US newspaper report, "In due course Trincomalee will become a city that will provide rest and recreation facilities," the Washington Post, 25 October 1981.

within the US embassy in Colombo to facilitate Israeli military involvement, including training the Sri Lankan Special Task Force, at a time when Sri Lanka and Israel had broken off diplomatic relations.<sup>56</sup>

The official rationale for providing foreign military training to Sri Lanka states: "The United States and Sri Lanka share a strong interest in the suppression of international terrorism. Sri Lanka has been cooperative in allowing transit through airspace, husbanding of ships and aircraft, and supporting operational missions such as Desert Storm, Desert Shield, and, more recently, Operation Enduring Freedom (OEF) and Operation Iraqi Freedom (OIF)".<sup>57</sup>

Despite limitations on certain types of US military assistance imposed in response to pressures arising from continuing reports of human rights abuses (such as the Leahy vetting process adopted by US Congress<sup>58</sup>), the US continued to provide training to enhance the Sri Lankan government's military capability.

In 1996, after the LTTE had demonstrated newly acquired conventional military capability in its seizure of the Mullaithiv military base, US Special Forces embarked on a series of official military exercises with Sri Lanka, such as "Operation Balanced Style", which focussed on counter-guerrilla warfare.<sup>59</sup>

"A team of elite United States Green Beret commandos have arrived in Sri Lanka to train troops on counter terrorism techniques. This is the third such batch of US troops to arrive under the ongoing "Operation Balanced Style" the Pentagon's military programme to train Sri Lankan troops to fight terrorism that was launched in March, last year. Until then, US military assistance was confined to training for officers under International Military Exchange and Training Programme (IMET). The team's arrival last week assumed added significance not only in view of Wednesday's US Government decision to list the LTTE as a terrorist organization but also because of what Government leaders believe is a campaign in a small section of the media to project that Colombo-Washington relations have taken a nose dive. Lt. Col. Harold Michael Poore, Defence Attaché at the US Embassy, told The Sunday Times 'the US envisage conducting three more joint exercises this year.. These exercises are conducted over a period of 30 days with about 12 to 20 American servicemen,' he said."<sup>60</sup>

A contemporary newspaper report noted the secret nature of this development.<sup>61</sup>

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56. As officially reported on the web site of Israel's Ministry of Foreign Affairs on the re-establishment of diplomatic relations in May 2000, "Israel and Sri Lanka had had many ups and downs in their relations ever since they had established diplomatic ties in the late 1950s. Sri Lanka had broken off diplomatic ties on a number of occasions, but later requested Israeli assistance in certain areas, mainly security, in view of the ongoing struggle against the Tamil Tigers." Retrieved from <<http://mfa.gov.il/MFA/ForeignPolicy/MFADocuments/Yearbook13/Pages/108%20%20Joint%20communiqu-eacute-%20regarding%20the%20re-esta.aspx>>

57. Foreign Military Training: Joint Report to Congress, Fiscal Years 2006 and 2007, Bureau of Political-Military Affairs, Volume I, August 2007, p.141

58. "An overview of the Leahy vetting process", on the Humanrights.gov web site managed by the Office of Policy Planning and Public Diplomacy, in the Bureau of Democracy, Human Rights and Labor, of the U.S. Department of State. <<http://www.humanrights.gov/2013/07/09/an-overview-of-the-leahy-vetting-process/>>

59. Athas, I. "How 2 brave soldiers saved minister". Sunday Times. 07 July 1996, Retrieved from <<http://www.sundaytimes.lk/960707/sitrep.html>>

60. Jansz, F. "US troops to help counter LTTE", Sunday Times, 12 October 1997 Retrieved from <<http://www.sundaytimes.lk/971012/frontm.html>>

61. "Unlike most joint military exercises, the Pentagon has not publicized the Sri Lanka mission. It has not been mentioned in Sri Lankan newspapers, which are heavily censored by a government sensitive about human-rights abuses laid at the feet of its military." - Kaufman, M. "War-torn Island Gets U.s. Advisers" philadelphia Inquirer, 23 June 1996, Retrieved from <[http://articles.philly.com/1996-06-23/news/25630233\\_1\\_tamil-tigers-tamil-eelam-liberation-tigers](http://articles.philly.com/1996-06-23/news/25630233_1_tamil-tigers-tamil-eelam-liberation-tigers)>

And, just as the LTTE was about to gain control of the Vanni in 2000, the US launched “Operation Flash Style”, in which several US military teams provided training to the Sri Lanka military. Apart from the US Navy SEAL Team One and its Special Boat Unit, another team from the Special Operations Squadron (6th SOS) of the United States Air Force was engaged in training Sri Lanka Air Force while, “a third team from the US Army Psychological Operations Group trained personnel of the Sri Lanka Army Directorate of Psychological Operations.”<sup>62</sup>

But all this support failed to change the reality on the ground, with the LTTE gaining even further territory and leading the Wickramasinghe Government, elected in 2001, to accept the ceasefire, which was signed the following year.<sup>63</sup> Yet, even during the period of the peace process, US military involvement with the government only deepened further. In March 2002, the US Ambassador to Sri Lanka, Ashley Wills, not only confirmed the provision of training of military units, but also referred to “the donation of military trucks as well as the sale of certain other equipment”.<sup>64</sup> Similar actions and statements detrimental to the smooth implementation of the peace process were made by several other senior US officials, including State Department spokesman Richard Boucher, Assistant Secretary of State for South Asia Christina Rocca and Deputy Secretary of State Richard Armitage. Assistant Secretary Rocca, who visited the island in March accompanied by the Commanding General of the US 3rd Marine Expeditionary Brigade and the III Marine Expeditionary Force, Brigadier-General Timothy Ghormley, openly stated that the “visit was intended mainly to discuss military co-operation, including training.”<sup>65</sup>

In late 2002, just seven months after the ceasefire agreement was signed, a 26-member delegation from the US Pacific Command visited Sri Lanka to make a comprehensive study of the “capabilities, needs and requirements” of the Army, Navy and Air Force. After visiting all the important installations,<sup>66</sup> it noted that the southern portion of Trincomalee harbour was surrounded by LTTE bases. Even though the peace process was in effect, the US team recommended that, as this was the most important base in the country, it should be secured as the basis from which to effectively prosecute the war.

