



PEOPLES' TRIBUNAL ON SRI LANKA

Session III
Berlin, 20-22 May 2022
JUDGEMENT

PERMANENT PEOPLES' TRIBUNAL
ROME



PERMANENT PEOPLES' TRIBUNAL

Founder:

LELIO BASSO (ITALY)

President:

PHILIPPE TEXIER (FRANCE)

Vice Presidents:

LUIZA ERUNDINA DE SOUSA (BRAZIL)

JAVIER GIRALDO MORENO (COLOMBIA)

HELEN JARVIS (AUSTRALIA-CAMBODIA)

NELLO ROSSI (ITALY)

Secretary General:

GIANNI TOGNONI (ITALY)

Peoples' Tribunal on Sri Lanka

Session III

Berlin, 20-22 May 2022

JUDGEMENT

CONVENED BY
Tribunal Permanente de los Pueblos

Fondazione Lelio and Lisli Basso
Via della Dogana Vecchia 5 - 00186 Roma Italy
ppt@permanentpeopletribunal.org

ORGANIZED BY
Irish Forum for Peace in Sri Lanka (IFPSL), Dublin
International Human Rights Association (IMRV), Bremen

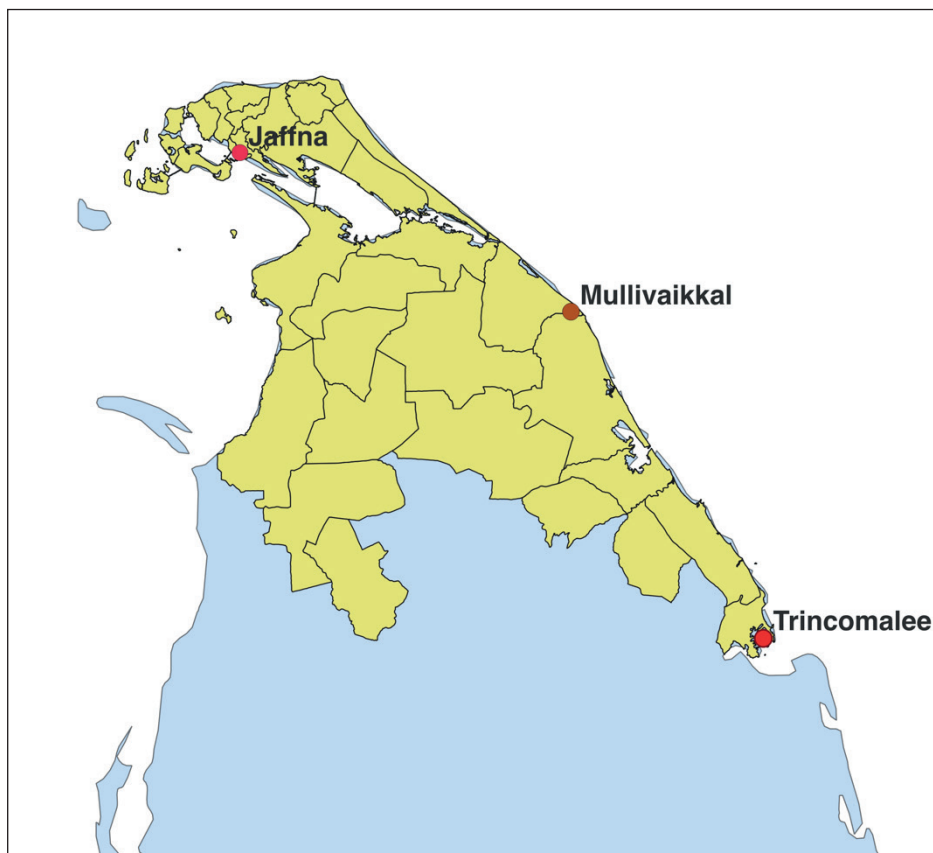
Contents

1. INTRODUCTION.....	7
2. THE PANEL OF JUDGES OF THE BERLIN TRIBUNAL.....	12
3.THE BERLIN TRIBUNAL AS THE THIRD SESSION OF THE PEOPLES’ TRIBUNAL ON SRI LANKA (PTSL).....	14
4.ACCUSATION 1 THE UNITED STATES IS PRIMARILY RESPONSIBLE FOR THE GENOCIDE.....	16
5. ACCUSATION 2 US-LED UN HUMAN RIGHTS COUNCIL RESOLUTIONS ON SRI LANKA VIOLATE TAMIL EELAM RIGHTS.....	23
6. ACCUSATION 3 THE DESTRUCTION OF THE LTTE AS A KEY ELEMENT IN THE GENOCIDE AND DESTRUCTION OF WOMEN’S RIGHTS.....	29
7. ACCUSATION 4 CONTINUED GENOCIDE OF EELAM TAMILS BY THE SRI LANKAN STATE.....	38
8. ACCUSATION 5 ONGOING PROSECUTIONS OF TAMIL EELAM ACTIVISTS IN THE EU (SUCH AS GERMANY).....	48
9. ACCUSATION 6 DESTRUCTION OF LTTE THREATENS PEACE IN THE INDIAN OCEAN.....	51
10. CONCLUDING REMARKS.....	57
11. RECOMMENDATIONS.....	60

12. Annex 1:	
A BRIEF HISTORY OF THE PRECIOUS HOMELAND OF THE TAMIL EELAM PEOPLE.....	62
13. Annex 2:	
ANALYSIS OF THE CATEGORY OF TERRORISM AS AN INSTRUMENT OF INTERVENTION AND WARFARE.....	82
14. Annex 3:	
NATHAN THAMBI’S STATEMENT TO THE TRIBUNAL.....	94
15. Annex 4:	
PEOPLE’S RESOLUTION ON JUSTICE FOR EELAM TAMILS IN AN INDIAN OCEAN OF PEACE.....	100
16. Annex 5:	
SPECIAL STATEMENT BY DENIS HALLIDAY, FORMER ASSISTANT SECRETARY-GENERAL TO THE UNITED NATIONS	106
17. Annex 6:	
AN APPEAL TO STOP THE PERSECUTION OF ANANDARAJAH, A TAMIL ACTIVIST IN GERMANY.....	108
18. Annex 7:	
A TEATIMONY OF RESISTANCE.....	111

INTRODUCTION

The Tamil people, originally from the north and east of present-day Sri Lanka (SL), have a millennia-long history. SL is located a few kilometres from the southern tip of India and for thousands of years, the north and east of the island have been the traditional territories of the Tamils, while the south of the island was home to the more numerous Sinhalese. Essentially, the Tamil and Sinhalese populations had separate social formations in their respective areas. They lived in distinct political domains, but with overlapping territories and histories, and even shared sovereignty to varying degrees at different points in history, with constant interactions with the rest of the Indian subcontinent.



Map 1. Tamil Eelam before 2007 - 2009

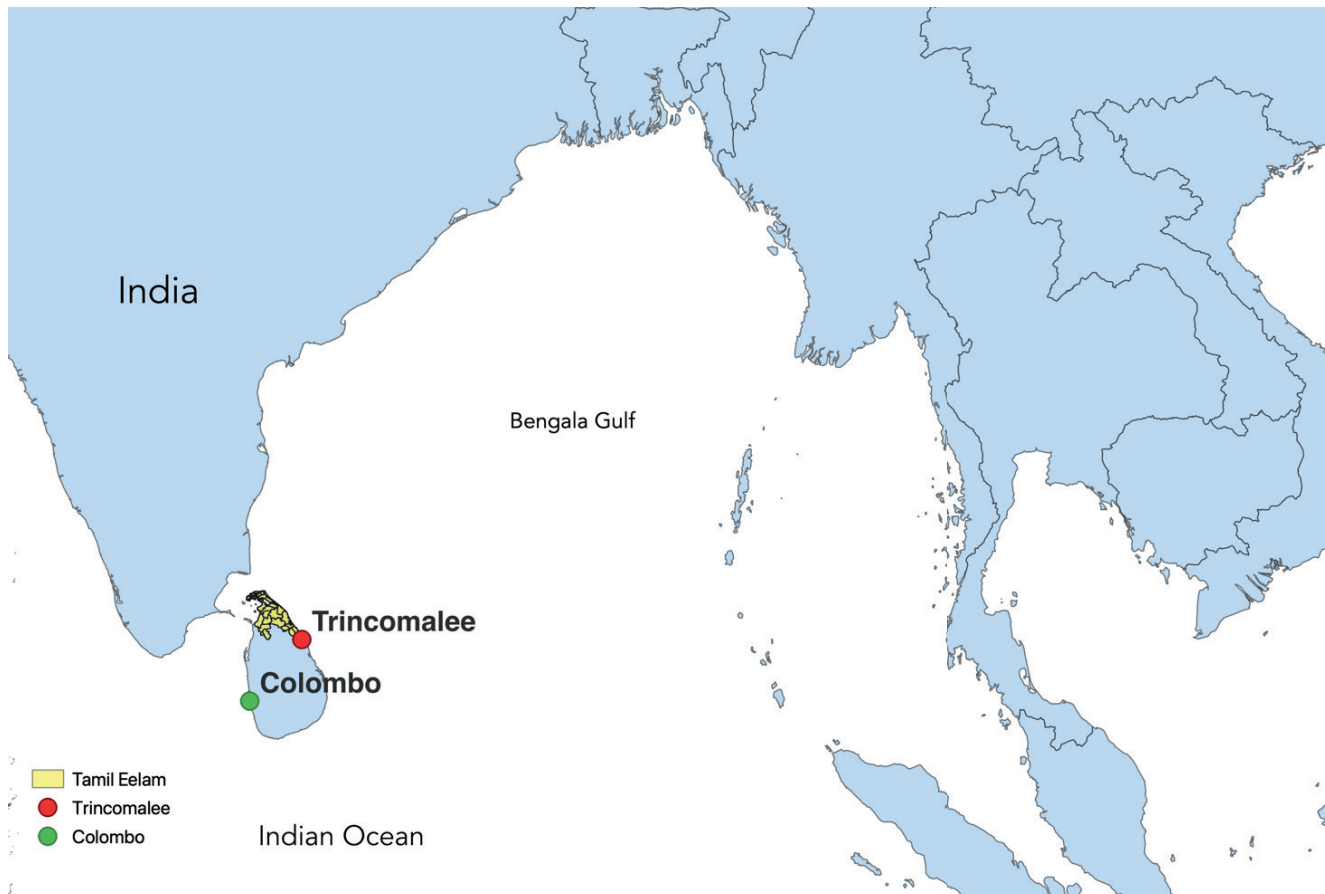
Source: Observatorio Latinoamericano de Geopolítica

More than 500 years ago, the Portuguese made clear the importance of the island to the European imperial powers: “...when you make this said island your headquarters, as decreed, you will become the centre of all our fortresses and possessions in the east and from this place you will be able to organise everything better than from any other place”.¹ The Dutch displaced the Portuguese. One hundred and fifty years later, the British replaced the Dutch. Unlike the Dutch and the Portuguese, who ruled the Tamil and Sinhalese social formations independently, it was the British, who had conquered the entire island, who built the SL state by merging them into a unitary political structure

1 Letter from King Manuel of Portugal to Francisco de Almeida, Portuguese Viceroy of Goa.

and ideologically laying the foundations of racist Sinhalese supremacy over the Tamils, with the aim of totally separating the island from the rest of the Indian subcontinent and using it as a strategic location in the Indian Ocean region. The British promoted the ideas that the Sinhalese were racially closer to them, that as Sinhala-Buddhists they were destined to control the whole island and that the Tamils were their ancient enemies (rather than the Portuguese, Dutch and British). There had never been a unitary political structure for the whole island until British colonial rule.

Map 2. Trincomalee's Strategic Position



Source: Observatorio Latinoamericano de Geopolítica

The Tamils took root in a region around the natural harbour of Trincomalee, the second deepest in the world, strategically located in the middle of the Indian Ocean. Admiral Nelson thought Trincomalee was the best harbour in the world and the British sank dozens of ships from Dutch-allied France to gain control, while forcing the Tamils to live under a unitary, supremacist Sinhalese political structure to maximise the strategic utility of the island through total control of the harbour, as they could not trust the Tamils as they were culturally and linguistically closer to India than the Sinhalese. It was this colonial political and social engineering that sowed the seeds of a process of genocide against the Tamils by the Sinhala supremacist state, and which had the constant and determined support of Britain, even after the island's formal independence in 1948.

The main objective of the British strategy was and is to break the Tamils' relationship with their homeland

In this framework, due to historical oppression, SL Tamils developed their collective political identity as Eelam Tamils and maintained a constant resistance for decades. Following their own will for freedom and self-determination, the Eelam Tamils managed to create an institutionality without discrimination on the grounds of caste, gender or religion. The place of women in the decision-making structure and in the political, social and daily dynamics of Eelam was so significant that it did not even require special mention or a claim to proportionality. They were simply a substantial part of that process. Under the leadership of the Liberation Tigers of Tamil Eelam (LTTE) they built the pluralistic secular state of Tamil Eelam, taking over since the 1990s at least 70% of their homeland, that had been occupied for decades by the Sinhalese security forces. In the face of the resistance and organisation of the Eelam Tamils, the SL state responded with acts of violent repression by legislative and military means, but it was precisely as a result of this formidable resistance, led by the LTTE, that the systematic ethnic repression of the SL state was checked and a balance of power was achieved that opened the way for the 2002 peace process between the SL state and the LTTE. At the initial phase the EU heavily supported the peace process whereas the United States and the United Kingdom, while verbally supporting it, constantly promoted a military option through their actions from the beginning.

The climax of the repressive escalation to genocide was orchestrated by the dismantling of the peace process by the US and UK respectively because of the geostrategic relevance of the Tamil territory and their urgency to position themselves in the Indo-Pacific region. The US and UK struck their first major blow to the peace process in 2003 (See Annex 1), at the same time as they carried out their 'shock and awe' attack on Iraq, and since 2009, when the SL state, with their full support, perpetrated the Mullivaikkal massacre, they have sought to maintain their hegemonic advantage vis-à-vis the emerging powers of the East. The mechanism of this intervention has been amply documented in this Tribunal. The accusation by these powers against the socio-state organisation of the Tamil people, the LTTE, as terrorists, is the driving force behind the genocide that unfolded in two phases through multiple variants of the "taking the water from the fish" procedure. The first phase is the total dismantling of the Tamil Eelam state and the elimination of the LTTE, which had stopped the initial process of genocide. The second phase is the ongoing systematic process of genocide through various structural changes that impose the identity of the oppressor nation on the oppressed nation. These procedures negatively affected the Tamil refugees in Europe and other parts of the world who raised funds for the LTTE to fight genocide in the last phase of the war. They underwent a process of criminalisation by those states under the accusation of aiding terrorism. Such criminalisation has justified both the major genocide event of 2007-2009 and the ongoing systematic genocide in the Tamil homeland.

The Permanent Peoples' Tribunal (PPT) has twice before addressed the collective rights of the Eelam Tamils, gathering information over a decade, starting in 2009, and listening to numerous eyewitness accounts. at the various sessions (at the Dublin Tribunal in 2010 and at the Bremen Tribunal in 2013) on the painful but persistent history (see Annex 1) of this people (see Annex 1) whose collective rights have been severely violated by the international state community. There are two sides to this story. One is the one that comes from the convergence of powers, institutions and discourses of the hegemonic international political framework; the other is the story shaped by the survivors through collective resistance and those who have reached out to them in solidarity. This third Berlin session of the PTSL has addressed both sides of this tragic contemporary history for Eelam Tamils, in the hope of

contributing to their ongoing quest for justice and freedom.

In terms of state power policy, the Tribunal considered three closely related issues: the right of Eelam Tamils to self-determination; the right to resistance as LTTE; and the genocide that was necessary to defeat both. The Jury's conclusion is that, beyond even complicity, the US decision to destroy the LTTE was the main instigating factor that led to the genocide in 2007-2009. It was documented that the motive was the US and UK's own geostrategic interests in the Indian Ocean region. It was found that the US and UK intentionally disrupted the peace process that had been taking place in the island since 2002; that this crime against peace was an act of aggression against the Tamils, that set in motion the climax of genocidal massacres of the SL state in 2007-2009; that it has contributed to the systematic genocide that has not stopped since then and that it has militated against peace in the entire Indo-Pacific region that has become the focus of the US global strategy. The systematic genocide has been replicated internationally through impunity for those responsible, while blaming Eelam Tamils for participating in the LTTE, including Tamil refugees who raised funds. This anti-terrorist framing of a national liberation movement was constructed by the US and UK, which pressured the European Union (EU) in 2006 to ban the LTTE through prosecutions and persecution of Tamil activists and refugees. We argue that this ban literally changed the balance of power between the SL state and the LTTE and triggered the climax of the genocide. Until then, the EU had promoted a negotiated solution as opposed to the military solution consistently advocated by the US and the UK. We consider the dominant narrative of "terrorism" to be false. It was constructed to justify the annihilation of the Tamil people of Eelam, to divert attention from the culpability of the major Western powers and was aimed at the destruction of the Tamil Eelam nation state that succeeded in stopping the ethnic genocide against the Tamils and reclaiming a liberated territory. We categorically state that the criminalisation of Eelam Tamils for supporting the LTTE is a continuation of genocide by other means.

Genocide is not an abstraction, it is felt in the bodies and minds of the survivors, in many ways that even now remain difficult to capture in all their horror. The testimony of the survivors takes on a special importance, and even more so the testimonies of Tamil women as they explain each phase of the process: why they became involved in the LTTE, how they became empowered in their cultural, social and political life in the liberated Tamil territories, their traumatic capture and rape by the SL security forces, and their experiences of the ongoing structural genocide. In terms of the collective rights of Tamils, the accounts of Tamil women in Eelam have been the focus of this Tribunal. This is a counter narrative to the dominant narrative about the LTTE. Taken together, these women offer a compelling picture of new lives full of dignity, equality and hope that were cruelly and brutally shattered, completely contradicting the dominant official narrative of "crushing terrorism". The strength and fortitude of the Tamil women is, without a doubt, an example to humanity.

We consider it of utmost importance to recover the truth about the historic achievements of the 2002 peace process and to identify those primarily responsible for its destruction. Indeed, if the 2002 peace process had succeeded, the current economic crisis of 2022 would not have arisen. Military use of the island by the world's most militarised powers could have been prevented. Peace in the Indian Ocean region could have been pursued. The subjugation of women and caste discrimination could have been overcome. All these progressive measures gained momentum through the national liberation struggle of Tamil Eelam and the 2002 peace process created a space to formalise these transformative practices in Tamil Eelam and beyond.

It is necessary to reveal the truth to the oppressed peoples of the world about the Tamil Eelam struggle, as well as to appeal to the conscience of those in Europe who supported the 2002 peace process, particularly those women who knew the achievements of the women of Tamil Eelam. Even after the testimonies at the Berlin Tribunal, further research on the significance of Tamil Eelam women and the innovative gender relations that characterised their experience will be necessary in order to recover the truth of the process and overcome the dominant narrative.

In addition, instead of the false polarisation between blocs of states presented as the only two options at the United Nations Human Rights Council (UNHRC), an independent third way based on peoples' solidarity is needed. Both of the two blocs of states that support (on issues of accountability for human rights violations) or oppose (based on the policy of non-intervention) the UNHRC resolutions on SL defend the absolute sovereignty and territorial integrity of the SL state and deny the right of Eelam Tamils to self-determination. The verdict of the Tribunal is a call to side with the real victims and survivors of the genocide and their collective political aspirations and to bring to light the truth behind this crime so that they can continue their struggle for justice and freedom.

This report proceeds by outlining the background to the third People's Tribunal on SL (PTSL) and the principles on which the judgement is based, followed by the identification of the charges and our conclusions on each of them, with accompanying argumentation. We include a critical deconstruction of the narrative of terrorism on which the dominant powers replicate and exercise their hegemony, at least so far, victoriously (see appendix 2). We reframe genocide from the perspective of peoples oppressed by imperialism.

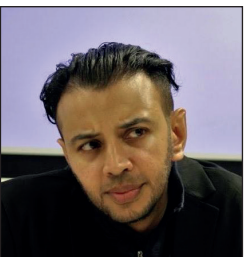
Taken together, the survivors' story is one of resistance to assert their fundamental and collective rights. Although we sometimes use the term victims, the Tribunal does not treat Eelam Tamils as helpless victims, but as historical survivors and freedom fighters embodying collective political aspirations of nationhood, self-determination and homeland. Presenting them as helpless victims is part of the hegemonic Western powers' control of the narrative in order to deny them agency and capacity to determine their political future. Historically, they have demonstrated that they are a people of resistance who not only espouse collective liberatory political aspirations, but have been able to realise those hopes by building a state of their own. It is in this spirit that we formulate our final recommendations and general conclusions. We call upon international social movements and international humanitarian consciousness to bear witness to the continuing trauma of the women, men and children of Tamil Eelam by mobilising solidarity for their ongoing struggle for nationhood, self-determination and homeland.

2

THE PANEL OF JUDGES OF THE BERLIN TRIBUNAL



Panel Chair: Ana Esther Ceceña (Director of the Observatorio Latinoamericano de Geopolítica and Professor/Researcher at the Universidad Nacional Autónoma de México)



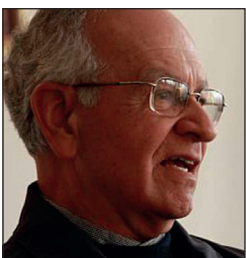
Junaid S. Ahmad (Director, Centre for the Study of Islam and Decoloniality, Islamabad and Founder and Chairman, Palestine Solidarity Committee, Pakistan)



Flavia Carvalho (Associate Judge of the Brazilian Supreme Court and Afro-Brazilian Feminist)



Lonko Juana Culfunao Paillal (A Leader (Ñisol) of the People of Mapuche Nation, Ancestral Authority, committed to the struggle for the sovereignty of her people and the Founder of the Ethical Commission against Torture).



Javier Giraldo Moreno (Vice-President of the Permanent Peoples' Tribunal, Colombian Liberation Theologian and Prominent Human Rights Activist) in Latin America).



Denis Halliday (Former Assistant Secretary-General of the United Nations who resigned from his post in opposition to UN sanctions on Iraq. He is a recipient of the Gandhi International Peace Prize.)



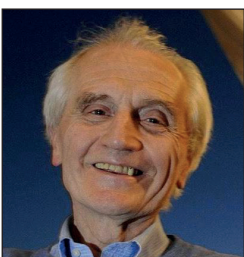
Lourdes Esther Huanca Atencio (President of the National Federation of Peasant, Artisan, Indigenous, Native and Wage-earning Women of Peru)



Liza Maza (Secretary General of the International League of People's Struggle (ILPS) and Former Member of the Philippine House of Representatives)



Feliciano Valencia (Former Colombian Senator and Nasa Indigenous Leader from the Cauca Region)



Gianni Tognoni (Secretary General of the Permanent Peoples' Tribunal in Rome)

THE BERLIN TRIBUNAL AS THE THIRD SESSION OF THE PEOPLES' TRIBUNAL ON SRI LANKA (PTSL)

The International Human Rights Association - Bremen and the Irish Forum for Peace in Sri Lanka are the organisers of each of the three sessions of the PTSL. The Berlin Tribunal has been convened as a continuation of the two previous Peoples' Tribunals on SL.

SUMMARY OF PREVIOUS JUDGMENTS: DUBLIN (2010) AND BREMEN (2013)

The Dublin Tribunal was held in January 2010, in a context in which the 2009 massacres were absent from the mainstream media. The basic facts needed to be recovered for the public record. It was established that the Government of Sri Lanka (GoSL) had committed War Crimes and Crimes against Humanity and that these crimes continued up to the time of sentencing. However, the charges of genocide and crimes against peace were not addressed due to concerns about both the information available and the implications for the right to resistance, respectively.²

The Bremen Tribunal, held in December 2013, considered the crime of genocide as a demand of the victims based on a comprehensive body of evidence. It found the SL State guilty of genocide, as understood under existing international law as defined by the Genocide Convention, as well as genocide as a social process as understood by the original drafter of the law Raphael Lemkin. Under both definitions, the Bremen Tribunal concluded that genocide had been committed and continued to be committed in an ongoing process.

The Tribunal concluded that the US and UK were complicit in the genocide. The Tribunal found that India played a minor role, but considered that more information was needed to make a judgement. The verdict also spoke of the consideration of other states, such as China.³ The Bremen Tribunal's Final Report significantly confirmed the view that the Eelam Tamils have been victims of a long-term genocide, while highlighting for the first time the complicity of the two Western powers most directly involved.

WHY A THIRD SESSION OF THE PEOPLE'S TRIBUNAL ON SRI LANKA WAS REQUESTED?

Almost a decade later, the organisers called for a third session of the PTSL because of the continuing trauma of Eelam Tamils facing occupation at home and the criminalisation of their main historical resistance abroad. They have presented evidence that the condition of genocide persists, as does international impunity and, in particular, also the condition of criminalisation of legitimate resistance to genocide, both domestically and internationally.

The organisers have argued that while the findings of the PPT in the previous two sessions have been important, the findings that war crimes were committed in SL have been manipulated by the US to promote its own interests in the island, especially through the UNHRC, which has been used to deny the fundamental collective rights of the Eelam Tamils by protecting the SL state structure.

Despite raising 'human rights' concerns about SL, through US-led resolutions at the UNHRC, and even publicly announcing a travel ban on SL army chief Shavendra Silva in February 2020 for his conduct in

2 <https://pptsrilanka.org/about/pt-sri-lanka/>

3 <https://www.ptsrilanka.org/verdict/>

the 2009 war, in reality the US has steadily strengthened its ties with the SL State and its armed forces.⁴

Co-opting the idea of genocide to fit the hegemonic narrative.

The Bremen Tribunal's verdict was a major international breakthrough in the establishment of genocide committed against the Eelam Tamils, both in the Mullivaikkal massacre and as a historical and continuing process. The verdict differentiated the issue of genocide from the notion of "war crimes", which implies a just war by the SL State, to potentially focus on a war against the fundamental rights of Eelam Tamils to exist as a group. However, the very notion of the Eelam Tamil 'genocide' has since been corrupted to fit a narrative that condemns the immediate actors, but allows the international powers most implicated, the US and UK, to evade further scrutiny of their own culpability.

Although the concept of genocide remains shamefully absent from UNHRC resolutions or official US debates, it has gained recognition among Western policymakers, especially in Canada. Except that, rather than being understood as a continuous process of destruction, genocide has been repositioned as a singular event in 2009 that can be attributed to individuals, rather than as a systemic and structurally embedded problem of the SL State.

Context of Rising Regional and Global Tensions

The organisers called for the third session of the PTSL to be contextualised by the heightened importance of two growing tensions:

1) The struggle for self-determination of the peoples of the Global South takes place in the context of global power struggles, thus requiring primary scrutiny of the actions of the powers involved from both a moral and practical point of view.

2) The ongoing genocidal process against the Eelam Tamils and the intensification of US military engagement with the SL State are not only a threat to the Eelam Tamils, but also to the Indian Ocean region, with ramifications for world peace in the context of the US policy of containment of China. The Quadrilateral Security Dialogue (QUAD) links India, Japan and Australia as close US allies.⁵ This was followed in January 2021 by an in-depth intelligence exchange between the US and India on China's movements.⁶

Relevance of the Algiers Charter and Limits of Existing Legal Norms

Normativity is a statement of the ethical standard against which the judges of the Tribunal examine the case. The foundational norm we invoke is the Charter of Algiers, which is imbued with self-determination and anti-imperialism in both spirit and letter. The Charter expresses two principles which must be balanced to ensure the fulfilment of its objectives: the inalienable right of oppressed peoples to national self-determination, on the one hand, and the need to respect the interests of "the community as a whole", on the other, provided that certain conditions are met.⁷

4 <https://www.lowyinstitute.org/the-interpretor/curious-case-us-sri-lanka-sanctions>

5 A 2022 White House document describes the QUAD as "a premier regional grouping" in pursuit of its "Indo-Pacific Strategy", aimed at countering what it sees as "coercion and aggression [that is] most acute in the Indo-Pacific", INDO-PACIFIC STRATEGY, The White House, <https://www.whitehouse.gov/wp-content/uploads/2022/02/U.S.-Indo-Pacific-Strategy.pdf>

6 <https://www.bbc.co.uk/news/world-asia-india-54655947>

7 PPT <https://permanentpeopletribunal.org/algiers-charter/?lang=en> <http://permanentpeopletribunal.org/wp-content/uploads/2011/05/Charta-di-algeri-EN.pdf>

4

ACCUSATION 1 - THE UNITED STATES IS PRIMARILY RESPONSIBLE FOR THE GENOCIDE.

ACCUSATION

The US is primarily responsible for the genocide against the Eelam Tamils by committing the “Crime Against Peace”, intentionally undermining the 2002 ceasefire, through interventions designed to strengthen social, political and military forces opposed to a negotiated agreement between the Sri Lankan State and the LTTE for shared sovereignty of the island, leading to a “total war” strategy to destroy the LTTE.

FINDING

The 1950 Nuremberg Tribunal defined Crimes against Peace as:

-
- 1.Planning, preparing, initiating or waging a war of aggression or a war in violation of international treaties, agreements or assurances;
 2. Participation in a common plan or conspiracy to commit any of the acts referred to in paragraph 1.

We find that the US state is guilty of both aspects of this crime in its aggression against the liberated territory of Tamil Eelam, to the extent of planning and instigating its destruction under the banner of counter-terrorism. For its own strategic military interests, the US coordinated a systematic plan to destroy the liberated territory of Tamil Eelam, centred on the north and east of the island. The US decided that it had to secure undisputed access to the port of Trincomalee and deliberately set out to roll back the peace process into a war, in which it intervened extensively to ensure the complete victory of the SL armed forces, regardless of the consequences for the human rights of the Tamils.

THE JURY’S REASONING

At the beginning of the SL Peace Process (which formally began in 2002) there were two separate and legitimate administrations in the island: the SL State and the LTTE. In 2000, the liberated territory of Tamil Eelam constituted a de facto state. In the Sinhala-dominated areas, the United National Party (UNP) government was given an electoral mandate to resolve the long-standing issue of the oppression of the people of Tamil Eelam through negotiations with the LTTE; while the mandate in the Tamil areas is demonstrated by support for the Tamil National Alliance (TNA), which advocated the same path of a negotiated solution.⁸

The 2002 Peace Process between the GoSL and the LTTE, facilitated by the Norwegian government, ended the war that had cost more than 60,000 lives over 25 years. Neither the Tamils nor the Sinhalese wanted a resumption of the war at all. Immediately after the first round of peace talks, the US sent 26

⁸ A brief contextual history of the Tamil Eelam national struggle for a homeland (Tamil Eelam) is provided in Annex 1.

military experts from its Pacific Command (USPACOM) located in Hawaii (30 September to 10 October 2002) to the port of Trincomalee, in the Tamil homeland, to conduct a study on the future conduct of the war. Their report read as follows:

The most important base for the SLN [Sri Lankan Navy] is without question Trincomalee Harbour. Currently, the LTTE control the southern portion of the Harbour. From this area, the LTTE have effectively monitored all ship movement in and out of the Harbour, launch suicide and artillery attacks against the Naval Base and could potentially destroy any vessel coming in and out of the Harbour. The SL Army is responsible for this area but they have been unable to completely secure it.⁹

USPACOM laid out the master plan for successfully executing the future war. It advised upgrading armaments, modernising security forces and capturing the LTTE-administered areas surrounding Trincomalee Harbour. In fact, the US and UK had been assisting the SL security forces for years. Even in 2002, the US Navy SEALs had already started a training session for the SL Navy from 5-24 August in the southern and central provinces of the island.¹⁰

The US was the first country to ban the LTTE (1997)¹¹ in the Western Hemisphere, a year after offering joint training opportunities to SL armed forces under the Joint Combined Exchange Training (JCET) in the form of annual military exercises code-named 'Balanced Style'.¹² But the evolution of the LTTE from an unconventional guerrilla force to a formidable military power with conventional combat capability hampered initial plans to decimate it militarily. This was evident when the LTTE three years later, in April 2000, managed to subdue the huge military garrison of Elephant Pass - Paranthan in the north, which was one of the "most heavily fortified military garrisons in South Asia"¹³ and initially considered "impregnable"¹⁴ by US military experts conducting field assessments on behalf of the SL State. The fall of Elephant Pass was a turning point in the history of the Eelam War, as it shattered the vaunted combat superiority of the elite US-trained army unit. The recapture of large swathes of territory from the control of the state armed forces in a matter of a few months created an unprecedented military balance on the ground, and by mid-2001, the SL State was on the verge of losing its entire military dominance in the north of the island in the face of the LTTE's increased fighting power and its growing popularity among Tamils as a formidable liberation movement. Furthermore, the LTTE's attack in mid 2001 on the main SL airforce base beside the international airport and the Free Trade Zone destroyed a large number of fighter jets, without a single civilian casualty. This attack generated a massive moral and economic impact on the Sinhala society that set the background for the 2002 Peace Process.

The Ceasefire Agreement (CFA) signed between the GoSL and the LTTE in February 2002 must be

9 Trincomalee Harbour Defence /Assessment of the Armed Forces of Sri Lanka

10 US Training for Our Services' Sunday Observer - 04.08.2002

11 The US and Sri Lanka: Terrorism Ignored? - Watson, Elliott L <http://cronfa.swan.ac.uk/Record/cronfa43109>

12 <https://tamilnation.org/intframe/us/86tic.htm>

13 https://www.marineinsight.com/know-more/5-major-ports-of-sri-lanka/#4_Port_of_Trincomalee

14 <https://tamilnation.org/lte/vp/interviews/8403%20anita%20pratap.htm>

understood in the context of the transformations that were taking place on the ground. Hence, the provisions of the CFA, although facilitated by an external actor (Norway), were more a reflection of the reality on the ground ensuring parity of esteem between the parties to the conflict than rules set by the facilitators. The US, which appeared to be a prominent supporter of the CFA, immediately greeted the ceasefire with ritual praise as soon as it was signed. However, on 9 March 2002, barely two weeks after the CFA was concluded, the US ambassador to Colombo, Ashley Wills, told *The Island*, a Sinhala nationalist newspaper in Colombo that maintained an openly hostile editorial policy towards the CFA:

I agree with “*The Island*” that there are reasons for caution in reaching any agreement with the LTTE. It would not be proper for me to speak for the Sri Lankan Government, which I believe also understands the need for caution, but you may rest assured that the United States Government is fully aware of the history of the LTTE [...] It is because of the LTTE’s past actions that the United States was the first Western country to place the LTTE on its Foreign Terrorist Organisation List and has placed it on the list of terrorist organisations established by President Bush after the 9/11 attacks [...] The United States has also provided considerable support to the Government of Sri Lanka during this civil conflict, including training Sri Lankan military units, donating military trucks, as well as selling other equipment and establishing training opportunities in the United States for selected Sri Lankan military officers [...] We understand that achieving peace will not be easy. We understand, however, that a just and lasting peace for all the people of this island is worth the risk of attempting to negotiate with the LTTE.¹⁵

The key components that determined the overall tone of Wills’ article to the nationalist newspaper summed up the essence of subsequent US policy towards the ceasefire and coincided with the Sinhala nationalist anti-CFA position on negotiating with the LTTE, reinforcing the fears and suspicions propagated by the Sinhala nationalist lobby in its propaganda campaigns among the Sinhala masses. These fears included the “need for caution” in dealing with the LTTE, the “history of the LTTE”, which was considered unreliable, and the “risk of negotiating” with the group. These positions were continually reiterated in the following years in almost every statement from the US embassy in Colombo and in every political announcement by key US dignitaries visiting the country.

It is crucial to understand that the US insistence on designating the LTTE as a “terrorist” organisation, i.e. an enemy to be defeated at all costs, and thus framing the island conflict in the context of its own global “war on terror”, led to genocide. As explained in more detail in Annex 2, the definition of terrorism is itself a deeply contested terrain. The annex paper discusses under what conditions it may be justified to take up arms in rebellion against an existing state structure. As many have emphasised in the case of Nelson Mandela, one person’s “terrorist” is another person’s freedom fighter. Moreover, any acceptable general use of the concept of terrorism must include the possibility of states using terrorist methods for their own ends, which is very much applicable to the SL case. The relevant point for our judgement is that the US and UK, acting as close allies, used their narrative of counter-terrorism and, in particular, the “prevention of terrorism” as a justification for genocidal and repressive practices. This is the crux of the deliberate breakdown of the 2002 Peace Process by these two Western states, which set the course for the climax of the genocidal massacre that followed and the genocide currently underway.

Contrary to the hostile US stance towards the Peace Process, the EU welcomed, politically and practically, the Line of Control between the SL governments and the LTTE, while promoting a negotiated political solution as opposed to a militaristic one. The EU’s stance reinforced the GoSL’s peace mandate at the

time, marginalising Sinhala nationalist groups.