“A high powered United States military team has declared that land areas south of Trincomalee must be secured by the security forces from the Tiger guerrillas if this strategic port is to be protected. Warning that the ‘vulnerable position that currently exists could essentially level the majority of the Sri Lanka Navy fleet,’ the team said ‘without control of this area the defence of Trincomalee harbour will always be a losing battle.’ It has added that ‘the ability to prosecute the war would be detrimentally affected’.”<sup>67</sup>

When the Sri Lankan government renewed the war in July 2006, it indeed commenced operations by attacking the LTTE bases around Trincomalee as per this recommendation of the US military.

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62. Athas, I. 'Situation Report: Operation Flash Style' in the 'Year of War"', Sunday Times, 6 February 2000, Retrieved from <http://www.sundaytimes.lk/000206/sitrep.html>

63. The Ceasefire Agreement, signed on 22 February 2002 between the Government of Sri Lanka and the Liberation Tigers of Tamil Eelam (LTTE), is discussed in the judgment of the first People's Tribunal on Sri Lanka, pp.11-12

64. "US stand on LTTE as terrorist organisation re-iterated". The Island, 09 March 2002, Retrieved from <http://www.island.lk/2002/03/09/news02.html>

65. “US spells out formula for Tiger deban”, Sunday Times, 17 March 2002, Retrieved from <http://www.sundaytimes.lk/020317/frontm.html#fLABEL5>

66. “The cover up of a Tiger build up in Trincomalee”, Sunday Times, 14 September 2003, Retrieved from <http://www.sundaytimes.lk/030914/>

67. Athas, I., “Trinco naval base is vulnerable”, US military warns Lanka”, Sunday Times, 14 September 2003. Retrieved from <http://www.sundaytimes.lk/030914/front/trinco.htm>

In April 2003, after six successive rounds of peace talks, an unexpected suggestion for a consultative meeting in Washington DC was made by the US. As the LTTE had been banned in the US as a “foreign terrorist organization” since 8 October 1997, it therefore could not participate. This US initiative, known as the “Washington Incident”, thereby violated the parity of status between the parties and set in motion the demise of the Peace Process.

Despite knowing that the success of the entire peace process depended on upholding the parity of status between the two negotiating parties as stipulated in the Cease Fire Agreement, the US continuously worked to destabilise the balance by not only itself favouring the Government of Sri Lanka, but also demanding that others, such as the EU, do the same. For example, on 8 December 2003, Assistant Secretary of State for South Asia Christina Rocca, during her meeting with the EU Commission, stressed that “the LTTE must not be treated as co-equal with the GOSL. The one is a designated terrorist group while the other is a legitimate government.”<sup>68</sup>

The EU decision to ban the LTTE, taken on 29 May 2006, was the most devastating blow to the peace process, destroying the ‘parity of status’ and paving the path to a full scale war. This crucial decision, which disregarded the views of the Scandinavian ceasefire monitors<sup>69</sup>, was taken under US pressure, as later was revealed in a parliamentary speech made by Sri Lanka's then Foreign Minister, Mangala Samaraweera<sup>70</sup> and confirmed in leaked US diplomatic cables.<sup>71</sup>

Once the peace process had formally ended in 2006 and the Sri Lankan government renewed the war in earnest, US support escalated, even though Congressional restrictions were still in place.<sup>72</sup> In October 2006, more than 1,000 US Naval personnel participated in “an unprecedented joint US-Sri Lanka military exercise involving the Okinawa-based Marine Expeditionary Force and the Sri Lankan Navy.”<sup>73</sup> In 2006 and 2007 alone, under Foreign Military Training programmes, some 387 Sri Lankan security force officers were trained at a number of war schools and regional centres including the John F. Kennedy Special Warfare School in Fort Bragg, North Carolina and the US Military Intelligence Center in Arizona, Fort Leavenworth military colleges and the American War School in Fort Benning, Georgia at a cost of \$2,528,389.<sup>74</sup>

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68. Cable 03BRUSSELS5593, A/S ROCCA CONSULTATIONS ON SOUTH ASIA WITH EU <<http://wikileaks.org/cable/2003/12/03BRUSSELS5593.html>>

69. Lisbeth Kirk, “Swedish general slams EU for terror listing Tamil Tigers”, EU Observer, 25 August 2006, stating: “The Swedish head of the outgoing Sri Lanka Monitoring Mission (SLMM), retired brigadier general Ulf Henricsson, has slammed the EU for listing the Tamil Tiger rebels in Sri Lanka as terrorists. He said the ruling meant the Sri Lankan government thought it had “carte blanche” to take on the rebels, according to French news agency AFP. Ahead of the decision to list the Tigers as terrorists in May, the Swedish general had warned Brussels in a memo that it could lead to a rise in violence and attacks...”I would say it's a mistake, it was a wrong decision because... the LTTE [Liberation Tigers of Tamil Eelam] and the government have signed the ceasefire agreement as equal partners,” said general Henricsson. ‘If one is suddenly on a terrorist list it's not very difficult to see we're going to run into difficulties - which we have done,’ the Swede said.” Retrieved from <<http://euobserver.com/defence/22264>>

70. Sri Lanka's Ex-Foreign Minister Mangala Samaraweera’s parliamentary speech on 4 April 2012, Retrieved from <<https://www.colombotelegraph.com/index.php/rajapaksa-then-and-now/>>

71. Cable 06OSLO551, SRI LANKA CO-CHAIRS MEETING IN OSLO <<http://wikileaks.org/cable/2006/05/06OSLO551.html>>

72. “U.S. halted military aid to Sri Lanka when battling LTTE terrorism: Does SL need it now?” reporting that the US had been “suspending military aid/support and taking Sri Lanka out of the eligibility list of the Millennium Challenge Corporation Grant from 2006 through 2009”, Gamage, G. Asian Tribune, 19 December 2009. Retrieved from <<http://www.asiantribune.com/news/2009/12/19/us-halted-military-aid-sri-lanka-when-battling-ltte-terrorism-does-sl-need-it-now>>

73. Ferdinando, S. "Marines to land at Hambantota as part of US, Lanka Naval exercise" The Island, 19 October 2006, Retrieved from <<http://www.island.lk/2006/10/19/news28.html>>