How exactly did the contrast between the US and the EU play out? While the Nordic countries formed the SL Ceasefire Monitoring Mission to maintain the Line of Control between the two political domains, the US took steps to reinforce SL security forces. While the EU promoted a negotiated settlement and conditioned aid on the success of the Peace Process, the US prescribed the nature of the final solution by demanding that the LTTE abandon armed resistance and the right to self-determination, labelling the movement “terrorist”. The EU joined the intergovernmental body called The Co-Chairs (with Japan, Norway and the USA) to gather development assistance for the Peace Process. The US unilaterally decided to hold the preparatory meeting for the Tokyo donors’ conference in Washington when the two sides had successfully held 6 rounds of peace talks in major cities in Europe and Asia. This decision was announced just after the sixth round of peace talks in March 2003. This was a deliberate move to exclude the LTTE from the meeting. Until then, the fundamental principle of the peace process, the parity of esteem of both sides, had been respected, and both sides had made joint efforts to seek international financial assistance for reconstruction and rehabilitation. The US political-diplomatic manoeuvre violated this cherished principle underpinning the Peace Process. The meeting was held in Washington, which meant an increase in US influence and a turning of the screw in the Peace Process. Richard Armitage, US Deputy Secretary of State, again declared that the LTTE should “renounce terrorism in word and deed”.¹⁶

In response, the LTTE decided to suspend its participation in the seventh round of talks and the Tokyo donors’ conference. In an effort to revive the peace talks and address the growing humanitarian needs of the Tamil population, the LTTE submitted a proposal for the creation of an Interim Self-Governing Authority for the Tamil region¹⁷ which was never discussed, but simply rejected by the government. However, in compliance with the agreements reached during the peace talks, the LTTE established the North Eastern Secretariat for Human Rights (NESoHR) in Killinochchi in December 2004.

Following the 2004 tsunami, the Sinhala and Tamil regions were severely affected. Thanks to EU advocacy, the GoSL agreed to set up a joint mechanism with the LTTE to carry out rehabilitation and reconstruction. This move could have revived the stalled Peace Process, but the US decided not to allocate funds to this joint effort on the grounds that the LTTE is a “terrorist organisation” under US law, which emboldened Sinhala racist groups opposed to any agreement with the LTTE. The joint mechanism disappeared. Many countries sent humanitarian aid and the LTTE structures contributed to the equitable distribution of aid and were highly praised for it but the SL government blocked much of the aid that was to be administered by the LTTE.

In 2006, due to intense US pressure on EU member states, the EU banned the LTTE. This was the final and most destructive blow to the Peace Process.¹⁸ On the one hand, this totally removed any international protection for the Tamil people: to criminalise the LTTE is to delegitimise the historical resistance against the genocidal process that the Tamils have lived through for many decades. Such criminalisation deprived them of their right to self-determination that protects them from genocide. On the other hand, the ban gave the GoSL route permission to renounce any peaceful solution to the Tamil national question and fully embrace the military solution. The US move quickly disrupted the

16 <https://2001-2009.state.gov/s/d/former/armitage/remarks/19615.htm>

17 https://www.satp.org/satporgtp/countries/srilanka/document/papers/LTTE_northeast.htm

18 https://www.europarl.europa.eu/doceo/document/P-7-2012-009345_EN.html

dual state power operating in the island that has stopped the historical genocidal process, allowing the GoSL to resume and climax the genocidal process by abandoning the Peace Process (which it officially did in 2008) and fully implementing the military option. Shortly after the EU's criminalisation of the LTTE, the US signed a military agreement with SL in 2007 and 1,000 US Marines based in Okinawa were sent to the island to train its security forces for war. India joined in by providing naval support to prevent the LTTE from using the seas.

Should we assess the degree of culpability of international actors based on the supply of arms in the last phase of the war? As a jury we argue that it was only after the balance of power between the two sides had been altered by the US/UK through the EU ban that SL rapidly became an arms market. The Stockholm International Peace Research Institute (SIPRI) reports that Israel sold speedboats and unmanned aerial vehicles (UAVs). The US and India gave ground surveillance radars. China, Israel and Ukraine sold fighter jets. Pakistan increased its small arms supplies on credit from 2007. In early 2008, a new deal was agreed for 150,000 60-millimetre mortar shells and 150,000 hand grenades from Pakistan, which were immediately delivered from the Pakistani army's stockpile. India, in competition with China and Pakistan, offered \$100 million as a loan to buy military hardware from India, including vehicles and air defence systems. Slovakia delivered 10,000 artillery rockets in early 2008.¹⁹

Arms supplies had increased since 1977 but the LTTE could not be defeated. On the contrary, despite SL's superior military capability, a Tamil state could be built. Moreover, the LTTE achieved a balance of power that led to the 2002 Peace Process, with strong EU backing. Prior to the Peace Process, Germany and France had criminalised Tamil activists, but the Peace Process led these countries to constructively engage in maintaining the parity of esteem accorded to both sides at the international level. It was the EU ban on the LTTE, demanded by the US and UK, that dismantled the international space for peaceful negotiation. It is therefore highly misleading to reduce the causes of the resumption of war to the rapid supply of arms, which hides the culpability of the main global players in the destruction of the Peace Process. Only after the US and UK destroyed the international political space did SL become an arms market through which various powers competed for hegemony on the island for different reasons.

We also argue that the climax of the genocide in 2009 was reached not purely because of the racist regime led by the Rajapaksas. Sinhala nationalist political forces that supported the Rajapaksas were marginal during the 2002 Peace Process. In fact, the EU's initial support for the Peace Process weakened these forces. So much so, that it was Mahinda Rajapaksa (under EU pressure of course), who presented the proposal for the joint tsunami mechanism to Parliament when he was prime minister to President Chandrika Kumaratunga in early 2005. The Rajapaksa regime's power did not depend solely on Sinhala racism, even if in their public rhetoric they presented themselves to Sinhala society and the world as such. But in reality, faith in a military solution was drastically increased by the continued US interventions against the LTTE. Sinhala racist rethorics were turned into hard power with such interventions.

Hence, attacks on Tamil Eelam intensified between 2006 and 2008, with the genocidal process reaching its climax between September 2008 and May 2009. Between 2006 and 2008, at least 800 extrajudicial

¹⁹ Stockholm International Peace Research Institute (SIPRI), International Arms Transfers, https://www.sipri.org/yearbook/2009/07_p.316-317.

killings and 600 enforced disappearances were recorded outside LTTE-administered Tamil areas. The government was said to be fighting the LTTE, which is a “terrorist group”. The war was presented as a “humanitarian operation” to “liberate” civilians held “hostage” by the LTTE. The government ordered all international humanitarian organisations and social communicators to leave the region where the Tamil population was sheltering under the protection of the LTTE. But the more the region was attacked, the more the population moved with the LTTE. It seems that there was a choice between survival and freedom, but they chose the latter. The Tamil population was forced to concentrate in increasingly restricted areas of the northern region under heavy bombardment from the air, artillery shelling from the land and naval attacks from the sea. Later, the government declared a “No-Fire Zone”, requiring civilians to move there for protection, and once gathered there also shelled it, including the makeshift hospitals where the wounded were concentrated. These hospitals were constantly on the move as the population was forced to flee from place to place. In May 2009, half a million people were crammed into a 1.5 square kilometre area where they were bombed. After the war, the Roman Catholic Bishop of Mannar, Rayappu Joseph, testified before the Lessons Learnt and Reconciliation Commission (LLRC) and cited the government’s own statistics: the data indicated that of the 429,059 Tamils living in the LTTE-administered area in 2008, only 282,380 remained after the end of the war in May 2009, leading to the conclusion that 146,679 had disappeared. Meanwhile, a UN report estimated 70,000 dead in the final onslaught that ended at a place called Mullivaikkal.

The Peace Process enjoyed the popular support of all the peoples of the island

The US and the UK used “terrorism” as an excuse to break the Peace Process and lead to genocide. Most obviously, US aggressiveness in breaking the peace was programmatic and multifaceted, and its predictable consequences were devastating. US measures included:

1. Classifying the LTTE as a terrorist organisation in 1995 (US State Department), and designating it as a Foreign Terrorist Organisation in 1997, criminalising a legitimate national liberation movement.
2. Assessing and advising the SL armed forces on how to defeat the LTTE through a comprehensive study conducted by USPACOM in September 2002, just as the Peace Process was beginning, which included a visit to the port of Trincomalee. The US conducted a comprehensive assessment of the SL armed forces with proposals for modernisation and training, especially in special operations capability to defeat the LTTE.
3. After several rounds of fruitful internationally mediated peace talks between the GoSL and the LTTE, the latter’s legitimacy was decisively undermined by denying them entry to the crucial aid talks in Washington DC.
4. In early 2006, the SL army and navy were reassessed as to their ability to destroy the LTTE and provided with military equipment to do so.
5. Decisively intervening politically to close international political space for the LTTE in Europe in collaboration with the UK to pressure the EU to ban the LTTE in May 2006.
6. The US encouraged the GoSL to adopt the counter-insurgency model against a deeply rooted popular liberation movement (similar to that deployed in Guatemala), whereby civilians are targeted

with massive lethal violence to the point of extreme psychological trauma, disorientation and societal destruction.

The process leading to the climax of the genocide of the Tamil people in SL is associated with the deepening entrenchment of the Sri Lankan State in the US-UK axis within the post-Cold War geopolitical context of the break-up of the Soviet Union and the consequent opening of vast territories in Central Asia to global hegemonic competition. While a weakened Russia entered a process of recomposition, a triumphant USA established itself as the world's leading superpower. The years that include the aggression against Tamil Eelam coincide with the moment of greatest preventive deployment of the US in the region, in the face of the reconfiguration of another possible power bloc that would represent a counterweight. The positions of the former colonial powers, still significant, gave way to US leadership, visible above all else, through its military advance.

The wars and pulverisation of the Balkan states and other indirect or bypassed interventions opened the door to vast and rich territories, including through explicit unilateral occupations and wars such as Afghanistan and Iraq, or through proxy wars of various kinds, including Sri Lanka. In this geopolitical scenario, the British-made unitary political structure of the island proved extremely useful to the US in advancing its hegemony in the Indian Ocean region. The occupation of strategic positions, such as the port of Trincomalee, in these vast territories of Central and South Asia, not only made it easier to grab their wealth, with hydrocarbon deposits as a central target, but also prevented or hindered access to potentially competing nations - even if only on a regional scale - and allowed control of trade and military routes (land and sea). SL's value lies not in its economic resources, but in its geo-strategic location by allowing control of the main shipping lanes in the Indian Ocean.

In Conclusion

On the basis of the extensive documentation received and the testimonies presented at the Berlin session (2022), and taking into account, on the one hand, the asymmetry of power between the major world powers, mainly in relation to the US, and, on the other hand, the inability of the Sinhalese state of SL to defeat the de facto state of Tamil Eelam constituted by the LTTE, it can be asserted that the destruction of the LTTE - through the breakdown of the Peace Process and the genocide against the Tamil people, as substantially documented at the Bremen session (2013) - would not have been possible without the intervention of foreign actors of the stature of the US, with the complicity of its allied powers (UK and EU) and international bodies whose role should be to ensure peace and respect for human rights (UN).

ACCUSATION 2 - US-LED UN HUMAN RIGHTS COUNCIL RESOLUTIONS ON SRI LANKA VIOLATE TAMIL EELAM RIGHTS

ACCUSATION

The US-led UNHRC resolutions on Sri Lanka violate the fundamental rights of Eelam Tamils by failing to recognise their right to exist as a people, continue to criminalise their resistance and shield from scrutiny the main perpetrators of crimes against Eelam Tamils, such as the USA.

FINDING

On the basis of the detailed evidence presented, the Jury finds that this indictment is substantially correct. Despite the global divisions between the power blocs operating in this case, to date they have not been fair minded towards the Eelam Tamils. The US and its allies have the decisive role in the UNHRC and have ensured that their policies prevail. The result has been international impunity for genocide.

At a critical stage after the Mullivaikkal massacre, the UNHRC was the main institution for the Eelam Tamils to make representations. However, the UNHRC's decision-making process has been manipulated by the US and UK to deny the charges of genocide. The US and UK interventions have been instrumental in perpetuating the hegemonic narrative and policy framework that, on the one hand, defines the LTTE as a terrorist organisation and, on the other, defines SL as a legitimate unitary state whose sovereignty and territorial integrity are unquestioned. The disputes that have arisen fall within this pre-established framework. The UNHRC has repeatedly called on the SL State to investigate its own human rights violations, with some international involvement. Even this limited scrutiny has been blocked by SL, which in fact continues to engage in state terrorism with impunity. The SL governments that run the unitary state do so with the confidence instilled in them by the powers that back UN Resolutions and, at the same time, use the island as a geo-strategic military location that endangers peace in the Indian Ocean region.

THE JURY'S REASONING

The USA (and in its brief absence at the UNHRC, the UK) has been the proponent of a series of Resolutions at the UNHRC on 'Accountability and Reconciliation in Sri Lanka' since 2012, with subsequent Resolutions in 2013, 2014, 2015, 2017, 2019 and 2021, which share the same essential features. At first glance, the Resolutions may suggest a positive step towards justice for victims (without specifically mentioning Tamil victims in most Resolutions), and some Tamil organisations have strongly supported this idea. However, these Resolutions, on closer examination, represent a repudiation of the entire basis of the pre-2009 Tamil Eelam struggle.

Main points of the UNHRC Resolutions

The Resolutions from 2012 to 2021 imply or affirm that:

1. The government was conducting legitimate anti-terrorist operations (and therefore the LTTE is a terrorist organisation):

- “States must ensure that any measures taken to combat terrorism comply with their obligations under international law ... as appropriate” (texts of the 2012, 2013, 2014 and 2015 Resolutions; the 2017 and 2019 Resolutions affirm the 2015 Resolution, while the 2021 Resolution repeats this affirmation with an additional mention of the 2019 Easter Sunday attacks).²⁰

2. Violations are limited to internal forces (without examining the role of the US or allied forces), and calls for prosecution of LTTE members:

- “Stresses the importance of a comprehensive process of accountability for all human rights violations and abuses committed in Sri Lanka by all parties, including abuses committed by the LTTE, as highlighted in the comprehensive report of the Office of the High Commissioner for Sri Lanka” (2021).²¹
- “Acknowledges the need for a process of accountability and reconciliation for the violations and abuses committed by the LTTE, as highlighted in the report of the Office of the High Commissioner on its investigation in Sri Lanka” (2015).²²

3. It denies the right of Eelam Tamils to self-determination as a people (they must accept a unitary state and the dissolution of their national existence under the 13th amendment to the Constitution):

- “Calling upon the Government of Sri Lanka to fulfil its commitments on the devolution of political authority... to ensure that all provincial councils, including the Northern and Eastern Provincial Councils [which are recognised as the traditional homelands of the Tamil speaking people on the island], are able to function effectively, in accordance with the 13th amendment to the Constitution of Sri Lanka” (2021).²³

Political machinations

Rather than a change of stance, these Resolutions reflect the same positions taken by the US prior to 2009 to destroy the LTTE and support Sri Lanka’s single state building process. We can see that the US, at least since May 2007, had begun to publicly criticise SL’s human rights record. At the same time, however, it continued to target the LTTE and continued to provide critical military and political/diplomatic support to the SL State to defeat it.

The deliberate use of threat to prosecute SL officials can be seen in the evolution of calls for “international justice” from 2012 onwards. The 2012-2014 Resolution was opposed by SL and other states, but supported by the Western bloc and its allies. In 2014, it called on the Office of the High Commissioner for Human Rights to: “undertake a thorough investigation into alleged serious human rights violations and abuses and related crimes committed by both parties in Sri Lanka during the period [2002 to 2009]”.²⁴

However, following a change of government in 2015, the Resolution now co-sponsored by the GoSL,

20 The text is taken from the UN Security Council statement (Resolution 1456, 2003) on the issue of counter-terrorism at <http://unscr.com/en/resolutions/doc/1456>.

21 UN <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G21/072/88/PDF/G2107288.pdf>

22 UN <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/236/38/PDF/G1523638.pdf>

23 UN <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G21/072/88/PDF/G2107288.pdf>

24 UN <https://una.org.uk/news/human-rights-council-mandates-investigation-sri-lanka-war-crimes>

recognised “that the investigation of alleged serious violations and abuses of human rights and related crimes in Sri Lanka called for by the Human Rights Council in its Resolution 25/1 was necessitated by the absence of a credible domestic accountability process”.²⁵

Despite the fact that no such mechanism has been created, there has been no pressure on the new government to deliver on these promises in 2017 or 2019. The government’s attitude to these issues was expressed by a SL minister who stated, in relation to the passing of the Missing Persons Bureau Bill in the SL Parliament in 2016 as a step towards the implementation of the UNHRC resolution, that: The whole purpose of this process is to investigate war crimes and to prove that these allegations have no basis [...] The Office of Missing Persons is not a place that will investigate crimes. Its role will be strictly limited to collecting information on missing persons and providing assistance to the affected families. (Ajith Perera, Deputy Minister of Energy and Renewable Energy, Sri Lanka).²⁶

However, since Mahinda Rajapaksa’s re-election as prime minister, with Gotabhaya as president, the 2021 UN Resolution, now opposed by the new GoSL, has suggested that states use the principle of universal jurisdiction to prosecute perpetrators of crimes, demonstrating the cynical use of the UNHRC as a tool of regime change.

The Chinese-led countries (including some Latin American ones) that opposed the Resolution on several occasions argued that it was interference in a sovereign state.²⁷ In fact, the UNHRC resolution protects the sovereignty of the SL State, but does not recognise the collective right of Eelam Tamils to self-determination. It reduces rights violations to individual rights. In that sense, it is not an interference in the SL State, but in the collective rights of the Eelam Tamil people. This is exactly what the US sought to achieve with the Resolution. China’s opposition to the Resolution made China appear as a supporter of a state that has violated human rights and, by implication, China as the main violator of human rights and the USA as the protector of the rights of the Tamils. In this way, the US has manipulated the UNHRC Resolution to control the narrative, thus totally concealing its primary responsibility for orchestrating the war against the Tamils and turning the UNHRC resolution into a tool for regime change, keeping the state structure intact.

Resolutions and Votes at the UNHRC

Following reports of the massacre that took place in Mullivaikkal on 18 May 2009, Germany wrote to the UNHRC urging a special session on the human rights situation in SL. The letter was supported by 16 of the 47 voting nations of the Council.²⁸ Thus, an emergency special session was convened for 26-27 May 2009. Meanwhile, the GoSL and the UN issued a joint communiqué at the end of the UN Secretary General’s visit on 23 May 2009 with the following text:

25 UN <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/236/38/PDF/G1523638.pdf>

26 See “Victims outraged by efforts to protect military from prosecution for war crimes” at <http://www.jdslanka.org/index.php/news-features/politics-a-current-affairs/625-victims-outraged-by-efforts-to-protect-military-from-prosecution-for-war-crimes>.

27 See reports at <https://www.tamilnet.com/art.html?catid=79&artid=39972> and <https://www.tamilnet.com/art.html?catid=13&artid=39976>

28 UNCHR <https://extranet2.ohchr.org/Extranets/HRCExtranet/portal/page/portal/HRCExtranet/11thSpecialSession/Letter%20dated%2019%20May%202009%20%20from%20the%20Permanent%20Mission%20de.pdf>

Sri Lanka reiterated its strongest commitment to the promotion and protection of human rights, in keeping with international human rights standards and Sri Lanka's international obligations. The Secretary-General underlined the importance of an accountability process for addressing violations of international humanitarian and human rights law. The Government will take measures to address those grievances.²⁹

At the opening of the session on 26 May 2009, Cuba delivered the statement on behalf of the Non-Aligned Movement (NAM):

The NAM congratulates Sri Lanka on putting an end to more than 25 years of internal conflict. Sri Lanka's sovereign right to fight terrorism and separatism within its undisputed borders must be respected.³⁰

This position excused genocide on state sovereignty grounds without recognising the Eelam Tamils' right to national sovereignty.