74. Foreign Military Training : Joint Report to Congress FY 2006 and 2007, Vol. 1

In 2007, the US entered into a secret military agreement with the Sri Lankan Government, known as the Access and Cross Servicing Agreement (ACSA), at a time when no other Government did so, at a time when human rights violations, including massacres, were ongoing. Explaining the reasons for entering into a defence agreement, a leaked diplomatic cable argues that “Sri Lanka, positioned astride major sea lanes and at the doorstep to India, can play a significant role in military readiness as political and military efforts shift focus on Asia in the new millennium” and further says that “the signing will expand” the US Department of Defense's “capacity and capability to conduct global operations by adding another logistical option in South Asia”<sup>75</sup> According to another leaked diplomatic cable, the US advised Sri Lankan authorities “that we would not release the text of the agreement itself, but had no objections should the GSL decide to do so. We suggested they not release the annexes.”<sup>76</sup>

Such increasing US military support for the Sri Lankan government should be seen against the backdrop of the heavy US military attention directed to South Asia from 2001, the time of US involvement in the war in Afghanistan.<sup>77</sup> Secure access to Trincomalee harbour was seen as essential for the safe placement of US naval/military assets in the Indian Ocean given the limitations in both size and location of the US base at Diego Garcia. Defeat of the LTTE was critically important to this imperative.

Regardless of the widespread belief that the US severed military ties with Sri Lanka due to human rights concerns during the war, leaked diplomatic cables prove otherwise. According to one such cable, dated January 2008, the US Ambassador to Colombo writes “despite our current concerns about the likelihood of intensified conflict and human rights problems, it is important to keep communication lines open and maintain our contacts with the Sri Lankan military. The Sri Lankan military has consistently supported engagement with the U.S. and has welcomed all opportunities for joint exercises and training.”<sup>78</sup>

In the final month of the war, May 2009, as the Sri Lankan government troops were pounding civilians herded into the so-called “No Fire Zones”, the US shared with the Government exclusive satellite images of these areas.

“In a May 5 meeting with President Mahinda Rajapaksa and Foreign Secretary Palitha Kohona, Charge provided satellite images taken since April 27 of new shelling damage within the Government-designated ‘safe zone’ . . . These ‘before and after’ satellite images dated April 27 through May 3 document apparent shelling damage in the “safe zone” even after the April 27 declaration by President Rajapaksa. . . . the President asked [ the Chargé d’Affaires] for an assessment of the current situation, noting wryly, ‘you are probably better informed than I am.’<sup>79</sup>

It is clear that the US had direct and immediate information on the commission of war crimes, crimes against humanity and genocide as they were taking place during the war, yet this had no impact on the

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75. Cable 07COLOMBO303, PRESS COVERAGE FOR SIGNING OF ACQUISITION AND CROSS SERVICING AGREEMENT <<http://wikileaks.org/cable/2007/02/07COLOMBO303.html>>

76. Cable 07COLOMBO1017, GOVERNMENT PLANS TO RELEASE ACSA ANNEXES ON JULY 20, <<http://wikileaks.org/cable/2007/07/07COLOMBO1017.html>>

77. See for example, “New horizons in United States relations with South Asia”, speech by Christina Rocca, US Assistant Secretary of State for South Asia, at 21 April 2004 at the University of Pennsylvania <<http://2001-2009.state.gov/p/sca/rls/rm/31702.htm>> ; the Quadrennial Defense Review report February 2006 <<http://www.defense.gov/qdr/report/report20060203.pdf>>; and the National Defense Strategy, March 2006 <<http://www.comw.org/qdr/fulltext/nss2006.pdf>>

78. Cable 08COLOMBO66, SCENESETTER FOR ADMIRAL WILLARD'S VISIT TO SRI LANKA <<http://wikileaks.org/cable/2008/01/08COLOMBO66.html>>

79. Cable 09COLOMBO495\_a, “Sri Lanka: embassy shares images of safe zone with president”, <[http://www.wikileaks.org/plusd/cables/09COLOMBO495\\_a.html](http://www.wikileaks.org/plusd/cables/09COLOMBO495_a.html)>

desire for close cooperation with the government and military of Sri Lanka. Six months later, a US Government report was submitted to the Senate, entitled "Sri Lanka: Recharting US Strategy after the War"<sup>80</sup>, indicating that the US could not afford to "lose" Sri Lanka because of its importance in the changing US focus towards Asia, while since 2009, joint Sri Lanka/US military exercises have been staged in and around Trincomalee.

Throughout the war, the US had provided tacit support to the war effort of the Sri Lankan state through various means, with few relevant details known to the public. As has been pointed out by Paul Moorcraft, a leading expert on insurgency and a former instructor at Royal Military Academy Sandhurst as well as at the UK Joint Services Command and Staff College: "The Americans also urged the Sri Lankans to improve their night-fighting capability, especially the air-force, which required upgraded avionics and guided weapons."<sup>81</sup>

According to Moorcraft, "The Pacific Command also recommended the use of cluster bombs."<sup>82</sup> The Tribunal was presented with forensic evidence showing injuries sustained during the final months of the war consistent with the use of cluster bombs, and, as noted in the judgment of the Dublin Tribunal (p.13), "there is evidence of cluster munitions being dropped by warplanes." It should be noted that neither Sri Lanka nor the United States are States Parties to the Convention on Cluster Munitions that was adopted on 5 May 2008 and went into force on 1 August 2010.

In respect of the charge that the US was complicit in genocide, it is clear that the provision of special military training both in Sri Lanka and in the US itself enhanced the capacity of the Sri Lankan military. In addition, US support and assistance under the ACSA agreement combined with training by US Special Forces and commando training provided by Israel appear to have made a difference to Sri Lankan military capacity. Weak before the ceasefire, the Sri Lankan military, trained and strengthened during the Peace Process by the US, showed new strength, leadership and purpose when warfare was renewed.