Upon SL's failure to take meaningful steps to fulfil the above commitments, the UN Secretary-General appointed a three-member panel on 22 June 2010 to examine human rights and accountability issues during the last phases of the war in SL. This report of the Panel of Experts (POE) was submitted to the Secretary-General in March 2011.³¹ Subsequently, the Secretary-General forwarded the POE report to the Chair of the UNHRC and to the High Commissioner for Human Rights in September 2011. Thereafter, discarding the SG's POE report, the US sponsored the first Resolution based on the GoSL-appointed commission's own report (Lessons Learnt and Reconciliation Commission) denying any responsibility for the killings.³² In fact, this commission was mandated by the SL President not to probe into the human rights violations of the last phase of the war, but to probe into the 2002 Peace Process between the previous SL government and the LTTE.

From 2012 to 2014, even mild US criticism of SL's human rights abuses was enough to challenge the Rajapaksa government, and mobilised support from states wary of US interventionist motives. The UNHRC adopted the US-sponsored Resolution 19/2 'Promoting Reconciliation and Accountability in Sri Lanka' in March 2012, but with only 24 states in favour, mostly European; 15 states voted against, including China, Russia and Cuba; and 8 states, mostly African, abstained.³³ There was a similar pattern for the March 2013 and March 2014 Resolutions.³⁴ For example, Resolution 25/1 of 2014 was proposed by the USA, UK, North Macedonia, Montenegro and Mauritius and supported by 23 countries; 12

29 Colombo Telegraph <https://www.colombotelegraph.com/index.php/gotas-war-on-sri-lankas-human-rights-commitments/>

30 UNHRC [https://extranet2.ohchr.org/Extranets/HRCExtranet/portal/page/portal/HRCExtranet/11thSpecialSession/Oralstatements/260509/Tab2/Cuba%20\(non-aligned%20movement\).pdf](https://extranet2.ohchr.org/Extranets/HRCExtranet/portal/page/portal/HRCExtranet/11thSpecialSession/Oralstatements/260509/Tab2/Cuba%20(non-aligned%20movement).pdf)

31 UNSC <https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/POC%20Rep%20on%20Account%20in%20Sri%20Lanka.pdf>

32 SL <https://reliefweb.int/report/sri-lanka/report-commission-inquiry-lessons-learnt-and-reconciliation> See the US comments on Sri Lanka's "good faith"; at <https://2009-2017.state.gov/j/184137.htm>

33 UNCHR <https://www.right-docs.org/doc/a-hrc-res-19-2/>

34 UNCHR <https://www.right-docs.org/doc/a-hrc-res-22-1/>

opposed it, including China, Russia, Cuba and Venezuela; and 12 abstained.³⁵

Then there was another phase in the UNHRC sessions from 2015 to 2019. Rajapaksa was dismissed in January 2015, and the new Sirisena government adopted a different tactic. The GoSL co-sponsored Resolutions 30/1 (2015), 34/1 (2017) and 40/1 (2019). Resolutions 30/1 and 34/1 were proposed by the USA, UK, Montenegro and North Macedonia;³⁶ and passed without opposition.³⁷ Resolution 40/1 was proposed by UK, Montenegro, North Macedonia, Canada and Germany, and again passed without opposition.³⁸ Despite the growing body of evidence available, the UNHRC consensus remained tactical and further consolidated the continuing international impunity for genocide. On his visit to SL, former US Secretary of State John Kerry hailed the Resolution while defending the ‘reputation’, ‘honour’ and ‘professionalism’ of SL security forces who fought in the war (24 March 2015):

This resolution marks an important step toward a credible transitional justice process, owned by Sri Lankans and with the support and involvement of the international community. The resolution will help families of the missing find answers about their loved ones. And it lays out a path to provide truth, justice, reparation, and guarantees of non-recurrence that the Sri Lankan people deserve while safeguarding the reputation of those, including within the military, who conducted themselves with honor and professionalism.³⁹

There was a third phase from 2020 to 2022 with the return of the Rajapaksa government.⁴⁰ In 2020, SL withdrew from the Resolution process, inaugurating a return to the previous voting blocs. The 2020 Resolution was passed by 22 votes in favour, 11 against and 14 abstentions. The 2021 Resolution mentions the Tamil and Muslim communities for the first time. Rajapaksa thanked China for its opposition.⁴¹

In Conclusion

Once again, the latest versions of the Resolution expressed human rights concerns, but without addressing the fundamental issue of genocide, and in fact continued to provide ideological cover for the ongoing genocide with counter-terrorism as the framing narrative shared by both the US-led bloc and the opposition.⁴² In essence, both in word and deed, those powers who propose the Resolution as well as oppose it, for different geopolitical reasons, uphold the sovereignty of the SL State as opposed to Tamil people’s resistance to decades long national oppression and their right to self-determination.

35 UNCHR <https://www.right-docs.org/doc/a-hrc-res-25-1/>

36 UNCHR <https://www.right-docs.org/doc/a-hrc-res-30-1/> and <https://www.right-docs.org/doc/a-hrc-res-34-1/>

37 UNCHR <https://www.ohchr.org/en/hr-bodies/hrc/regular-sessions/session30/res-dec-stat>

38 UNCHR <https://www.right-docs.org/doc/a-hrc-res-40-1/>

39 <http://www.adaderana.lk/news/32461/justice-process-owned-by-sri-lankans-support-of-international-community-us>

40 The balance of the UNHRC sessions until 2021 is summarised at <https://www.justsecurity.org/74444/spotlight-on-sri-lanka-as-un-human-rights-council-prepares-next-session/>

41 Business Standard https://www.business-standard.com/article/international/rajapaksa-thanks-xi-for-china-s-vote-contr-unhrc-resolution-contr-lanka-121033001121_1.html

42 UNHRC <https://reliefweb.int/report/sri-lanka/resolution-adopted-human-rights-council-23-march-2021-461-promote-reconciliation>

US-led Resolutions have justified the reversal of the parity of esteem accorded to both parties in the 2002 Peace Process that was the best safeguard against genocide. Above all, through the Resolutions, the US has built a façade to cover up its own culpability in genocide by reducing the crime committed against the Tamil people to individual rights violations while falsely portraying itself as the sole protector of human rights in the world against all those who oppose its geo-strategic ambitions. To that end the US has manipulated the United Nations Human Rights Council to advance its imperial interests.

ACCUSATION 3 - THE DESTRUCTION OF THE LTTE AS A KEY ELEMENT IN THE GENOCIDE AND DESTRUCTION OF WOMEN'S RIGHTS

ACCUSATION

The USA, in seeking to destroy the LTTE, is guilty of violating the rights of Tamil women and their right to be protected from genocide, as they took action to destroy the LTTE knowing that the LTTE-administered territories protected Tamil women from the use of rape as a weapon of war by the GoSL, and enabled positive transformations for women in Tamil Eelam (including gender equality and women's empowerment).

FINDING

The Jury finds that powers such as the USA are guilty of violating the rights of the women of Tamil Eelam by destroying the LTTE. We reached this conclusion based on the testimonial and documentary evidence presented to us.

THE JURY'S REASONING

Preliminary Issue - Importance of Testimonial Evidence

Before reasoning this accusation, we believe it is important to address a preliminary issue. Throughout the 3 days of Tribunal sessions, we heard direct testimonies from penporaligal(women LTTE fighters). We are aware that this was the first time that former LTTE members were able to testify as such. Although many porali (combatants) are themselves witnesses and survivors of the genocide, the US-driven proscription of the LTTE has forced them into fear and silence. Although some former LTTE members have testified as witnesses in other international human rights bodies, they have had to conceal the fact that they were members of the LTTE when providing evidence of the atrocities they witnessed and suffered. By concealing the fact that they were members of the LTTE, important aspects of their experiences are left out of the accounts of violence and genocide. These important aspects include how LTTE members not only resisted genocide, but also participated in a state-building process in their original Tamil homeland that was based on liberation and equality. The use of sexual violence as a genocidal technology against Tamils is well documented. What is less known in the mainstream documentation about this is how Tamil women joined the LTTE to fight against sexual violence and protect other Tamil women, and how they were in the process of building a state where power was specifically distributed between Tamil men and women to prevent degradation against women within the Tamil state. We judges were honoured to have heard the testimonies of the penporaligal, to know not only the extreme violence they suffered, but also their strength and the socially progressive state (child care, elderly care, environmental care, gender sensitive, religiously pluralist and anti-caste) they were building for their people.

By breaking the peace and destroying the LTTE, the USA destroyed the de facto Tamil state that protected and empowered Tamil women and has re-exposed them to extreme violence under the SL security forces. We refer here to our findings and reasons for making a guilty plea on “Accusation 1”. The USA committed crimes against peace by intentionally undermining the 2002 ceasefire through interventions aimed at strengthening social, political and military forces opposed to a negotiated agreement between the GoSL and the LTTE for shared sovereignty of the island, leading to a strategy of “total war” to destroy the LTTE. By empowering the SL armed forces, the USA empowered a known perpetrator of atrocities against Tamil women. The US has a pattern of supporting regressive, violent and anti-women groups in their quest for global monopoly of land and resources.

A paradigmatic example is the US support for the mujahideen in Afghanistan when they sought to overthrow the Russian-backed Afghan regime. The mujahideen became the Taliban, of which ISIS is an offshoot. Similar examples are the US interventions in Guatemala, Chile and other countries, where US-backed regimes committed violent atrocities against women, especially indigenous and minority women.

The society under LTTE administration was noted for successfully challenging gender and caste oppression. It was also a place where women’s safety was guaranteed, in contrast to the long history of the use of rape as a weapon of war and genocide by SL State forces. These transformations were partly due to the large number of women who became LTTE fighters, which had a wider impact on Tamil Eelam society. In this sense, women under LTTE administration had their own organisational structures, were drivers of social change, had independent political power and were a crucial part of the LTTE’s political leadership. We heard testimonies from Tamil women who were members of the LTTE and had worked at different levels of the organisation. They testified about the violence they suffered growing up under Sri Lankan military occupation of their homelands and the reasons for joining the LTTE:

Witness 1: enlisted in 1995 to fight against the army, but also to combat the caste system in Tamil society and to address health problems such as malaria.

Witness 2: joined in 1991 after witnessing the murder of his family members as a teenager.

Witness 3: joined in the 1990s as a doctor.

Witness 4: joined in 1989 after surviving many incidents of sexual harassment and assault at military checkpoints of SL and Indian troops in Jaffna as a child and young woman.

Witness 5-6-7: joined because she saw the women members of the LTTE as role models and aspired to be like them.

Witness 8: joined during the ceasefire period, wanted to participate in the work of the Centre for Women’s Development and Rehabilitation (CWDR) run by women members of the LTTE.

These reasons for joining the LTTE are consistent with Dr. N. Malathy’s findings in her book *A Fleeting Moment in my Country: The Last Days of the LTTE De-Facto State*, and provide insight into how young Tamil women understood the work of the LTTE prior to joining, identifying eight broad categories of reasons why women joined the movement:

1. To punish the Lankan army for killing a loved one. This was the most commonly cited reason for enlisting.
2. To avoid being a victim of sexual violence by the enemy’s army

3. Displacement and lack of regular schooling
4. High-ranking female LTTE members as role models
5. Extreme poverty
6. LTTE awareness-raising campaigns; political awareness-raising
7. Rebellion against traditional culture, promotion of women's rights by the LTTE
8. To escape from family abuse of one kind or another

Witness 6 highlighted how SL State's discriminatory policies against Tamils with regard to university education (Standardization of Educaion Bill, 1971) affected all Tamil youth, but specifically young women and joining the LTTE gave them ample opportunities for education in different fields. Witnesses 1, 3, 5, 6, 7 and 8 wanted to join because they were inspired by the LTTE's internal work to make Tamil society more equitable for women. Witnesses 1 and 4 joined because they wanted to be able to walk on their own ancestral lands without fear of armed occupiers.

LTTE-administered State in the Vanni

While defending the borders of Tamil Eelam, the LTTE were engaged in a process of state building. This construction was guided by the LTTE's politics of self-determination, national liberation and struggle against oppression. The way in which their feminist politics guided state building was material and very visible. In addition to the two women's regiments, women were present in all the armed divisions of the LTTE, such as the Sea Tigers and the Black Tigers, and continued their political leadership through the Political Division. Tamil women constituted at least 50% of judges, lawyers and police. They worked in the media, banking, finance and other administrative positions.

The LTTE's pro-women stance influenced gender relations among Tamil civilians in their daily lives in Tamil Eelam. Dr. Malathy calls this a "Vanni style of women's liberation". In her recollections of the de facto state, Dr. Malathy writes:

Women, both LTTE members as well as civilians, occupied the public space in large numbers. They were very visible on the roads and in the LTTE institutions. This gave Vanni a uniquely pro-woman character, which was absent elsewhere on the island [...] LTTE women, women employed by LTTE institutions, and self-employed women were all interconnected through the many LTTE institutions, resulting in a unique female culture. These women openly and routinely discussed domestic violence and other problems faced by women. They were all on the lookout for women who needed a helping hand. Several LTTE institutions including health, welfare, banking, development, police, law, and the media supported this female culture by giving women supporting services. These institutions all had more than 50 percent female representation. Some of them were run solely by women [...] Women needing help were directed to the appropriate institutions, which were all focused on giving a helping hand to women. This was the best feature of this female culture, the elimination of destitution through universal women's action. It was a unique kind of feminism, created by connecting the majority of women all over Vanni, from all walks of life, for public action regarding women and children in need of help.⁴³

In these roles, as civilians and as Tigers, women became leaders in designing and shaping various sectors of the Tamil Eelam state, defining not only law and policy, but also the culture of policing and judicial institutions, among others. This was directly influenced by their lived experiences of SL

43 N. Malathy (2012) *A Fleeting Moment in my Country: The Last Days of the LTTE De-Facto State*, p. 107.

State institutions as violent, genocidal and oppressive. The Tamil Eelam Law School was established to train lawyers, which further strengthened equal gender representation in the profession. Legislation was drafted to effectively address various forms of violence against women. All these initiatives were supported and encouraged by Tiger men, who also did their part to ensure that they were carried out. The two key persons who initially mobilized women in the history of the Eelam Tamil national resistance were Thelepan (23) and Annai Pupathi (56) both of whom fasted unto death in 1987 and 1988 respectively opposing both Indian and Sri Lankan states. Thelepan was the political leader of the LTTE in Jaffna peninsula in the north. Annai Pupathi was a member of the Mothers' Front in Batticaloa district in the east.

The testimonies we heard gave us an insight into what life was like in the LTTE-administered state:

Witness 8- CWDR

This witness provided testimonial evidence about her experience as a human rights worker in the LTTE. She was a senior member of an administrative division and gave an in-camera presentation on her work as well as on the CWDR of the LTTE. According to the testimony of this witness, the CWDR emerged from grassroots women's organisation in the 1990s and became a registered NGO at the provincial level in 1995 and at the national level in 2003. The CWDR's operations included development, education, vocational training and welfare sections. The welfare section was divided into 5 areas including housing and comprehensive support for the following:

1. Vettri Manai ("victorious homecoming"): psychological care and support for women survivors of army violence, their families, etc.
2. Niraimathy Illam ("home of the full moon"): for women with cognitive disabilities.
3. Malar Cholai ("flower garden"): a home for mothers whose husbands had been killed or forcibly disappeared.
4. Mary Illam ("Mary's home"): a home for young women made destitute by the war.
5. Senthilir Illam ("home of tender shoots"): a home for children who had lost at least one parent to the war.

The 5 programmes mentioned above provided housing, food, medical and social support and other services that people needed to maintain an autonomous life within their communities.

In patriarchal societies, women are often economically dependent on men, and marriage becomes the only option for adult women to avoid living in poverty. In these societies, women who are widowed are forced to remarry or depend on male relatives, making them vulnerable to exploitation. Protracted war and genocide caused many Tamil women to lose their spouses. The CWDR provided employment opportunities to female-headed households so that those widowed by the war would not be forced to remarry to support themselves. Uthayatharakai ("rising star") was the name of the products made by women who found employment through the CWDR's women-run shops, factories, workshops and farms. This programme enabled women to become economically self-sufficient and support their families in the same way as men.

Services for the disabled

Witness 8 stated that she worked in a home for disabled LTTE fighters. She taught disabled LTTE members to speak English or to use computers so that they could support themselves and be independent despite their physical disability.

Witnesses also testified about the social transformations that took place in the LTTE-administered

regions:

Witness 1 testified about an incident she witnessed and discussed it with the LTTE leadership. She spoke of a woman who gave birth and abandoned her newborn child at the hospital. The woman had left a note explaining that she had become pregnant after being raped by the military and that she did not want the child. The witness stated that the LTTE leadership was not at all judgmental about the woman's decision to abandon the child and took action to look after the child. The organisation initiated a deep conversation among its members about such traumatic experiences of women.

Abolition of the Dowry System

Witness 4 stated that when she and her friends joined the LTTE in the 1980s, they wanted to challenge the dowry system in Tamil society. The dowry system is a common practice in South Asia whereby the bride's family gives money, valuables and property to the groom. It became an exploitative practice that made it very difficult for women from poorer families to marry. It also reinforced the social perception that men should be "compensated" for taking on the economic burden of someone's daughter through marriage. Witness 4 explained how she and her companions raised these concerns about the dowry system with the LTTE leader. He listened to their concerns and had the practice of dowry outlawed in LTTE-administered areas.

Guaranteeing Women's Safety

A common theme in the testimonies of the women witnesses was how the safety of women in LTTE-administered areas was important to them and constituted a significant success of which they were proud. All witnesses testified that structural violence led them to live in the LTTE-administered areas. Witnesses testified how they moved to Jaffna in the north after the 1983 anti-Tamil pogrom in the south of the island. They also testified that they decided to move to the Vanni region when the SL army took Jaffna. The women testified about the constant fear and insecurity that marked their childhood growing up under SL military occupation. As the LTTE embarked on a process of state building, women's freedom and security were paramount. Witnesses commented on how they could drive a motorbike, a tractor, a big truck or walk home alone late at night without fear in LTTE-administered areas. They also stated that this is no longer possible now that the military occupies their land.

The testimonial evidence of the society that the LTTE built shows how a very specific culture emerged. It was a culture of equality for Tamil women in every sense of the word. Women were equal within the LTTE, women were provided with specific resources and support to ensure their economic equality, and cultural transformations took place such that women were no longer unequal due to cultural practices. The consequences of the destruction of the LTTE-administered state were foreseeable, and these consequences are described below.

“BEFORE THE WAR WE WERE FREE”: Post-Mullivaikkal, the Ongoing Genocide and the Ongoing War by Other Means.

The LTTE-administered state was dismantled when the SL government withdrew from the ceasefire and began the next phase of its genocide, culminating in Mullivaikkal final massacre.

The first and second sessions of the PTSL assessed evidence relating to events between 2008 and 2009. In the third session, further testimonial evidence was provided on the specific treatment of women, especially women members of the LTTE, during that period. The following testimonial evidence was provided:

Witness 2

This witness recounted an incident that marked her deeply. In 1993, the SL army captured and killed 50 women LTTE fighters. Their bodies were returned to the LTTE and were completely desecrated. The murdered fighters were stripped naked, objects were inserted into their genitals and parts of their bodies were cut off. This is just one example of what the SL forces have done to Tamil women, whether they were members of the LTTE or not. The atrocities committed from 2009 onwards, though shocking and horrific, come as no surprise to those who have lived experiences with the SL armed forces.

This witness was a female member of the LTTE and testified about the horrific treatment she suffered right after she was captured by the SL armed forces in 2009. She was held in a special detention centre for women members of the LTTE and repeatedly raped by SL forces. She was raped so many times that she was unable to walk for some time, in addition to the psychological trauma. She only recovered physically after a complicated operation but the rage, the pain and the sense of horror and helplessness made her cry and cry as she gave her testimony, which was the first one she gave after these events. It is worth noting that this was one of the bravest and most powerful testimonies.

Witness 8

This witness was a member of the LTTE, but did not participate in armed combat. Even so, she was known to SL forces. She and her husband had a child at the time of the 2008-2009 displacements. During the displacements, a shell exploded next to her and she lost both her legs. She was evacuated so that she could receive medical attention and then transferred to a detention centre for LTTE members. A relative paid a bribe to SL security forces to help her escape and she had to live in hiding for a year and a half before she was able to flee the country (Demanding bribes of large sums of money from Tamils by SL security forces and police has been a common practice).

Witness 5

Witness 5 described her experience in the detention centre after being captured by the SL armed forces. She testified that she was given injections but was not told what for or why. She also testified about the differences between how the LTTE treated prisoners of war and how she was treated when she was a prisoner of the SL armed forces.

Witness 6

This witness worked in the media division of the LTTE alongside Isaipriya, a news reporter for the LTTE-run television station. She stated that Isaipriya had lost her son just before the 2008-2009 displacements. Witness 6 and other female LTTE members disguised themselves as civilian mothers

when they were captured by SL forces. This enabled them to escape to detention centres for LTTE members, as described by Witness 9. However, Isaipriya was unable to do so because she had lost her son. According to Witness 6, Isaipriya was very afraid of what the military would do to her if they caught her, especially as she was well known because of her public role as a news reporter. Isaipriya's nightmare came true when she was captured by SL forces. Witness 6 testified that she later learned how Isaipriya was captured, raped and tortured. There is evidence of this in the documentary "No Fire Zone", presented at the second session of the PTSL. The witness stated that "there are thousands of Isaipriyas" but she, in particular, was better known.

Witness 7

This witness testified about how in 2008 the LTTE and Tamil civilians living in LTTE-administered areas begged international NGOs not to leave them. They warned the NGOs that genocide would be unleashed, and yet the NGOs left anyway. No international power demanded otherwise.

All witnesses spoke of the sexual torture to which female LTTE members were subjected by SL forces after their capture. In her book *The Orders Were to Rape You*, Meena Kandasamy recounts her interviews with former LTTE fighters. The women she interviewed recounted their experiences of rape after the LTTE-administered state was taken over and occupied by SL forces. One female combatant recounted the following:

Why these rapes? I asked them too, just as you ask me now. They wanted the wombs of our women to bear their children. That's what they said during the rapes.

Yes. The men who ruined me, the men who ruined so many, many women – yes, I can identify each of them.

I did everything about it that I could have done in the circumstances in which this was all going on. I threatened to complain. 'I shall tell your superiors.' And the men said, 'These are their orders. The orders were to rape you.'⁴⁴

The abuses suffered by Tamil women, especially LTTE fighters, were organised, intentional and ordered by the superiors of the perpetrators.

SEXUAL VIOLENCE COMMITTED BY THE SL ARMY AFTER 2009

The Tamil homeland is currently under military occupation and violence against Tamil women and girls is systematic and widespread. There are reports of forced sterilisations and forced abortions. Drugs and alcohol have been deliberately introduced into Tamil society by the state to dull the call for freedom of the next Tamil generation. War memorials are erected to celebrate the soldiers who massacred the loved ones and heroes of the Tamil land on which they are built. The SL State and security forces increase land grabbing, theft and colonisation of the Tamil homeland. There are tens of thousands of widows and female-headed households. Women are often subjected to sexual violence and harassment by the SL army. Once independent, these Tamil women live now under full military control, struggling to find sources of income to support their families and feed their children. In this context, there is no doubt why any Tamil living in occupied Eelam says that this is NOT "peace" or "freedom", but war. The current situation is one of creeping genocide and is being carried out largely through violence against Tamil women.

One witness testified about her current life as a former LTTE fighter living in occupied Tamil Eelam. She described how SL forces come to her house at any time to "control" her. They keep a constant watch on her. During these checks she is also harassed by SL forces, and have been raped on multiple occasions. She also stated that she does not tell her friends and family how she is treated by SL forces.

44 Meena Kandasamy (2020) *The Orders Were To Rape You: Tigresses in the Tamil Eelam Struggle* pp.52-3

Her experience coincides with the findings of Meena Kandasamy, one of the women she interviewed, who shared her experience of being watched by SL forces, and how they continue to demand that she report to their military bases despite the fact that the armed conflict ended in May 2009. Despite the fact that thousands of women are under surveillance and have to report to the army, this is not openly discussed:

It is a shame. Women keep it hidden. It is a society where the story cannot cross your doorstep. Even if we say that the army called us for questioning, the people would say, 'If the army calls you, would they let you be? Would it just be questions? They would have tested and tasted every part of you.'

The immediate implication was that we had slept with the army. This happened with thousands of women.

When I ran away my family began to suffer. My little brother was taken for interrogation. Where did your sister hide her weapons? To my family, the bomb is not the weapons. Not the beating. It is the youngest sister, 14 years old. The fear that she will have to face the same fate as me when she grows up.

Who do I see in front of my eyes? Not my mother. Not my father. Not my family. I see the army. The soldiers. Even in my sleep. Even now I live in fear.

Why do I stay alive? To get justice. To expose the army and the EPDP [Eelam's People Democratic Party] dogs.⁴⁵

Why me? Because I am a Tamil woman. But also because I was a fighter. And my family background didn't help either – my elder brother was a martyr. And in the last days of the war, a younger brother too. The SL army saw the rapes as revenge...⁴⁶

Witness 7, in her presentation, described the current situation of women in occupied Tamil Eelam. She described the systematic genocide that is taking place through militarisation in the north and east of the island, the Tamil homeland and where the LTTE administered regions once were. Genocide is also cultural or identity-based and is taking place through the use of the Sinhala language in Tamil-speaking areas, and the renaming of villages and streets from their Tamil origin to Sinhala names. Unlike the situation of widows in the LTTE-administered state, Tamil widows now live with stigma and economic despair. Being a single mother is very dangerous. The security forces are like vultures. The SL legal system and police are corrupt and racist against Tamils, leaving women without legal or state protection. Tamil women find it difficult to find work because they are doubly marginalised as Tamils and as women. Former LTTE members are even more marginalised, and people do not want to hire them for fear of being associated with a former fighter.⁴⁷

45 Tamil political party which collaborates with the GoSL opposing the LTTE and other Tamil political parties. Acts as aparamilitary organisation linked to the SL military. Responsible for the deaths of many Tamil Eelam activists.

46 Meena Kandasamy (2020) *The Orders Were To Rape You: Tigresses in the Tamil Eelam Struggle* pp.53-55

47 The ongoing effects of the destruction of the LTTE on Tamil women in Eelam are highlighted in the following reports: International Crisis Group (2011) *Sri Lanka: Women's Insecurity in the North and East*, Colombo/Brussels, 20 December 2011 https://reliefweb.int/sites/reliefweb.int/files/resources/Full%20Report_428.pdf; Minority Rights Group International (2013) *Living with Insecurity: Marginalisation and Sexual Violence against Women in the North and East of Sri Lanka* <https://minorityrights.org/wp-content/uploads/old-site-downloads/download-1297-Living-with-insecurity-Marginalization-and-sexual-violence-against-women-in-north-and-east-Sri-Lanka.pdf>; Yasmin Sooka(2014) *An Unfinished War: Torture and Sexual Violence in Sri Lanka 2009-2014*, The Bar Human Rights Committee of England and Wales (BHRC) and The International Truth & Justice Project, Sri Lanka https://barhumanrights.org.uk/wp-content/uploads/2014/03/an_unfinihsed_war_torture_and_sexual_violence_in_sri_lanka_2009-2014_0-compressed.pdf;

United Nations (2017) *Concluding Observations on the Eighth Periodic Report of Sri Lanka UN*

In Conclusion

As a jury we affirm that society under LTTE administration was notable for successfully challenging gender and caste oppression. It was also a place where women's safety was protected, in contrast to the long history of the use of rape as a weapon of war and genocide by SL State forces. These transformations occurred mainly due to the large number of women who became Tamil Eelam functionaries and LTTE fighters, which had a wider impact on Eelam Tamil society. In this sense, women under LTTE administration had their own organisational structures, were drivers of social change, had independent political power and formed a crucial part of the LTTE's political leadership. We consider that powers such as the USA are guilty of violating the rights of the women of Tamil Eelam by destroying the LTTE.

ACCUSATION 4 - CONTINUED GENOCIDE OF EELAM TAMILS BY THE SRI LANKAN STATE

ACCUSATION

SL continues to violate the fundamental right of Eelam Tamils to exist as a people, through acts of genocide as defined by the UN Genocide Convention, as well as structural genocide through an army of occupation in the north and east of the island that perpetrates the following aspects of genocide::

- The colonisation of traditional Tamil lands by Sinhalese, including the demolition of cemeteries, under the pretext of “development” and seizing religious sites and claiming them as Buddhist shrines.
- Erasure of Tamil place names and other public facilities.
- Rape and sexual violence by occupying soldiers against Tamil women.
- Arbitrary arrests, beatings and torture of Tamils
- Disappearances at the hands of the notorious state agents of the unmarked “white vans”.
- Denial of the right to remember the Tamil Eelam liberation struggle, to the extent of not allowing candles to be lit in honour of Tamil martyrs.
- Denial of remedy or means of justice for all of the above.

FINDINGS

This Jury endorses the findings of the Bremen Tribunal that genocide in this case is an ongoing process. Furthermore, we find that genocide continues to occur today through the multiple forms of SL State repression of the Eelam Tamil national identity as identified in the indictment. The international impunity enjoyed by the SL State allows it to continue its genocidal policies and practices on the ground. No UNHRC Resolution has succeeded in stopping this process. As noted above, these Resolutions accept the sovereignty of the SL State and it is in the name of this sovereignty that the ongoing acts of genocide are carried out. After 2009, the USA has further increased its military support to the SL security forces, who are the main direct agents of the systematic genocide of the Tamil people of Eelam. Meanwhile, SL’s defence budget has also increased. This is a war by other means against the Tamil people of Eelam.

THE JURY’S REASONING

The Bremen Tribunal (2013) found:

that the genocide against the Eelam Tamil group is an ongoing process [...] The plan of coordinated genocidal actions reached its climax in May 2009, but it is clear that the Sri Lankan State’s (under different governments) project is to erase the Eelam Tamil identity [...] and this process of genocide is underway. The genocidal strategy has changed after the destruction of the state of Tamil Eelam, the killings are transforming into other forms of conduct, but the intention to destroy the group and its identity remains and continues, causing serious bodily or mental harm to members of the Eelam Tamil group.

The PPT considered that the evidence at the time indicated that acts of genocide as defined by the Genocide Convention, such as sexual violence, rape, sterilisation and other acts, were being perpetrated. These measures are institutionalised and consistent with genocide under Article II of the 1948 Convention:

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

- (a) Killing members of the group;
 - (b) Causing serious bodily or mental harm to members of the group;
 - (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
 - (d) Imposing measures intended to prevent births within the group;
 - (e) Forcibly transferring children of the group to another group.⁴⁸
-

Ongoing genocide

The Sinhala-Buddhist colonisation of the traditional lands of the Tamil-speaking peoples through multiple means that was observed before 2013 has continued to date.⁴⁹

Sinhalese settlements have been rapidly built up in the Eastern Province, where the port of Trincomalee is located, and the contiguity of the Eelam Tamil homeland as North and East has been broken. Genocide has multiple avenues. The most profound are those that deny Eelam Tamil identity and culture by destroying their history, their references, and their rootedness to the territory where they have built life, customs and meanings. The de-Tamilisation of the island of Sri Lanka, particularly in the North and East, has been implemented through a process of cultural corrosion imposed militarily and under criteria of inferiorisation and total disregard for the identity and life itself of the Eelam Tamils. It combines physical elimination with degradation through daily rape and the widespread establishment of relations of impunity/powerlessness with the systematic perpetration of a physical and symbolic razing to the ground of all signs representative of the long Eelam Tamil history and of their glorious moments of struggle and defence of their right to their ancestral territory and values. The programmed and systematic desecration of bodies is accompanied by the desecration of the imaginary and the meaning of life, seeking to provoke uprooting, fear, hopelessness and insecurity by living in a climate of constant terror. The social and political fabric built in Tamil Eelam gave the Tamil people a sense of cohesion and certainty in the strength and relevance of their history that could only be unbalanced by external forces of enormous power such as those brought into play by the USA, using the SL security forces as a tool.

The policy of cultural/territorial corrosion and erasure of the non-Sinhalese and the need to break up community fabrics, which is maintained to this day by the resistance force of the Tamil people, has also been directed at other cultural communities that have lived side by side with the Tamils. Such is the case with the increasing attacks on the Muslim community by Sinhala Buddhist groups aided or sponsored by the state. Islamophobia has spread widely and has also begun to be used as an

48 <https://ihl-databases.icrc.org/en/ihl-treaties/genocide-conv-1948>

49 See the International Crisis Group report 2012. <https://www.crisisgroup.org/asia/south-asia/sri-lanka/sri-lanka-s-north-i-denial-minority-rights>

instrument of destabilisation and terror. Muslims are persecuted and attacked like the Tamils, but they have also been pushed aside or manipulated to be incorporated into the mechanisms of establishing social chaos to justify the action of the security forces. Social breakdown is the best terrain for imposing an authoritarian order conducive to total control of Sri Lankan territory.

In the history of the entire conflict, there has been no Muslim militancy in the country, but on Easter Sunday 2019, a series of suicide bombings were unleashed against churches and hotels, killing more than 250 Christians and several tourists. These groups emerged after the end of the war and the Muslim community has constantly alerted the government about their activities, but no action was taken. It later emerged that these groups had close links with the SL intelligence services. After the massacre, the entire Muslim community has been vilified and hundreds of them have been arrested under the draconian Prevention of Terrorism Act, which was originally put in place to criminalise and suppress the resistance of the Eelam Tamils. We may never know who masterminded the Easter Sunday attacks, but we know for certain that in their aftermath, the SL State has been further securitised, becoming a full member of the 'Global War on Terror' club. Since its military victory in 2009, the country's defence budget has increased every year. A paper published by the South Asia Studies Institute has shown the dramatic increase in the defence budget since the end of the military victory from USD 1.499 billion (war period 2006-2009) to USD 1.716 billion (post-war 2009-2017).⁵⁰

Increased Militarisation

There have been reports since 2013 that this process is continuing. Significantly, the reports confirm the continuation of genocidal processes between 2015 and 2019, the period when Mahinda Rajapaksa, president during the final phase of the war for 2006-2009, lost power, demonstrating that the genocidal process is deeply embedded in the functioning of the SL State. It is noteworthy that, during this period, the US-led Resolutions at the UNHRC effectively abandoned the call to investigate the conduct of the war before 2009, while failing to raise any of the systemic issues facing Eelam Tamils noted below. The Maatram Foundation (2015) wrote that the key objective of the militarisation of land is, among other things, the Sinhala Buddhisation of the North and East under the pretext of responding to security threats. The report argues that militarisation is not only about land, but also about the militarisation of communities.⁵¹

The same report states in 2015 that 14 of the 19 divisions of the Sri Lankan army were stationed in the north, but in March 2022 the PEARL (People for Equality and Relief in Lanka) report states that 16 of the 20 divisions of the defence ministry and 4 of the 6 defence headquarters are located wholly or partly in the Tamil region, revealing the disproportionate military presence in the region.⁵² There is an increase in the intensity of militarisation from 2015 to 2022, as suggested by previous reports; one military personnel for every six people in a district.⁵³ According to the Economic and Political Weekly,

50 Institute for South Asia Studies, <https://www.isas.nus.edu.sg/wp-content/uploads/2021/11/Final-South-Asia-Scan-1.pdf>

51 Maatram Foundation (2015) Understanding Post-War Land Issues in Northern Sri Lanka funded by the Swiss Agency for Development Cooperation (SDC) and the Swiss Embassy in Sri Lanka. http://www.jdslanka.org/images/documents/displacement_land_issues/sri_lanka_post_war_land_issues.pdf

52 PEARL (2022) <https://pearlaction.org/wp-content/uploads/2022/03/State-Sponsored-Sinhalization-of-the-North-East-March-2022.pdf>, p. 24.

53 Oakland Institute(2015) https://www.oaklandinstitute.org/sites/oaklandinstitute.org/files/OI_The_Long_Shadow_of_War_0.pdf p. 3.

of the region's 18,000 square kilometres, 7,000 have been occupied by security forces. In the Jaffna peninsula, the soldier/civilian ratio is 1/6-7. This ratio exceeds the military-to-civilian ratio in Chechnya, Kashmir and Baghdad (just after the US invasion).⁵⁴ The Adayaalam report notes that in Mullaitivu district, where the last phase of the war was fought, there is one soldier for every two civilians (60,000 soldiers to 120,000 civilians). This is in addition to police and intelligence officers.⁵⁵ The Maatram Foundation reports: "In a discussion held on 10 October 2014 in the Northern Provincial Council [NPC], members provided statistics from three districts suggesting that over 67,000 acres of land had been taken for use by the military in Jaffna, Mullaitivu and Mannar districts. In Jaffna, according to NPC statistics, 10,919 acres have been taken for military use, in Mullaitivu 34,362 acres and in Mannar 22,247 acres. It was stressed that this was only a conservative estimate and that the figure could be more than reported."⁵⁶ And, according to the same source, in 2012, of the 19 divisions of the SL Army, 14 were stationed in the north.⁵⁷

The International Sri Lanka Truth and Justice Project reveals that the security forces continue to torture and use sexual violence against Tamils. Their loved ones have been denied the truth about thousands of Tamils who were made to disappear. A large number of Tamil political prisoners have been detained for many years. While these multiple actions of destroying the collective foundations of the Eelam Tamil people and imposing Sinhalese identity on the Tamil homeland continue, the USA has resumed its joint training sessions with the SL navy in Trincomalee harbour and has increased the participation of SL security forces in a series of training sessions to further endanger peace in the Indian Ocean region.