In the aftermath of the war, the US has increased the number of joint military exercises, mainly in the eastern port city of Trincomalee, from April 2010 with the participation of the US military officials from Special Operations Command Pacific<sup>83</sup>, and followed annually under different code names such as 'Operation Flash Style'<sup>84</sup> and 'Operation Pacific Angel'.<sup>85</sup>

**Active US complicity in the genocide arises not only from its sustained efforts to increase the power and effectiveness of the Sri Lankan military, the direct perpetrator of the genocidal acts taking place in the last months of the war, but perhaps even more**

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80. SRI LANKA: Recharting U.S. Strategy after the War, Committee on Foreign Relation, United States Senate, 97 December 2009, <<http://www.foreign.senate.gov/imo/media/doc/SRI.pdf>>

81. Paul Moorcraft, Total Destruction of the Tamil Tigers. South Yorkshire: Pen & Sword Military, 2012, p. 110.

82. *ibid.*

83. U.S. and Sri Lankan Militaries Participate in Joint Humanitarian Exercise, 16 April 2010. <<http://srilanka.usembassy.gov/pr-16april10.html>>

84. "US navy SEALs in Trinco", Daily Mirror, 13 July 2013, <<http://www.dailymirror.lk/news/32340-us-navy-seals-in-trinco.html>>

85. "Operation Pacific Angel-Sri Lanka Concludes " US Pacific Command, August 2010, <<http://www.pacom.mil/media/news/2010/08/20100825-Pacific%20Angel-Sri%20Lanka%20Concludes.shtml>>

**significantly from its role in blocking and even reversing political and diplomatic initiatives to implement the peace process and in blacking out information on the unfolding critical situation and the unprecedented worldwide protests by Tamil communities in the diaspora. These military and non-military actions constitute “the provision of means to enable or facilitate the commission of the crime”, as determined to be included in “complicity” in genocide by the International Court of Justice in February 2007.<sup>86</sup>**

### **5.2.3.- Alleged Complicity of the Indian State**

The Tribunal was asked to consider the accusation that “the Indian state is guilty of being complicit in the crime of Genocide against the Tamil people”.

In the late 1980's India intervened against the LTTE in order to gain control over the Tamil population in Sri Lanka as a strategic asset, an action that resulted in the death of 12,000. In the 1990's India, played the role of a junior partner in a strategic alliance with the United States, and has continued to subordinate its strategic policy approach towards Sri Lanka under the US war paradigm.

Owing to the complexity of India's shifting role within the conflict in Sri Lanka and, as there was neither sufficient material evidence nor time for the Tribunal to consider properly the afore-stated Accusation, the panel of judges decided to postpone deliberations of the question.

### **5.2.4.- Findings**

Recognizing that the Sri Lankan state alone did not have the capacity to achieve its genocidal ambitions, and given the evidence presented, the Tribunal believes that the UK, the USA and India are guilty of complicity in genocide. Further, the Tribunal judges that the UK and the USA are clearly accomplices in the genocidal process. Regarding the charge against India, the Tribunal decides to withhold its final decision pending the consideration of additional evidence, which could include examination of the potential responsibility of other States, such as China.

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86. BH vs. Serbia-Montenegro, para. 419

## 6. Recommendations

**T**he specific role and aim of the judgements of the Permanent People's Tribunal cannot be confined to the condemnation of entities and persons who must be accountable. The permanent validity of the personal and collective rights which have been violated needs to be declared and hence directed to create space and obligations for the present and the future, when peoples who have been transformed into victims, can decide on their lives in dignity.

These recommendations frame concrete scenarios, which coincide with very concrete and urgent needs that emerged from the proceedings: they have in common the fundamental request for full accountability of those who have been identified as responsible for the genocidal process, and for an urgent and long-term commitment to full restitution to the Eelam Tamils of their rights.

### I.

To the United Nations, whose failure to take action, which they officially describe as 'systemic', had a decisive role in the failure to prevent as well as in the enactment of the genocidal process against the Eelam Tamils:

- To provide within the shortest delay a credible account of the determinants of the decisions which led to the interruption of the peace process and to the order for UN officials and staff to withdraw.
- To give maximum priority to the establishment of a strategy aimed primarily at stopping the ongoing genocide, and also at creating concrete conditions for the Eelam Tamils to exercise their rights to peace and self-determination.
- The creation of an international commission of inquiry – which excludes the states which have been directly and/or indirectly linked to the genocidal process – could be a first step in this direction.

### II.

To the European Union, which had played a positive role with the promotion of the peace process, but later contributed to the implementation of the genocidal process with its acceptance of the US gover-

ment position on the “terrorist” nature of the Eelam Tamils,

- To assume the responsibility of providing a transparent report on the reasons that led to the failure of the peace process.
- To review its external policy, in order to assure that the political, economic, and cultural rights of the Eelam Tamils are respected and promoted with specific attention to the difficult situation of denial and repression created by the Sri Lankan government.
- To reconsider with high priority its security policy, so strictly dependent on classifications imposed by the US government without regard for due process and irrespective of the evolving nature of liberation and resistance movements.

### **III.**

To Germany, where it was possible to hold this session, and which, during the run up to and in the initial stages of the Sri Lankan peace process, is known to have actively promoted a negotiated rather than a military solution - as well as to other countries of good will,

- To undertake an active role in the prompt enactment of the recommendations directed to the EU, so that a European policy inspired by human and People's rights can be activated with respect to the peoples of Sri Lanka with the shortest delay.
- In particular, to promote and request within the pertinent European institutions – including the Council of the EU, European Commission and the European Parliament – the adoption of measures directed to ensure the protection and promotion of the rights of the Eelam Tamil diaspora in EU member states, specifically with regard to their right to asylum, work and association, since the protection of the Eelam Tamil diaspora is one of the paramount means of fostering the security and well-being of Eelam Tamils in Sri Lanka.
- To identify Eelam Tamils in Europe as a resource for disseminating information about the true situation in Sri Lanka.

### **IV.**

To the State of Sri Lanka,

- To recognize, and publicly discuss, as an act of democratic credibility, the findings of this independent Tribunal, so that the ongoing process of eliminating the identity and existence of Eelam Tamils cannot become a scar on a society characterized by the denial of human and People's rights.
- To stop trying to disguise, in its official discourse and its actions, the organized process of denial of the fundamental rights of the Eelam Tamils, being implemented through economic, structural, and cultural policies presented as development projects, in which national and international, and public and private resources are invested.