The militarisation of communities has not only been legalised with the aim of stamping out any trace of 'terrorism', but has also been morally justified by presenting the activities of the security forces as exemplary and outstanding in the world: The army is heavily involved in community-oriented development projects, it is claimed;⁵⁸ the army held a mass religious wedding ceremony for 53 ex-combatants in 2010;⁵⁹ provided assistance to newlywed couples;⁶⁰ conducted educational, vocational, spiritual, recreational and psychological programmes.⁶¹ All of these are aimed at destroying the collective identity and consciousness of the Eelam Tamils and their deep rootedness in their homeland, and bring them under 'One Sri Lanka'; a Sinhala-supremacist state.

54 A Correspondent (2012), Economic and Political Weekly, p. 35-36.

55 Adayaalam Centre (2018) <http://adayaalam.org/wp-content/uploads/2018/01/Normalising-the-Abnormal-The-Militarisation-of-Mullaitivu.pdf>, p.1.

56 Maatram Foundation (2015) Understanding Post-War Land Issues in Northern Sri Lanka, p. 6. http://www.jdslanka.org/images/documents/displacement_land_issues/sri_lanka_post_war_land_issues.pdf

57 Maatram Foundation (2015), p. 3.

58 IRIN. "Sri Lanka: Former Tiger Fighters Struggle for a Normal Life". Refworld, 28 May 2012. <https://www.refworld.org/docid/4fc5f4db2.html>.

59 Reddy, Muralidhar. "Mass Wedding in Vavuniya". The Hindu, 14 June 2010. <https://www.thehindu.com/news/international/Mass-wedding-at-Vavuniya/article16243271.ece>.

60 Sameera, Gayan. "Sri Lanka Stages Mass Wedding for Former Rebels." Reuters. Thomson Reuters, June 13, 2010. <https://www.reuters.com/article/idINIndia-49262720100613>.

61 Malkanthi Hettiarachchi. "Sri Lanka's Rehabilitation Programme: A New Frontier in Counterterrorism and Counterinsurgency". Prism (Washington, D.C.) 4, no. 2 (2013): 105-21.

Sinhalese Colonisation, Land Grabbing and Development Projects

Structural changes in the Tamil homeland are carried out through numerous development projects subsidised by foreign countries. Under the pretext of preserving archaeological sites, Sinhala Buddhist identity has been imposed on the Tamil region. Hundreds of Sinhala Buddhist shrines have been built in predominantly Tamil Hindu, Christian and Muslim areas. Tamil names have been changed to Sinhala names. Security forces publicly celebrate Sinhala Buddhist festivals, while events organised in memory of the thousands of Tamils who gave their lives and civilians killed in the war are denied.

The security forces engage in income-generating activities such as extensive cattle ranching and selling produce on the open market, subjugating local farmers. They also run hotels for tourists and have turned many sites into war memorials. The SL navy gives a free hand to Sinhalese fishermen to use large trolling boats with large nets in the seas of the Tamil region, depriving the Tamil fishing community (which is ill-equipped) of their daily catch.

The Oakland Institute report (2021) states:

Under the guise of “development projects”, government-driven Sinhala colonisation is growing in Tamil areas with the intention of changing the demography and denying Tamil communities access to their land...with the use of various government departments - such as the Mahaweli Authority, the Archaeology Department, the Forestry Department and the Wildlife Department - in this strategy.⁶²

This is according to a 2022 PEARL report:

[The] historical and contemporary process of Sinhalisation of north-eastern Sri Lanka, through the use of state-sponsored land grabbing, settlement and irrigation schemes; “Buddhism” [is] coupled with the systematic oppression of the Tamil people and minority groups, such as the Muslim community.⁶³

Imposition of Sinhalese Buddhist Culture in Tamil Eelam

The renaming of places of worship, villages, towns, cities, rivers, roads, etc. from Tamil to Sinhala has intensified. Ancient Tamil archaeological sites have been renamed Sinhala Buddhist localities. Hundreds of new Sinhala Buddhist places of worship have been established throughout Tamil Eelam, all of them heavily protected by the security forces. Genocide is not only the destruction of an oppressed people, but also the imposition of the oppressor’s identity on the oppressed.

Destruction of LTTE Fighters’ Cemeteries

The SL security forces have demolished over 20,000 graves of fallen LTTE fighters (maaveerar) along with the structures of 20 large-scale burial grounds (maaveerar thuyilum illam) throughout Tamil

62 Oakland Institute (2021) Endless war: the destroyed land, lives and identity of Sri Lanka’s Tamil people, <https://www.oaklandinstitute.org/tamils-sri-lanka-endless-war>

63 PEARL (2022) State-sponsored Sinhalization of the North-East, <https://pearlaction.org/sinhalization-of-the-north-east/>

Eelam. New military bases have been built on these sites which the Tamils considered sacred.

Denial of Commemoration

The SL State has continuously suppressed the commemoration of Tamil Eelam freedom fighters and civilians killed in the war. There are reports and the Jury has heard testimonies revealing this suppression; even lighting a candle to remember the dead is considered as aiding terrorism. SL police and security forces have destroyed the memorials and structures built by the people to remember those who were killed in the war.

Other Acts of Continued Genocide

Given the past and present conduct of the SL State, which includes clear evidence of a pattern of systematic and repeated genocide, the following acts must be considered to have been committed with the intent to destroy in whole or in part the Eelam Tamils.

Numerous reports also document the persistence of rape and sexual violence (see Accusation 3), as well as torture and abductions.

Yasmin Sooka/ITJP (2014) finds that: "...abduction, arbitrary detention, torture, rape and sexual violence have increased in the post-war period" and that these "widespread and systematic violations by Sri Lankan security forces occur in a manner indicative of a coordinated and systematic plan approved by the highest levels of government".⁶⁴

In 2016, Sooka who in was appointed to the UN Secretary-General's Panel of Experts on Accountability in SL in 2010, wrote that despite the government's 2015 promise of a radical clean-up, "[t]he notorious Sri Lankan 'white vans' are still operating; it's largely business as usual..."⁶⁵

The UN Special Rapporteur on Torture corroborates accounts of continuous "white van abductions", torture and sexual violence. The Rapporteur describes accounts of extremely brutal methods of torture, such as burns and beatings, stress positions, asphyxiation, rape and sexual violence occurring over long periods.⁶⁶

Continued Genocide and Increased US Military Involvement

Maintaining the same argument with regard to the USA's primary responsibility for the genocide (Accusation 1), the Jury found how the USA has furthered its geo-militaristic ambitions in SL in the phase of the aforementioned ongoing systematic genocide following the destruction of the LTTE. The increased levels of military cooperation with the SL State during this phase has been revealed to the Jury through well-documented evidence by several expert witnesses. This further demonstrates the Jury's findings in relation to the US-sponsored UNHRC Resolutions as a ploy to deny the Tamil right to self-determination, while making a false promise to the Tamils in relation to human rights and threatening the Sinhala regimes to stay away from the Chinese axis. This has created a false polarization between the Sinhalese and Tamils ("Sinhalese are anti-US and pro-Chinese" while "Tamils are pro-US and anti-Chinese"). The following activities of the US security forces (with the help of its allied states) in SL after the final massacre confirm how the US has furthered its geostrategic ambitions in the Indian Ocean region, for which the continued genocide of Tamil Eelam is necessary. Following the destruction of the LTTE, the maximisation of the strategic utility of the island by the US and the systematic genocide of Tamil Eelam are intrinsically intertwined.

64 ITJP(2014) <https://barhumanrights.org.uk/an-unfinished-war-torture-and-sexual-violence-in-sri-lanka-2009-2014/>

65 Tamilnet (2016) https://tamilnet.com/img/publish/2016/01/ITJP_Press_Release_7_Jan_2016_on_new_report.pdf

66 Report A/HRC/34/54/Add.2 <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/440/12/PDF/G1644012.pdf>

US Military Presence in and with SL

Date	Event	Participants
July 2011	South Asia Maritime Conference in Colombo	USPACOM, CCMR, SL (organizadores)
August 2011	Pacific Airlift Rally	300 air force personnel from the USA, Australia, Malaysia and SL
2013	Joined Combined Exchange Training (JCET)	US NAVY SEALs con el ejército de SL
2016 --2018	Seven port visits within QUAD framework	US Navy ships
27 - 29 Nov 2016	Galle Dialogue 2016, maritime security conference	Commander USPACOM
November 2016	SL Marine Corps training begins in Trincomalee	11th Marine Expeditionary Unit and Makin Island Marine Corps Amphibious Ready Group
April 2017 (1 week)	Military Disaster Exchange Programme	USS Comstock
September 2017	Indian Ocean Conference	USPACOM and locals
11 - 15 September 2017	Pacific Airlift Rally	USA and SL
October 2017	Cooperation Afloat Readiness and Training (CARAT)	US Pacific Command, its traditional allies and the SL Navy
November 2017	USA offers Coast Guard cutter Secretary to SL	SL-USA Partnership
2018	Rim of the Pacific (RIMPAC)	USPACOM, SL and others
May 2018	USPACOM changes to USINDOPACOM	
April 2020	Operation Balanced Style. 4-week training	U.S. Army Special Forces (Green Berets) and Task Force Alpha Detachment Team (SFOD-A), USIN-DOPACOM with SL
24 June 2021	Cooperation Afloat Readiness and Training (CARAT) in Trincomalee	US Navy and the armed forces of Japan and SL

In July 2011, USPACOM and the US Center for Civil-Military Relations (CCMR), in collaboration with SL, organised a five-day South Asia Maritime Conference in Colombo. US Ambassador Patricia A. Butenis and SL Navy Commander Somathilake Dissanayake participated in the inaugural session.⁶⁷ In August 2011, 300 members of the US, Australian, Malaysian and SL air forces conducted the Pacific Airlift Rally. Lieutenant Colonel Tim Rapp, commander of the 36th Expeditionary Squadron had this to say during the event: “No one in the US Air Force has had the opportunity to come and train in Sri Lanka in 20 years”.⁶⁸

In 2013, the US NAVY SEALs conducted Joined Combined Exchange Training (JCET) under the name “flash style” from 2 July to 19 July with the SL military. JCET is an annual military exercise between US forces and their allied states. The US intensified its military engagement in SL as part of its pivot to Asia strategy and within the QUAD framework. Between 2016 and 2018 alone, US naval vessels made seven port visits to SL (Attanayake 2018). Japan, in line with US strategy, also intensified its military ties with SL. In March 2013, then Japanese Prime Minister Shinzo Abe met with Mahinda Rajapaksa in Tokyo with a joint statement being issued emphasising the need to “enhance and expand” bilateral ties and to “effectively address maritime issues common to both countries.”⁶⁹ Between 2012 and 2014, over the course of 18 months, 15 Japanese Navy vessels called at Colombo. On 12 June 2014, the Chief of Staff

67 <https://www.tamilnet.com/art.html?artid=34175&catid=13>

68 <https://www.dvidshub.net/news/75795/pacific-airlift-rally-starts-sri-lanka>

69 <https://www.tamilnet.com/art.html?artid=39184&catid=79>

of the Japanese Maritime Self-Defence Force met with then President Mahinda Rajapaksa to discuss strengthening bilateral ties in maritime security and defence. In 2015, then Prime Minister Abe and SL Prime Minister Ranil Wickremesinghe inaugurated the Japan-SL Joint Comprehensive Partnership, which sets out a multi-dimensional advancement of ties between Colombo and Tokyo, from financial investments to cooperation in maritime security and defence matters.

The US and Japanese commitments to strengthen Sri Lanka's maritime capabilities and strategic utility come against the backdrop of QUAD and increasing US attempts to dominate the Indian and Pacific Ocean region. The US and its allies, like those in QUAD, insist on the vision of a free and open Indo-Pacific as an economic strategy to maintain US dominance in the face of Beijing's economic and geopolitical strategies presented, among others, by the Belt and Road Initiative. USPACOM Commander Admiral Harry B. Harris Jr. attended the Galle Dialogue 2016, a maritime security conference held in SL from 27-29 November 2016, expressing "I think Sri Lanka could be a convening power to discuss freedom of navigation in the Indian Ocean."⁷⁰ In April 2016, US Rear Admiral Colin J Kirlan, USPACOM's commander of special operations, visited Sri Lanka (Attanayake 2018). In May 2016, US Major General Steven R Rudder, director of strategic planning and policy for USPACOM visited SL (Attanayake 2018). In November 2016, the 11th Marine Expeditionary Unit and Makin Island Amphibious Ready Group of the US Marine Corps arrived in Trincomalee aboard the USS Somerset to train the then newly founded SL Marine Corps in theatre security cooperation exercises.

During the Obama Administration and its continuation, two 'Sri Lanka-US Partnership' dialogues were also held. The first in February 2016 in Washington D.C., and the second in Colombo in November 2017.

These political engagements also reflected the continuation of the enhanced policy established during the Obama Administration. The press release of the first dialogue emphasised SL's greater integration into US economic initiatives in the Indian Ocean to counter Chinese influence. "The delegations discussed SL's critical geostrategic location within the Indian Ocean region and how to strengthen cooperation on issues of regional importance bilaterally and through multilateral organisations such as the Indian Ocean Rim Association. The US encouraged SL to participate in its Indo-Pacific Economic Corridor initiative to increase economic connectivity among South Asian countries and with Southeast Asia."⁷¹ During the second dialogue, the US announced the donation of naval equipment to enhance SL's maritime security capabilities.

As a sign of strong bilateral ties and deepening US engagement with Sri Lanka, the US announced that it will deliver a second US Coast Guard cutter [a small, lightly armed, fast and highly manoeuvrable vessel used for interdiction and coastal patrol] to the Sri Lankan Navy. The Secretary-Class Heavy-Duty Cutter will enable Sri Lanka to more effectively police its coastline and exclusive economic zone and protect its sea lines of commerce and communication.⁷²

Despite having close ties with the Rajapaksa regime following the regime change in 2015, the US praised SL for moving away from "creeping authoritarianism" and becoming "a global champion of

70 <https://www.pacom.mil/Media/News/News-Article-View/Article/1015066/us-welcomes-sri-lankas-contribution-to-security-in-the-indo-asia-pacific-region/> (in English)

71 <https://www.pacom.mil/Media/News/News-Article-View/Article/706655/joint-statement-from-the-us-department-of-state-and-the-ministry-of-foreign-aff/>

72 <https://geneva.usmission.gov/2017/11/07/joint-statement-from-the-u-s-department-of-state-and-the-ministry-of-foreign-affairs-of-sri-lanka-on-the-second-u-s-sri-lanka-partnership-dialogue/>

human rights and democratic accountability”, while continuing to move forward militarily with SL.⁷³ At this juncture, both the US and SL governments co-sponsored the UNHRC Resolution without Chinese opposition. In April 2017, the US navy’s USS Comstock participated in a week-long military exchange programme with the SL Navy on disaster relief efforts and coordination.⁷⁴

The USA and SL jointly hosted the Pacific Airlift Rally from 11-15 September 2017 in SL, focusing on ‘disaster relief’ airborne training.⁷⁵ In September 2017: Major General James S Hartsell, USPACOM, visited SL and attended the 2017 Indian Ocean Conference, where he condemned China’s presence in the South China Sea and instability in the southern Philippines.⁷⁶ In October 2017, the first biennial Coordinated Afloat Readiness and Training (CARAT) meeting between the US and SL navies was held. The training focused on cooperation to improve maritime security competencies, as well as the cohesion or interoperability of operations between the US Pacific Command, its partners and the SL navy. In December 2017, the USA and SL amended the 2002 open skies agreement between the two countries.⁷⁷

In 2018, the US invited SL to the largest maritime exercise involving its traditional partners, Rim of the Pacific (RIMPAC). Also, in May 2018, USPACOM changed its name to US Indo-Pacific Command (USINDOPACOM), reflecting the expansion of US operations and ambitions in the Indian Ocean.

In 2019, USINDOPACOM Commander Admiral Philip S. Davidson, testifying before the US Senate Armed Services Committee, expressed the following regarding US Indo-Pacific Command’s commitments to SL and the strategic utility of SL status to the US:

Sri Lanka remains a significant strategic opportunity in the Indian Ocean, and our military-to-military relationship continues to strengthen.... Increasing navy-to-navy engagement with Sri Lanka will be a USINDOPACOM focus in 2019....The Sri Lankan Navy is a well-trained and professional force with the potential to contribute to multi-lateral maritime interoperability in the Indian Ocean.⁷⁸

In February 2020, Colombo media reported the US embassy’s statement on the travel ban imposed on SL army commander Shavendra Silva for alleged war crimes, but the US reiterated that it would not affect its future military engagements with SL. “The announcement of the designation does not place additional restrictions on security assistance or military engagement in Sri Lanka, nor does it represent a shift in policy or desire to limit engagement more broadly with the government and people of Sri

73 <https://lk.usembassy.gov/remarks-ambassador-samantha-power-u-s-permanent-representative-united-nations-marco-united-american-sri-lanka-trade-investment/>

74 U.S. Embassy in Sri Lanka. USS Comstock Participates in Humanitarian Assistance Training in Sri Lanka. <https://lk.usembassy.gov/uss-comstock-participates-humanitarian-assistance-training-sri-lanka/>.

75 <https://www.pacom.mil/Media/News/News-Article-View/Article/1315181/pacific-air-force-sri-lanka-host-pacific-airlift-rally/>

76 <https://www.pacom.mil/Media/News/News-Article-View/Article/1307958/mobilization-assistant-to-commander-us-pacific-command-speech-at-the-indian-oce/>

77 <https://www.state.gov/u-s-sri-lanka-amendment-to-the-u-s-sri-lanka-open-skies-agreement-of-2002-includes-seventh-freedom-rights-for-all-cargo-operations/>

78 <https://www.tamilnet.com/art.html?catid=79&artid=39778>

Lanka.”⁷⁹

In May 2020, the head of the SL Air Force attended a virtual conference conducted by the United States Pacific Air (USPACAF). In April 2020, members of the US Army Special Forces (Green Berets) and Operational Detachment Team Alpha (SFOD-A), attached to USINDOPACOM, conducted a four-week training (Operation Balanced Style) with SL.⁸⁰

The 27th annual CARAT (Cooperation Afloat Readiness and Training) exercise series between the US Navy and the armed forces of Japan and SL began in Trincomalee on 24 June 2021.⁸¹

All of these have been unfolding in the backdrop of increasing rapprochement between India and the USA, particularly after the end of the Cold War, and within the geopolitical strategy of the US pivot towards Asia in encircling China. For this purpose an uninterrupted access to the Trincomalee harbour was necessary. Eelam Tamils’ deep rootedness in their homeland where the harbour is located was the barrier; “the human shield” against converting the Indian Ocean into a war zone. Therefore saving a people’s connectedness to their land, not simply a piece of land, but homeland was necessary. Legitimation was given by the label of “terrorism”.