### **V.**

To the international organizations and agencies – governmental as well as non-governmental – which are actively involved in cooperative activities in the area,

- To be fully aware and informed of the genocidal process which characterizes the situation of Sri Lanka.

- To ensure that their presence, investments and interventions do not directly and/or ideologically support the discriminatory practices of the Sri Lankan Government.
- To coordinate as far as possible their actions so that peaceful processes of civic resistance, and restitution and promotion of the identity of Eelam Tamils can take place in their homeland in Sri Lanka, as well as in their diaspora.
- To support with the maximum urgency and priority, and with the aim of effective coordination and integration, all initiatives of judicial defence and rights' recognition, as well as of rehabilitation of the victims of genocide, which are taking place in all parts of the world.
- To consider initiating judicial proceedings through universal jurisdiction in third States, that provide it, in the name of the struggle against impunity.

**Finally, the Tribunal invites worldwide civil society and governments to commemorate the victims of the genocide that took place in Sri Lanka and acknowledge the anguish and trauma of the victims and their families by marking 18 May as 'Mullivaikkal Commemoration Day.' This symbolic step can signal the redemptive process that the global community should embark on to safeguard the memory of the victims.**

May the above recommendations accompany the victims of the genocide and the organizations that support them through the very difficult time needed to mobilise the civil societies where they live and transform into realities their hopes for full human rights.

## 7. Concluding Remarks

**T**he Tribunal cannot conclude its work without specifically recognizing the fundamental contribution of those eyewitnesses who had the courage to come forward to testify on facts that have touched their lives profoundly and forever. They are the most qualified representatives of the victims, whose numbers will never be known and whose suffering could never be described in full. The recognition and protection of their rights are the reasons for the existence and activities of the PPT.

The PPT is also well aware that in the current situation the rights of those that witnessed the atrocities committed in the country are vulnerable to further violations, both directly against their personal freedom and life, and through the persecution of their families.

**Therefore, the PPT declares that any harm that might happen to those who testified or to their families should be considered as the exclusive responsibility of those authorities and actors addressed within our judgment. We commit ourselves to maintain a sharp attention to the safety of the witnesses who have courageously contributed to the fact-finding task of the tribunal. If anything would happen to any of them, we will hold the government of Sri Lanka responsible.**

The PPT furthermore declares its readiness and commitment to take an active role in monitoring and promptly acting on any consequence that the witnesses might suffer due to the fact of having contributed to our work and deliberations.

## Appendix I

### Excerpts from the closing statement for the prosecution

#### Characteristics of the Sri Lankan genocide of Eelam Tamils

**W**e have heard in evidence the notion of different types of Genocide. If this is a Genocide what type is it? Or perhaps better what dimensions does it assume?

We identify and highlight for your attention 6 specific characteristics:

1. This is a Genocide in which the question of national self determination and the legitimacy or not of an armed struggle for independent statehood is at stake. The denial of national self determination is at the heart of this genocide. As a result of their experiences of persecution, physical and cultural destruction, and abandonment over decades, the Eelam Tamils refuse to accept the paradigm that they remain a second class minority within the unitary Sri Lankan state. They determine themselves as Eelam Tamils, not Sri Lankan Tamils, seeking their own homeland.
2. The Genocide has a genesis in a particular form of colonial rule established by the British for strategic reasons that privileged the island within their system of empire and deliberately engendered a racially supremacist identity for the Sinhalese, in order to separate them from the independence movement in India. This deliberate social manipulation was passed on into the mechanisms of the neo-colonial state.
3. The process of social construction of Tamil Eelam, not only as a political movement or as an armed struggle, but more deeply rooted in the transformation of daily practice and living culture of the population have been under way for at least two decades in the zones liberated from Sri Lankan state rule. Although in a state of deep insecurity because of the war situation, an entire generation grew up in a Tamil society that was collectivizing social welfare, getting rid of the caste system, in a society in which women were empowering themselves. The genocidal assault was aimed to destroy not only an aspiration but an already existing prototype in the lived experience of hundred of thousands of people. In this sense it would be a profound misreading to radically separate the armed cadre of LTTE from the social process of construction that they had allowed to come into being, and to counterpose the LTTE against the civilian population. This is a point of distinction or division of labour, but not generally speaking of antagonism. We have heard in evidence the unified sense of movement in a common national project, Tamil Eelam. The genocide is there to turn the social group process into a series of atomized and demoralized individuals looking to their own survival. It is to destroy the actual

group-ness of the group. From the counter insurgency perspective the only way to destroy the armed movement was to destroy the social group process of which it was a part.

4. We highlight in the evidence the significance of the intensified gender oppression as an essential component of the genocide. The Sri Lankan military in war and under the current occupation of the north and east is by its act of systematic rape making a statement which is – “we rape you Tamil women and through your rape we are destroying the national Tamil identity”. The rape of Tamil women is a double hate crime that continues today and is connected with the very processes of controlling the reproduction of the Tamils as a group, which is also assailed through coercive birth control.

5. How has the genocide of the Eelam Tamils in such an acute expression of unfettered state terrorism, more normally associated with fascism and dictatorship, been carried out with the full knowledge of liberal democracies and yet with complete international impunity? Surely this is because the last phases of the war were justified as part of the international ‘war on terror’ that encourages egregious violations of human rights. The situation of the Tamils is an aspect that further highlights the criminogenic tendencies of the so-called ‘war on terror’ that permanently relegates some sections of humanity to dehumanized targets.

6. The degree of international impunity is another striking characteristic of this genocidal process. There has been complicity by the international system of states. A complicity of silence in the face of an anticipated genocide, a genocide foretold. The condemnation of this genocide is also squarely a condemnation of the UN and its own systematic failure to protect and to prevent genocide. We locate this failure, not only in individuals or institutionally, for which, although the UN itself admits requires some degree of review, still continues. The failure of the UN is deliberate and lies with the strategic state powers who in reality control the UN.

### **The question of complicity**

This tribunal has raised the issue of different types or degrees of complicity that occur in different ways at different stages in the genocidal process, ranging from architects of the very state that from its formation had a genocidal tendency in its structure, to the complicity of aiding and abetting the genocide; from benefiting from genocide, to silence and post genocide collusion. The degree of responsibility varies upwards from passive beneficiary, to a degree of responsibility that approaches joint authorship.