In Conclusion

US geo-strategic ambitions around the island explain the use of terrorism to disrupt the 2002 Peace Process, destroying the LTTE, provoking genocide and a continuing and systematic genocidal practice thereafter, and controlling the human rights narrative through the UNHRC, denying the Eelam Tamils’ right to self-determination. Further developments of US strategic military involvement in SL, documented above, reveal how the destruction of the LTTE and the state of Tamil Eelam has endangered peace in the Indian Ocean, which the Jury will examine below. Before elaborating on this, the Jury will set out its findings on the unjustifiable persecution of Eelam Tamil activists in Europe as a prolongation of the ongoing process of genocide.

79 <https://www.tamilnet.com/art.html?catid=13&artid=39811>

80 <https://www.tamilnet.com/art.html?catid=79&artid=39778>

81 <https://www.c7f.navy.mil/Media/News/Display/Article/2669523/carat-series-2021-commences-elevating-maritime-security-partnerships-with-us-sr/>

ACCUSATION 5 - ONGOING PROSECUTIONS OF TAMIL EELAM ACTIVISTS IN THE EU (SUCH AS GERMANY)

ACCUSATION

EU states, such as Germany, that adopted the policy of banning the LTTE in 2006, are violating the fundamental rights of Eelam Tamils, including their right to resistance, through the ongoing prosecution of Tamils in exile for their support to the LTTE during the SL Peace Process. Under pressure from the UK, in line with US policy, the EU agreed in 2006 to ban the LTTE as a proscribed organisation. Until then, the EU had actively supported the Peace Process in SL and thus contributed to creating the international conditions for peace to consolidate and flourish. The EU and its member states, especially Germany, sponsored development projects in the liberated areas of Tamil Eelam, including in response to the destruction caused by the 2004 tsunami. Unfortunately, the EU succumbed to pressure from the US and UK, thus making it more possible for the all-out war solution to go ahead, until the mass slaughter of 2009.

FINDING

Even after the genocidal massacre in 2009, the EU maintained its ban, and it was then that Germany and other EU states began deporting Tamil refugees and initiating criminal prosecutions against Tamils for supporting the LTTE. These state prosecutions violated the fundamental rights of Eelam Tamils by blaming the victim community and stigmatising legitimate resistance to decades of genocide. The elimination of the right to resistance constitutes an act of genocide.

THE JURY'S REASONING

As the Bremen verdict (2013) points out, although the EU supported the 2002 Peace Process between the GoSL and the LTTE - which, we argue, had every chance of achieving a negotiated settlement on the basis of shared sovereignty of the island between Sinhalese and Tamils - the EU, against its own interests, bowed to US pressure and outlawed the LTTE.

This effectively reversed EU policy. For example, in 2006, in response to a German parliamentary question on the EU's list of terrorist organisations, the German government acknowledged that some of the support provided to the LTTE to participate in peace negotiations over the past five years would no longer be allowed and that EU projects implemented through LTTE-dominated groups would no longer be carried out.⁸² Previously, the EU had provided funding through the Tamil Relief Organisation (TRO) for demining, while states such as Germany had provided funding for the TRO and TECH (The Economic Consultancy House).

Some EU states, prior to 2009, began arresting and prosecuting Eelam Tamils in Europe for their material

82 06.2006 zum Thema "Einstufung der Rebellen-Organisation Liberation Tigers of Tamil Eelam (LTTE) als Terror-Organisation durch den Europäischen Rat". <https://dservver.bundestag.de/btd/16/021/1602128.pdf>

support to the LTTE, something the EU would have been guilty of only a few years earlier. These arrests appear to be a coordinated action among Western states following the election of President Mahinda Rajapaksa, who had vowed to destroy the LTTE, including Australia, USA, Canada, UK, Italy and France. However, in two EU states, the Netherlands and Germany, which had engaged in 'peace transformation' strategies in SL, these prosecutions did not begin until after the 2009 Mullivaikkal massacres.

Germany, which was the most supportive country of the SL Peace Process in Europe, initiated these arrests in 2010, for which four defendants were sentenced to 5-year prison terms for raising funds for the LTTE. The process has continued since then with subsequent trials in Berlin (2014), Hamburg (2016), Stuttgart (2019-2020), Düsseldorf (2022), where the trial of Nathan Thambi (at the time of the Berlin session of the PTSL) and three others starting on 27 April 2022.⁸³

The Jury has taken into account the testimony of Nathan Thambi, see Annex 3.

The German State has changed its Position

In addition to this, Germany has prosecuted other Eelam Tamils, for membership of the LTTE (e.g. in 2019 an Eelam Tamil, a refugee in Germany since 2014, was convicted of being a logistics driver for the LTTE, despite having been tortured by SL security forces as the court acknowledges), and others for participating in attacks against government security forces (e.g. another Eelam Tamil was tried in Düsseldorf 2021 on murder charges for allegedly bombing an SL army convoy in 2009). In addition, other Eelam Tamils have been accused of committing war crimes.

It should also be noted that other Western states continue to persecute LTTE-linked Eelam Tamils in other ways, and have also co-sponsored the US-led UNHRC Resolution on SL. This includes attempts to deport from Canada the wife of murdered TNA MP Joseph Parajasingham in 2011 on terrorist charges;⁸⁴ deport former TNA MP M.K. Eelaventhan in 2015 for the same;⁸⁵ or the deportation of Manickavasagam Suresh in 2018.⁸⁶ Australia, as noted in the evidence of former Australian diplomat Bruce Haigh in the 2013 Bremen Tribunal, detained some 50 Eelam Tamils after arriving as refugees. A significant number were detained for many years, some for up to 6 years on security grounds, while at least one other faced detention, having been detained on separate but related grounds, for over 10 years (having arrived in Australia in 2009 and released in 2021).

Ongoing Processes

The ongoing prosecutions of Nathan Thambi and others are part of the same narrative presented in these UNHRC Resolutions. Firstly, he is not charged with any particular act, apart from supporting the LTTE, which is considered a crime because the German state now wants to classify them as a foreign terrorist organisation and it is legitimate for a government to exterminate a terrorist.

By claiming that the LTTE is a terrorist organisation, Germany is also saying that the LTTE played no role in providing security to the Tamil people, that it was not instrumental in preventing the genocide

83 <https://www.nd-aktuell.de/artikel/1163349.sri-lanka-tamilen-sri-lanka-tamilen-vor-deutschem-gericht.htm?sstr=Vina%27Thiru>

84 National Post <https://nationalpost.com/news/canada/sri-lankan-refugee-spared-deportation-as-judge-rules-she-no-longer-fits-definition-of-a-terrorist>

85 National Post <https://nationalpost.com/news/politics/ontario-conservatives-unaware-their-queens-park-guest-was-being-deported-for-terrorism>

86 The Indian Express <https://indianexpress.com/article/world/canada-to-deport-ltte-member-to-sri-lanka-4478068/>

against the Tamil people of Eelam. Therefore, the LTTE's right to resistance is totally eliminated.

The connection between the UNHRC Resolutions and these ongoing prosecutions was clarified by the German Ambassador to the UN in Geneva in 2021, who stated that they fully supported the need for accountability in SL and that they had started to prosecute LTTE members in Germany. In supporting the 2021 UNHRC Resolution, the German state proclaimed that:

Germany is convinced that a comprehensive treatment of the past is necessary for an inclusive and sustainable reconciliation and that crimes of the past cannot go unpunished. In her report, the High Commissioner mentioned that investigations can also be carried out within the framework of universal jurisdiction. This is already happening in Germany, where the Federal Prosecutor's Office has opened a case against a former member of the LTTE.⁸⁷

In Conclusion

The three sessions of PSL found that the US-led bloc is complicit in war crimes and crimes against humanity (Dublin 2010), complicit in genocide (Bremen 2013) and orchestrated the genocide going beyond complicity (Berlin 2022). The judges of all the three sessions have unanimously agreed that the US pressure on the EU to ban the LTTE in 2006, which dismantled the parity of esteem between the two parties and emboldened the SL State, triggered the final war against the Tamil people. The LTTE ban is nothing else, but criminalisation of resistance to genocide. After the climax of genocide was reached in 2009 criminalising Tamil activists in Europe – who supported the LTTE by raising funds in the last phase of the war – and deportation of Tamil refugees to Sri Lanka by countries like Germany have further strengthened the SL State to continue with structural genocide in the Tamil homeland as found in Accusation 4.

⁸⁷ Statement by Germany at the 46th Session of the UN Human Rights Council, Item 2, ID on the HC report on Sri Lanka, Geneva, 24 February 2021, https://web.archive.org/web/20210703215655/https://hrcmeetings.ohchr.org/HRCSessions/HRCDocuments/41/SP/31980_46_fb-596be9_e8fa_4e6b_9f5d_f0f26f3af05b.docx

ACCUSATION 6 - DESTRUCTION OF LTTE THREATENS PEACE IN THE INDIAN OCEAN

ACCUSATION

The US policy motivation to destroy the LTTE, in order to secure SL's status as a US geo-strategic military asset, is not only a fundamental violation of the rights of the Eelam Tamils, but also poses a threat to peace in the Indian Ocean region, with ramifications for the nations of that region, but also to world peace in the context of the US'pivot to Asia' strategy.

The SL State is not only guilty of fundamentally violating the rights of the Eelam Tamils, but also those of peoples outside its borders, by allowing its territory to be used, actually and potentially, for offensive military operations by the US and its allied forces in Asia.

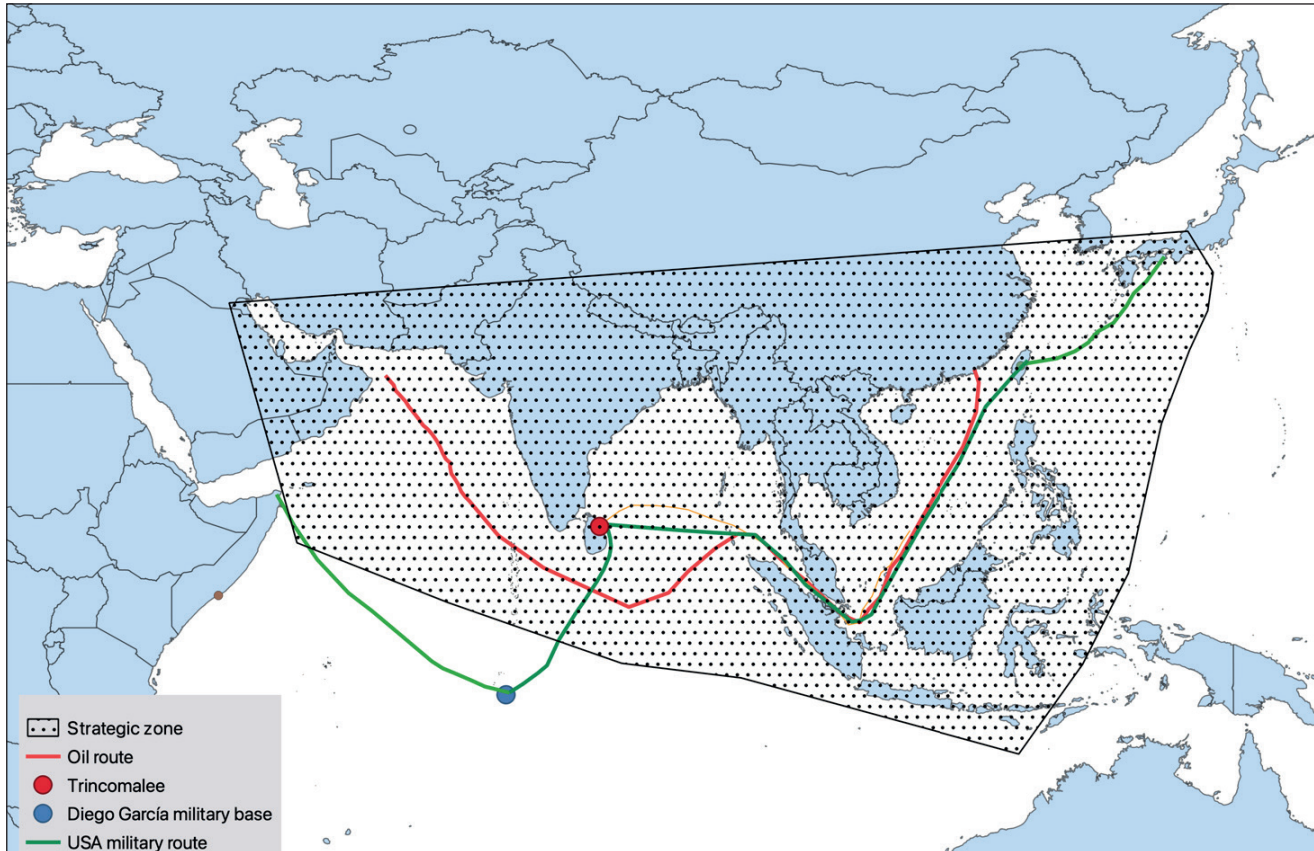
FINDING

Based on the evidence presented, we conclude that it was US policy to destroy the LTTE, as it was an obstacle to its ambitions to secure the island within its military orbit. This was despite US denials of such ambitions. The genocidal massacre of the Eelam Tamils in 2009 paved the way for advancing US imperialist interests, fuelling its ambition to be the dominant military power in and around the Indian Ocean with the support of India. The evidence provided confirms that the US calculated that the killing of the Eelam Tamils was necessary to secure its strategic interests. This is a dire warning. The threat to peace from US expansionist militarism is an increasingly present concern for the peoples of Asia and the Pacific region and, indeed, at a growing rate for the world as a whole. However, we believe that the peace ramifications of the US "pivot to Asia" have complex and rapidly changing dynamics that require deeper analysis and action beyond the scope of this Tribunal.

THE JURY'S REASONING

The Tribunal has concluded that the USA was primarily responsible for the war against the LTTE and the genocidal process against them through its leadership role in their dismantling/destruction. This section addresses the question of the motives for these US actions and how these actions threaten others. It was argued before the Tribunal that the destruction of the LTTE not only posed a threat to the Eelam Tamils themselves, but also to peace in the Indian Ocean region, which has ramifications for the global situation. This was because the US policy was motivated by its desire to increase its strategic military control of the island, which would be used to violate the sovereignty of other peoples in the region. It has also been argued that the SL State is also guilty of violating the sovereignty of other peoples (beyond that of the Eelam Tamils) by allowing the US to carry out these policies from its territory. On the contrary, the LTTE's policy and practice was to support non-alignment. In considering this, we have to take into account the policy and practice of the US, SL and the LTTE on these issues.

Map 3. Indo-Pacific strategic zone



Source: Observatorio Latinoamericano de Geopolítica

Since the defeat of the LTTE in 2009, there has been a steady increase in military engagement between the US and SL as clearly noted under Accusation 4 above. SL's location at the nodal point of the world's most heavily used shipping lanes across the Indian Ocean makes it of extraordinary strategic importance for naval control. Rather than the 'resource curse', it remains the 'location curse' of SL that has overdetermined any prospect of sovereignty for the island, particularly for the Eelam Tamils, given the significant capacity of the port of Trincomalee in the eastern Tamil region of the island, which was used by past European imperial powers and remains a coveted asset for the US today. It would also serve as a far superior base to the main US and UK military base, Diego Garcia, which was a key location from which air force operations were launched against the Middle East, including the invasions of Afghanistan and Iraq (The slain journalist Dharmeratnam Sivaram's analysis was the most scathing in this regard).⁸⁸

The Western imperial powers support a unitary SL, not least because it is their best guarantee for securing Trincomalee as a necessity for future wars. The Tamil Eelam nation has been sacrificed on the altar of US militarism.⁸⁹

88 Interview 2004 https://humanrights.de/wp-content/uploads/videos/sivaram_geo_es.mp4

89 The Jury has taken into account Annex 4: Peoples' Resolution on Justice for Eelam Tamils in a Zone of Peace in the Indian Ocean.

The US denies that Strategic/military Interests motivate its Policy

Despite the island's objective strategic importance, the US has consistently denied that its policy towards SL is motivated by strategic or military ambitions, both before, during and after the 2002 Peace Process, despite occasionally acknowledging its own 'substantial' involvement/engagement on the island. When US Green Berets began training SL special forces on the island in the mid-1990s, US military attaché Colonel Carl Cockrum, who facilitated the training, declared: "We have no business in this fight".⁹⁰

Jeffrey Lunstead, US ambassador to SL (from August 2003 to July 2006) wrote in 2007 that engagement in the Sri Lankan peace process since it began in late 2001 has been substantial. The degree of commitment and dedication of US attention could, in fact, be considered disproportionate to US interests in Sri Lanka. The increased engagement occurred despite the absence of significant US strategic interests in Sri Lanka. Politico-military interests are not high, and the US has no interest in military bases in Sri Lanka.⁹¹

Deputy Secretary of State Richard Armitage, in a 2003 speech, questioned why the US should 'invest significant attention and resources in Sri Lanka, especially at a time when we have such overwhelming competing interests', and given that there is 'no clear strategic thrust'. Instead, Armitage attributed this activity to a desire to "help bring this country to the fore as a recovering victim of conflict, terrorism and human rights violations".⁹²

More recently, in 2019, US Ambassador to SL Alaina B. Teplitz, in response to information about a proposed Status of Forces Agreement between SL and the US dismissed news about US intention to establish a military base in SL as "blatant disinformation". She stated that the agreement "sets the framework for US military personnel visiting Sri Lanka at the invitation of the government, and is designed to address a number of bureaucratic issues".⁹³ It is therefore necessary to assess in the face of this denial whether or not the US has such military-strategic interests.