We recognize there is a debate over the question of intent and motive and point out this also overlaps with complicity. We include in this debate the question of strategy and complicity in the service of geo-strategic interests.

Our evidence concentrates on three states that we term strategic powers complicit in the ongoing genocide. In this respect we highlight the fresh evidence of Gajendrakumar Ponnambalan who was involved in crucial behind-the-scenes communications in the final stages of the killing in May 2009 about which he has gone public specifically for this Tribunal. It was the US, UK and Indian embassies that were contacted on 17 May 2009 in what were, by that time, frantic efforts to prevent a massacre of several tens of thousands of people in Mullivaikal. One supposes that diplomats pass these emergency messages on to their governments. But it's thanks to Wikileaks that we do in fact have direct evidence in the form of a cable from the US ambassador recording exactly this approach.

Our submission is that we do not consider this as complicity after the event of genocide, or by another actor at arms length, but a collusion that is simultaneously involved and protects itself from discovery, complicity that covers its tracks. The incidence of external states with their own priorities over-determined the internal process at key junctures, deliberately preventing a peaceful negotiated settlement to the process and pushing it firmly in the direction of a genocidal solution.

## Three charges of complicity with Genocide

### i) British Complicity with Genocide:

It has been said of Panama that first the US constructed a canal and then they decided to construct a country around it. So it was in regard to British colonialism in Ceylon, they first wanted Trincomalee as the harbour to control the Indian Ocean, and then they constructed a political system around it. Ceylon had to be a strategically loyal enclave within a system of seaborne empire. The divide and rule was to separate Ceylon from the challenge raised by the independence movement in India.

Divide and rule went further, the British engendered a sectarian Sinhala ideology to protect their strategic interests in Ceylon as a loyal enclave. They deliberately sowed the seeds of race hatred so that an ostensibly unitary structure was in fact exclusionary, discriminatory, and divisive.

The continually repeated Sinhala mobilizations and land colonisations went far beyond one political party, but became a political culture in which Eelam Tamils were forced to become no more than a minority in a sectarian unitary state. This state continued as the vehicle for British strategic interests in Trincomalee, as was emphasised in evidence by Winston Churchill<sup>1</sup> (who we are calling as a witness for the prosecution on this point) and continued after 1948.

The British consistently intervened militarily, overtly and covertly, to support and train the Sri Lankan state. The overt statement of continuing strategic interests and, thanks to the newly researched detailed in submission to you, British Complicity Part 2, based on released official documents, we are able to outline the wider extent of British involvement in army training and covert operations with the Sri Lankan military, ranging from top level consultancy to the Sri Lankan president by UK counter insurgency strategists, to training the entire senior officer corps until the late 1990s, to military intelligence, to emergency management, to covert and special operations unit training, to the wide use of auxiliary mercenaries, so called 'Keany-Meany' services. Because of the withholding of official information the picture is incomplete but the overall contours are clear, outlining a broad spectrum of ongoing formation of the Sri Lankan military by the British military throughout the post war period, right up to, and including, early 2009, when senior Northern Ireland police officers were working in Sri Lanka.

### ii) US complicity with genocide:

... We were given evidence of other forms of covert and willing cooperation between the Sri Lankan military and the US military including, for example, an Israeli special desk in the US embassy in Colombo, a special radio listening station, and a military cooperation agreement with largely unknown, but presumed comprehensive, terms.

In the late 1990s and early 2000s the evidence strongly suggests that the US took over from the UK as the main imperial point-man to control the process in Sri Lanka. It was in 2002, for example, that we heard evidence that the US military carried out a comprehensive review of the Sri Lankan military forces and made recommendations as to new strategies and new forms of engagement. It was shortly after, in 2003, that the US deliberately collapsed the peace process. So the US was involved in both a military preparation and a political preparation for the ensuing genocide.

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1. Churchill, in 1945 said, "the sighting of the Japanese fleet had adverted the most dangerous and distressing moment of the entire conflict. Ceylon's capture, the consequent control of the Indian Ocean and the possibility of a German conquest in Egypt would have closed the ring, and the future would have been bleak." - <<http://www.airmuseum.ca/mag/0410.html>>

We also heard, in camera, from a Tamil witness evidence that during the last phase of the peace process there were increased special operations in the Tamil areas. This is complimentary, although not conclusive, evidence of the effects of the US special operations training on the increased capacity of the Sri Lankan military to carry out incursions killing Tamil civilians.

iii) India's complicity with genocide:

The panel has been provided with a comprehensive documentation pack that we ask be fully studied, although we recognise it arrived quite late in the process, through no fault of its authors....

### **Sri Lankan state genocide that is intended, structural and ongoing**

#### **On the issue of intent**

.... When we look at the situations that have been presented to you in the evidence, one has to ask when the Sri Lankan army bombed St Peters, did they intend to bomb St Peter's or was it an accident? When we look at the many situations of rape did they intend to rape or was just it an accident? When they bombed the hospitals and carried out the kind of acts you've heard about extensively over the past few days, did they intend to do that or was it all a mistake? When they forcibly removed people and engaged in ethnic dilution in violation of Article 49 of the 4th Geneva Convention, can we really say they didn't really intend to do that? When they blocked food water and medicines, which is an element of the crime of extermination, did they intend to do that or did it happen because the trucks couldn't get through?

We also have to look at the outcome of these acts in the terms of the level of crimes and the many dead, the many injured - mentally and physically - and the fact that hundreds of thousands were put in situations and conditions calculated to bring about their physical destruction in whole or in part.

We also need to look at the evidence presented of post war actions that indicate a continuing genocide. For example, did the Sri Lankan government actually intend to have all those Tamils in the IDP camps? Had they intended to militarise the North? Have they intended to rape and torture women and men? In the assault on the Tamil culture, did they actually do that? Did they bulldoze the cemeteries? Did they intend to change the place names? Did they put Buddhist symbolism and facilities on top of Hindu ones or were these all unplanned accidents?

The consequences of course, of these intended acts is the continuing dehumanization and deprivation of the Tamil civilian population and it is generating fear among the civilian population. You have seen evidence of that, as many witnesses have testified to it. We have also heard about increasing numbers of Eelam Tamils seeking asylum outside of Sri Lanka, joining hundreds of thousands who have already left. There are inferences that can be drawn from the flood of asylum seekers, including the fact that the government of Sri Lanka intends to "de-Tamilise" the island and welcomes the continuing fleeing of Tamil civilians from the island.

#### **Public incitement**

There has been public incitement for genocide... such as...

"People who are trapped in Mullivaikal area are just the relatives of the terrorists, they cannot be considered as civilians at all" - from one party of the coalition government: on 8 January 2009.

Issues of conspiracy

You have been presented with extensive testimony of the awareness that the SLA could not win without gross violations of the Geneva Conventions. You have heard testimony of the awareness that

even if the SLA could win against the LTTE militarily, the Tamil people would still be there as Tamils. Without extensive violations of the Geneva Conventions and the targeting of Tamil civilians, the enemy is not defeated.

The present politics of “de-Tamilization” presents continuing and compelling evidence of the intention to quash the idea of Tamil Eelam. You have heard evidence in the changes of demographics of Tamil areas and extensive testimony of the growing number of asylum seekers who join the hundreds of thousands who have already fled.

### **What is at Stake?**

... The continuation of the mass killing of Eelam Tamils in Mullivaikal beyond 16 May 2009 is completely fundamental, as it was clear by this point that the LTTE was defeated as a military force and was seeking terms of surrender. The killing of civilians and LTTE cadres was no longer necessary to defeat the LTTE, it was only necessary if the intention was to destroy the group that had stayed with the LTTE and moved with it, initially over 300,000 people and by 16 May still some 150,000 or so. There was the deliberately engineered deflation by the Sri Lankan government of the numbers of those left in the No Fire Zones. The government stated that just 75,000 people remained, to cover for the intended final massacre of a similar number.

It was not only the Tigers that had to be destroyed but the idea of the liberation of Tamil Eelam, an idea and vision that comes from Eelam Tamils as the expression of their identity as an ethnic and political group. The idea of a homeland, Eelam, was, and is, fundamental to the Tamil identity and it is any vestiges of homeland for the Tamils in the north and east of the island that is still being destroyed today as we meet.

The genocidal killing was the clear objective of the military assault that was carefully planned through phases, and step by step in the final phase, to exterminate tens of thousands of Eelam Tamils.

The peoples of the world should recognize the legitimate struggle of the Eelam Tamil nation that is denied by genocidal violence. Their voluntary wish is a separate state.

We appeal to the panel of judges and we call on all people of conscience, social movements and states around the world to speak out against the genocide and recognize the legitimacy of Eelam Tamils to national self determination. The prevention of genocide and realization of national rights are inseparable in this case.

The destruction of Tamil Eelam has been, and still is, the ultimate and deliberate intended outcome of this genocidal programme. It has succeeded in part, not yet completely, nor irrevocably. Which is why this tribunal is so important as part of the movement to prevent continuing genocide.

**Andy Higginbottom & Karen Parker**

09 December 2013 | Bremen, Germany

The prosecution team was appointed by the IMRV and the IFPSL to put forward the case for the accusers.

## Appendix II

### Photographic, Video and Written Submissions

#### Introductory texts

1. Concept Paper - International Human Rights Association, Germany
2. Accusation Paper: Dublin Tribunal follows up on genocide and international complicity: The Sri Lankan state and its accomplices are accused of the crime of genocide against the Eelam Tamils, The People's Tribunal on Sri Lanka, Session II – International Human Rights Association, Germany and Irish Forum for Peace in Sri Lanka, Ireland.

#### Strategic importance of the island and creation of the unitary structure

1. British State's Complicity in Genocide against the Tamil People, Part 1 – International Human Rights Association, Germany
2. British State's Complicity in the Genocide against the Tamil People: After 1945, Part 2 – Viraj Mendis, International Human Rights Association, Germany and Phil Miller, Cooperate Watch, Britain

**ANNEX 1:** - Case Study, British Counter-Insurgency Experts in Ceylon, 1971 (Taken from 'MI5 in Ceylon – the untold story', by Phil Miller, Open Democracy, 5 November, 2013)

Link: <<http://www.opendemocracy.net/opensecurity/phil-miller/mi5-in-ceylon-untold-story>>

**ANNEX 2:** - Britain's Interest in Trincomalee Harbour, 1971

(The Ministry of Defence prepared this secret memo for Prime Minister Edward Heath in May 1971).

'Soviet Military Assistance to Ceylon: The Consequences of a Grant to the Soviet Union of Naval Facilities at Trincomalee', The National Archives, FCO 37/810

**ANNEX 3:** - 'UK Arms Exports to Sri Lanka: Licences Granted For...:1997-2008', downloaded from Saferworld

Link: <<http://www.publications.parliament.uk/pa/cm200809/cmselect/cmquad/178/178we23.htm>>

**ANNEX 4:** - 'Media reports on UK arms sales to Sri Lanka from 2001

- "UK dealers sell 'vacuum bombs' to Sri Lanka", 23 November, 2001

Link: <<http://www.theguardian.com/world/2001/nov/23/armstrade.srilanka>>

- 'UK backed Israeli deal to enhance Lanka's firepower Presidential probe on shady arms transactions', 13 December 2006

Link: <<http://www.island.lk/2006/12/13/news1.html>>

Link: <<http://www.island.lk/2006/12/21/news16.html>>

- 'UK arms sales to Sri Lanka match tsunami aid, 3 May, 2007

Link: <<http://www.tamilnet.com/art.html?catid=13&artid=22056>>

-. 'Britain sold arms to Sri Lanka during Tamil Tiger conflict, 2 June, 2009

Link: <<http://www.telegraph.co.uk/news/worldnews/asia/srilanka/5426520/Britain-sold-arms-to-Sri-Lankaduring-Tamil-Tiger-conflict.html>>

- 'Revealed: UK sells arms to Sri Lanka's brutal regime', 18 February, 2013

Link: <<http://www.independent.co.uk/news/uk/politics/revealed-uk-sells-arms-to-sri-lankas-brutal-regime-8498768.html>>

#### **ANNEX 5:** - British Police Liaison with Sri Lanka

Link: <<http://www.belfasttelegraph.co.uk/news/local-national/northern-ireland/top-psni-men-advised-forces-of-bloody-sri-lankan-regime-29659207.html>>

Link: <<http://www.corporatewatch.org/?lid=5076>>

Link: <[www.heraldscotland.com/news/home-news/revealed-how-scots-police-trained-sri-lankan-cops-linked-to-human-rights-abuse.22090150](http://www.heraldscotland.com/news/home-news/revealed-how-scots-police-trained-sri-lankan-cops-linked-to-human-rights-abuse.22090150)>

Link: <<http://www.corporatewatch.org/?lid=5009>>

#### **ANNEX 6:** UK military courses for Sri Lanka in 2007

Link: <<https://www.gov.uk/international-defence-training-idt>>

Link: <[http://www.army.mod.uk/training\\_education/24475.aspx](http://www.army.mod.uk/training_education/24475.aspx)>

Link: <<http://www.royalnavy.mod.uk/Careers/How-to-Join/Royal-Navy-Officer-training>>

Link: <<http://www.royalnavy.mod.uk/Careers/How-to-Join/Royal-Navy-Officer-training>>

#### **ANNEX 7:** Military Communication Skills Project

Link: Google search term: SL MilComSkill proposal 12Jun04.doc

Link: Wikileaks cable cited in <<http://www.tamilnet.com/art.html?catid=79&artid=3449/>>

**ANNEX 8:** Smith, T.A. "The Reluctant Mercenary: The Recollections of a British Ex-Army Helicopter Pilot in the Anti-Terrorist War in Sri Lanka" Sussex: Book Guild Ltd, 2002

## **Different components of the genocidal attack on the Tamil people, 1930-2002**

### **Part One: Colonisation Schemes, Discriminatory Laws and Pogroms**

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## The Peace Process brings a Halt to the Genocide – The Role of the European Union

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2. The German Engagement in Conflict Resolution through Rehabilitation and Basic Education for Children before and after the 2002 Peace Process – Dr Reinhardt Bolz, former director of German Development Cooperation (GTZ)
3. Psychological Impact of War and 'Treating' Trauma – Dr Waltraud Bolz (GTZ)
4. A Documentary Film on Education Programmes as Part of Rehabilitation Projects – Dr Huck (GTZ)

**ANNEX 1:** 'Exportboom: Deutschland steuert auf Rekordüberschuss zu', Reported by Der Spiegel, 05 September, 2013

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**ANNEX 2:** 'Exporte aus Deutschland nach Güterabteilungen' – Reported in Das Statistik-Portal, 2013

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**ANNEX 3:** 'Rajapaksa: Then and Now' – Article by Mangala Samaraweera, in Colombo Telegraph, 4 April, 2012

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**ANNEX 4:** Christian Stokke: 'Liberal Peace in Question. The Sri Lankan Case', in Liberal Peace in Question: Politics of State and Market Reform in Sri Lanka, (ed.) Christian Stokke and Jayadeva Uyangoda, London: Anthem Press, 2011

**ANNEX 5:** Suthaharan Nadarajah and Luxshi Vimalarajah: 'The Politics of Transformation: The LTTE and the 2002-2006 peace process in Sri Lanka', Berghof Transitions, Series No. 4, 2008

**ANNEX 6:** Jeffrey Lunstead: 'The United States' Role in Sri Lanka's Peace Process, 2002-2006, Colombo: The Asia Foundation, 2007

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**ANNEX 8:** Zunzer, Wofram: Sri Lanka Round Table. New Perspectives in the Sri Lankan Peace Process - The Current Political Situation and the Role of the International Community, Berlin: Berghof Foundation, 2004

**ANNEX 9:** Rajesh Venugopal: 'The global Dimensions of Conflict in Sri Lanka', Working Paper, Number 99, Oxford: Queen Elizabeth House, 2003.

**ANNEX 10:** Jonathan Goodhand and Phillipa Atkinson: Conflict and Aid: Enhancing the Peacebuilding Impact of International Engagement, London: International Alert, London, 2001

**ANNEX 11:** Ludgera Klemp: 'Entwicklungspolitik am Scheideweg – politische Randerscheinung oder globale Strukturpolitik?', in Politik und Zeitgeschichte, B 18-19/2001

**ANNEX 12:** Tobias Debiel and Volker Matthies: 'Krisenprävention - mehr Fragen als Antworten? Eine Zwischenbilanz zur deutschen Entwicklungs-, Außen- und Sicherheitspolitik.', in E+Z – Entwicklung und Zusammenarbeit, Nr.9, September, 2000

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**ANNEX 15:** Stephan Klingebiel: 'Impact on Development Cooperation in Conflict Situations', in Cross-section Report on Evaluations of German development Cooperation in Six Countries. Bonn, German Development Institute, 1999

**ANNEX 16:** Reinhold E.Thiel: 'Entwicklungspolitik als Friedenspolitik. Interview mit Ministerin Heidemarie Wieczorek-Zeul', in E+Z – Entwicklung und Zusammenarbeit. Nr.1, January, 1999

**ANNEX 17:** Mark Kaufman: 'U.S. quietly expands its role in Sri Lanka. Green Berets help train soldiers, open path for military presence' – Reported in The Dallas Morning News, 1996

**ANNEX 18:** S. D. Muni: Pangs of Proximity: India and Sri Lanka's Ethnic Crisis, New Delhi, Sage Publications, 1993

## Additional Documents

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4. Report of Learnt Lessons and Reconciliation Commission, November, 2011

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5. Report of the Secretary-General's Panel of Experts on Accountability in Sri Lanka, 31 March, 2011

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7. Francis A Boyle: The Tamil Genocide by Sri Lanka: The Global Failure to Protect Tamil Rights Under International Law, Atlanta, Clarity Press 2010,

The author of the concept of genocide, Raphael Lemkin, said that genocide, in essence, is 'the destruction of the national identity of the oppressed group [and] the imposition of the national identity of the oppressor'.....The construction of the Tamil population as alien to a unitary Sri Lankan state was a long process, which included legal and political decisions, as well as countless massacres, processes of discrimination, periods of armed conflict and finally, the implementation of an exterminatory project.

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