A more recent justification for the growing US military commitment to SL is that it is necessary because of 'Chinese aggression', as noted in the US Indo-Pacific Strategy 2022:

we recognize that American interests can only be advanced if we firmly anchor the United States in the Indo-Pacific and strengthen the region itself, alongside our closest allies and partners. This intensifying American focus is due in part to the fact that the Indo-Pacific faces mounting challenges, particularly from the PRC [People's Republic of China]. The PRC is combining its economic, diplomatic, military, and technological might as it pursues a sphere of influence in the Indo-Pacific and seeks to become the world's most influential power. The PRC's coercion and aggression spans the globe, but it is most acute in the Indo-Pacific.⁹⁴

90 Marc Kaufman, Green Berets Playing Role In Bloody Civil War, 28 June 1996, Seattle Times, <https://pt3lanka.org/s/en/item/55>

91 Jeffrey Lunstead, THE UNITED STATES'S ROLE IN SRI LANKA'S PEACE PROCESS 2002-2006, 2007, https://www.tamilnet.com/img/publish/2007/05/USrole_01.pdf

92 Quoted in Lunstead

93 Sudha Ramachandran 'Sri Lankans Up in Arms Over US Military Pacts', 15 August 2019, The Diplomat, <https://thediplomat.com/2019/08/sri-lankans-up-in-arms-over-us-military-pacts/>

94 US Government <https://www.whitehouse.gov/wp-content/uploads/2022/02/U.S.-Indo-Pacific-Strategy.pdf>, p5.

In fact, the Declaration of the Indian Ocean as a Zone of Peace was presented by Ceylon (Sri Lanka after 1972) to the UN General Assembly on behalf of the Non-Aligned Movement in 1971.⁹⁵ This coincided with the US and UK construction of the Diego Garcia military base in the Indian Ocean. In practice, SL's actions run counter to the objectives of the Declaration.⁹⁶ Although the Indian Ocean Zone of Peace (IOZOP) was conceived during the Cold War, the principles remain relevant now as the US remains the world's superpower, with new strategic rivals, notably China. The Declaration called on the major powers to enter into negotiations to eliminate their military presence, especially warships and associated bases.⁹⁷

Despite submitting this Declaration to the UN General Assembly, Ceylon maintained close relations with the US, to the extent of allowing the use of its territory for US facilities. SL has allowed its airspace and territorial waters to be used in US military operations including the 'Persian Gulf War' (1990-1991) and the invasions of Afghanistan (2001) and Iraq (2003), which was used as justification for providing military assistance to SL.⁹⁸ As noted by a US journalist reporting on the training of SL's new special forces by US special forces in 1996, "Sri Lanka was the only Asian nation to offer refueling bases for US warplanes during the Persian Gulf War".⁹⁹

This relationship has expanded with the signing of the Access and Cross-Servicing Agreement (ACSA) in 2007, when only two other states in the Indian Ocean region had signed such agreements (the Philippines in 2002 and Malaysia in 2005). As stated in the People's Tribunal verdict on Sri Lanka (2013), the purpose was to add another 'logistical option in South Asia'.¹⁰⁰

More recently there have been talks about signing a Status of Forces Agreement or, as the US ambassador has described it, a "Visiting Forces Agreement".¹⁰¹ In 2018, as mentioned above, USPACOM invited SL to participate in the world's largest maritime warfare exercise, Rim of the Pacific (RIMPAC), which it has organised every two years since 1974. SL participated again in 2022 as one of 26 competing nations. Beyond allowing the use of its airspace and territorial waters, recent years have seen temporary US logistics centres operating from SL. In January 2019, the USS John C. Stennis, the first Nimitz-class aircraft carrier to visit the area in 30 years, was serviced from logistics centres previously established in Trincomalee and also in Colombo. A US military press release described: "The primary purpose of the operation is to provide mission-critical supplies and services to US Navy ships transiting through and operating in the Indian Ocean".¹⁰²

Since the defeat of the LTTE in 2009, there has been a steady increase in military engagement between

95 Sanath De Silva (2021) "Disarmament, Indian Ocean and Strategic Externalities: The Case of Sri Lanka" *Journal for Peace and Nuclear Disarmament*, 4:2, 268-286

96 Wikileaks https://wikileaks.org/plusd/cables/1975STATE219685_b.html

97 Declaration of the Indian Ocean as a Zone of Peace. <https://digitallibrary.un.org/record/192075> See also Does Great Power Rivalry Threaten to Scuttle the Indian Ocean Peace Zone? <https://www.globalissues.org/news/2022/02/18/30109>

98 Foreign Military Training: Joint Report to Congress, Fiscal Years 2006 and 2007, Bureau of Political-Military Affairs, Volume I, August 2007, p.141 - cited by TPP (2013).

99 Marc Kaufman, Green Berets Playing Role In Bloody Civil War, 28 June 1996, Seattle Times, <https://pt3lanka.org/s/en/item/55>

100 Citing cable 07COLOMBO303, PRESS COVERAGE FOR THE SIGNING OF THE ACQUISITION AGREEMENT AND SERVICES CROSSING https://wikileaks.org/plusd/cables/07COLOMBO303_a.html

101 Sudha Ramachandran, Sri Lankans Up in Arms Over US Military Pacts, August 15, 2019, *The Diplomat*, <https://thediplomat.com/2019/08/sri-lankans-up-in-arms-over-us-military-pacts/>

102 <https://www.pacom.mil/Media/News/News-Article-View/Article/1708141/uss-john-c-stennis-leverages-logistics-hub-in-sri-lanka/>

the US and SL. This has taken place during Mahinda Rajapaksa's Presidency from 2005 to 2015, Sirisena's Presidency from 2015 to 2019, Gotabaya Rajapaksa's Presidency from 18 November 2019 and Ranil Wickremesinghe's Presidency from 20 July 2022. As noted above, this covers the period during which the US pressured the GoSL through the UNHRC, from 2012 to 2014, and the period during which it stopped pressuring, from 2015 to 2019, only to do so again later. As an example, although the US publicly announced a travel ban on Shavendra Silva in 2020 for his conduct in the 2009 war against the LTTE, at the same time the US embassy stated, "The announcement of the designation does not impose additional restrictions on security assistance or military engagement in Sri Lanka, nor does it represent a change in policy or desire to limit engagement more broadly with the government and people of Sri Lanka."¹⁰³ Since Gotabaya Rajapaksa's election in 2019, a number of publicly acknowledged US training programmes already noted in Accusation 4 have taken place in SL.

Although there have been significant geopolitical changes since the 1980s, with the dissolution of the Soviet Union and the realignment of India, the LTTE's position expressed during this period is consistent with its practice until 2009. LTTE leader Prabhakaran stated in an interview in March 1984 that the Induction of US arms [into SL] is not only a threat to the Tamil freedom movement but also to India's national security. America's objective as you will certainly be aware is not simply confined to helping the Sri Lankan army to crush the Tamil liberation struggle. Their ultimate aim is to secure a naval base at Trincomalee. Such a happening will convert the Indian Ocean into a war zone, and will increase the tension prevalent in the region.

And, in his view

Tamil Eelam will be a neutral state, committed to non- alignment and friendly to India. respecting her regional policies, particularly the policy of making the Indian Ocean a zone of peace.¹⁰⁴

Reiterating this position, in March 1986,

The US administration has strategic and geopolitical interests in the region. Sri Lanka with its natural harbour in Trincomalee, is most strategically located in the Indian Ocean. The objective of the US imperialists is to gradually penetrate the country and eventually bring the island under its sphere of influence and domination. The escalating ethnic conflict has driven the Jayawardene Government to seek American assistance. The US has been directly helping Sri Lanka through her allies, i.e. Israel, Pakistan, South Korea and China. The US objective seems to be to perpetuate and escalate the ethnic crisis, so that she can gradually set foot on the island and establish a base in Trincomalee.¹⁰⁵

103 'Sri Lankans at war over US military pacts', The Diplomat 15 August 2019 <https://thediplomat.com/2019/08/sri-lankans-up-in-arms-over-us-military-pacts/>

104 Sunday Magazine, India 11-17 March 198 <https://tamilnation.org/ltte/vp/interviews/8403%20anita%20pratap.htm>

105 Interview with The Week Magazine, India, 23 March 1986. At <https://tamilnation.org/ltte/vp/interviews/8603%20week.htm>

In Conclusion

The issue raises a critical question concerning the responsibility of states to oppose foreign military installations on their territories. While it is conceivable that a foreign military presence could serve the protection of a host state, in the case of SL the increasingly frequent military engagements between the US and SL cannot but pose a threat to world peace, especially given SL's past support for US invasions in the Middle East.

CONCLUDING REMARKS

THE IMPORTANCE OF COUNTERING THE TERRORISM NARRATIVE

The contrast in the focus on the LTTE as a ‘terrorist’ organisation, as opposed to certain SL military personnel as individuals who committed crimes, is a constant theme of the hegemonic narrative; the narrative that is pervasive in Western academic literature, NGO reports, major UN reports on SL, and the actions of states such as the US, UK, Canada and Germany. All of these narratives blame the atrocities exclusively on the internal parts of the island, and exclude external forces.

As an example, Norway, which was the mediator in the SL Peace Process, commissioned a report to evaluate its actions which concludes, in the executive summary: “...the Sri Lanka Peace Process [...] began as an experiment in liberal peacebuilding and ended as the result of a very different ‘Asian model’ of ‘conflict resolution’ [...] building on notions of state sovereignty and non-interference.... The military crushing of ‘terrorism’ [...] the prevalence of order over dissent or political change...”¹⁰⁶

The cumulative findings of the Dublin, Bremen and Berlin Tribunals have revealed the terrorism of the SL State and its accomplices. This Tribunal has proceeded to examine the terrorism narrative directly and has paid more sustained attention to the US interventions. We have revealed that the terrorist designation of the LTTE served as a pretext for the US and UK to intervene decisively to prevent a peaceful solution and steer the conflict back towards genocide.

GENOCIDE AS THE ABSOLUTE OPPRESSION OF WOMEN

The Genocide Convention refers to a limited understanding of genocide in terms of what genocidal processes mean for women. The increasingly widespread use of women’s bodies as a terrain of struggle calls for special treatment of the case and refinement of criteria for conceptualising genocide. It is essential to advance specific and open-ended notions that encompass all dimensions of genocide.

INTERNATIONAL IMPUNITY FOR GENOCIDE WHEN IT HAS WESTERN BACKERS

Despite overwhelming evidence to the contrary, including from their own investigations, senior UNHRC officials have set out to deny the genocide committed by SL State against the Eelam Tamils. Led by major Western powers, UNHRC member states have not only avoided acknowledging that a genocidal massacre took place and that genocide of a nation continues to be committed by other means, but have excluded their own responsibilities and degrees of complicity from the investigation. We affirm and re-emphasise the Bremen Tribunal’s recommendations concerning the United Nations, including the need to create “an international commission of enquiry - excluding states that have been directly and/or indirectly linked to the genocidal process”.

GUILT BEYOND COMPLICITY

The Bremen Tribunal has already demonstrated US and UK complicity in the 2009 genocidal assault and ongoing genocide. Genocide scholars point to different types or degrees of complicity: prior knowledge, participation in planning, direct assistance through weapons and training, benefiting from the crime, and covering up the crime, among others. The US and UK governments are guilty of complicity in all

106 NORAD (Norwegian Agency for Development Cooperation) 2011 Pawns of Peace: Evaluation of Norwegian Peace Efforts in Sri Lanka, 1997-2009 <https://www.norad.no/en/toolspublications/publications/2011/pawns-of-peace-evaluation-of-norwegian-peace-efforts-in-sri-lanka-1997-2009/>, p. xviii

these cases.

However, based on the evidence provided, we have come to the conclusion that the USA not only facilitated the genocide, but instigated it. The USA intervened in the internal affairs of SL to deliberately break the peace and prepare the SL State, the media and its political allies for a “total war” solution. This amounts to the highest degree of culpability, beyond complicity.

However, established legal doctrines tend to downplay the central role played by external co-perpetrators and limit the scope of their criminal culpability. In particular, the continuing genocide against the Eelam Tamils tests the legal concepts of the UN Genocide Convention and subsequent international jurisprudence. We identify the following as overlapping material factors in realpolitik determinations of genocide:

1) The UN human rights process is utterly flawed in both prevention and prosecution. It fails as a selfless defence of the world’s peoples by allowing major powers to select which states face serious charges. The designation of genocide is a trigger that then allows for forced intervention under the rubric of the “Responsibility to Protect”. Predictably, only state regimes that are not close US allies are subjected to international scrutiny on these terms, and never those states where the US is already influencing or determining policy.

2) The Convention assumes that there is a perpetrator assisted by one or more accomplices, which does not correspond to the power relations between a neo-colonial state and the dominant imperial powers. The neo-colonial relationship is a negotiated division of labour. The governing external powers set the strategic parameters for action and provide the international cover for the operations of the nominally independent state, which in reality is dependent and subordinate, especially in its moments of crisis, as was the case with SL in 2002-2004, which provided the opportunity for a profound intervention. As far as the island of SL is concerned, the imperialist design of the division of labour lies, not in the economic resources of the island, but in its geo-strategic location in the Indian Ocean region. Hence the absolute necessity of maintaining it as a unitary political structure. The claim of Tamil Eelam is the greatest challenge to the maximisation of the geostrategic utility of the island by the USA and its allies.

3) The UN Genocide Convention emphasises special criminal intent. What is apparent in international relations is the strategy and close collaboration between states as allies. Witnesses have drawn our attention to numerous official documents detailing the US strategy to defeat the LTTE, secure Trincomalee and fully focus the SL State on achieving that objective.¹⁰⁷ The genocide of the Eelam Tamils has functionally served the US strategy very well, removing a potential obstacle to its military dominance of the region. Although the US has been much more cautious in expressing any intention to destroy the Eelam Tamil nation, it openly declared the destruction of the LTTE, which had only one possible avenue for its terrible realisation: genocide. In essence, a genocidal massacre was orchestrated to take advantage of the deep relationship the Tamil people have with their Tamil Eelam homeland, where the port of Trincomalee is located. The destruction of the LTTE, which upheld this relationship -as mandated by the people in the 1977 and 2004 parliamentary elections on the basis of the Vattukottai Resolution, with the full participation of the people in the national liberation struggle at different levels - is an essential component of the genocide.

4) In fact, the destruction of the LTTE marks the climax of the genocide in 2009 and, in it, the capture, rape, torture and murder of the women combatants and the desecration of their bodies signify the most crucial aspect of the apex of the genocide. Therefore, to speak of the genocide of the Eelam Tamils is not possible without speaking of the destruction of the LTTE, and in particular the

107 There are echoes here of the academic debate on the Nazi Holocaust between emphasising the intentionality or functionality aspects of genocide.

atrocities committed against women. Systematic genocide without interruption has been possible after the destruction of the LTTE as its continued delegitimisation justifies and enables the SL State to carry out the ongoing genocidal processes. So much so that thousands of graves of LTTE fighters have been totally destroyed as part of the ongoing genocide. The criminalisation of Tamil activists in Europe and the deportation of Tamil asylum seekers in Europe further reinforce the SL State's action. The UNHRC Resolutions, sponsored by the US, have been introduced to cover up this international culpability by taking full control of the narrative on the SL national question in a manner that suits US geo-strategic ambitions in the Indian Ocean region.

These issues point in the same direction: UN legal processes and concepts in their present form are designed neither to prevent nor to hold accountable genocide sponsored by Western imperialist powers or in conformity with their interests. Imperialist-sponsored genocide and the imperialist perpetrators of genocide walk free unless and until the peoples of the world hold them accountable.

RECOMMENDATIONS

MAIN RECOMMENDATIONS

Recommendation to Social Movements and Progressive Political Forces

We recommend that European social movements and progressive political forces recognise that the EU's 2006 ban on the LTTE as a terrorist organisation at the behest of the US - a reversal of the EU's own peace initiative - was a "crime against peace", and put pressure on European governments to investigate this decision.

The Bremen Tribunal recommended that the EU "reconsider as a matter of high priority its security policy, which is so strictly dependent on classifications imposed by the US government without regard to due process and without considering the evolving nature of liberation and resistance movements". Without a reconsideration of this decision, Europe is not in a position to take any position on SL.

The EU and the Council of Europe have separately investigated Europe's role in the US torture and rendition programme. Some European states have also conducted investigations into these matters.¹⁰⁸ Similarly, the issue of the 2006 EU ban could be pursued through similar channels (which has so far been raised as a question in a European parliament).¹⁰⁹

We appeal to the progressive governments, political forces and social movements in the world, particularly in Latin America, Africa, Asia-Pacific and the Middle East to expose the covering up of the US-led bloc's culpability in the genocide (both its climax in 2009 and thereafter as continuous genocide) against the Eelam Tamil people and openly resist turning Indian Ocean into a war zone. The Peoples' Resolution on Justice for Eelam Tamils in an Indian Ocean of Peace in Annex 4 (as opposed to US-led UNHRC Resolutions) as outlined below can be a guide to do so.

Recommendation to Germany and other states that previously supported the Sri Lankan Peace Process

We ask the German state:

1. Drop criminal charges against Nathan Thambi, Anandarajah and other LTTE supporters and members.
2. Guarantee their freedoms and protection as refugees, in line with previous policy.

We reaffirm the Bremen Tribunal's recommendation to Germany to "identify Eelam Tamils in Europe as a resource to spread information about the true situation in Sri Lanka". Any persecution and harassment of Eelam Tamil activists undermines this constructive avenue of justice and freedom. Prosecutions and the characterisation of the LTTE as a terrorist organisation deny former members and sympathisers the space to tell the true situation in the island.

In addition, we urgently recommend to the German state:

108 Both the European Parliament and the Council of Europe carried out some investigations into this practice, which took place between 2001 and 2006. For example, CIA renditions: MEPs want member states to bring those responsible to justice (08-06-2016). And there are ongoing actions in the EU (or former EU member states) related to this issue, in 2020 in Scotland, UK in 2019 and an ongoing campaign The Rendition Project.

109 A question relating to the ban was asked in the EU Parliament by an Irish MEP: Question for written answer, Inclusion of the LTTE on the EU 's terrorist list", Paul Murphy (GUE/NGL), 15 October 2012. https://www.europarl.europa.eu/doceo/document/P-7-2012-009345_EN.pdf Written answer, 7 January 2013, https://www.europarl.europa.eu/doceo/document/P-7-2012-009345-ASW_EN.pdf

1. The Federal Ministry of Justice to publish information on the prosecution for membership attribution of LTTE sympathisers as a foreign terrorist organisation in 2010.
2. End the policy of criminalisation of Eelam Tamils, including on the basis of alleged war crimes.

TWO OTHER RECOMMENDATIONS OF THE TRIBUNAL

In the proceedings of this Tribunal, we have received written statements and oral testimony. Here we make recommendations regarding sources of evidence that have been significant in our efforts to establish the people's narrative.

Recommending Guidelines for Rape Trauma Survivor Testimonies

The rape testimonies were given behind closed doors, but were still clearly distressing for the women witnesses. The Tamil women in question are survivors of the trauma of genocide rape. Several collapsed, and then struggled with the stress to finish giving their testimonies. These accounts provide the crucial foundation of truth at the Tribunal. Despite their stress, the witnesses welcomed the opportunity to recount their horrific experiences, some for the first time, as part of a process of reclaiming their integral identities. All of them contrasted the spirit of freedom they had during the struggle with the conditions of subjugation, humiliation and stigmatisation they suffer after the military victory of the SL State. They suffer these conditions not only in SL, but also in the countries that have granted them refugee status, where they are not allowed to speak freely about their struggle for liberation. It was clear to the Jury that the Tamil women of Eelam could speak in the West of their pain and suffering as helpless victims, but not as freedom fighters embodying the power of resistance.

The Jury made every effort to be sympathetic while confirming their testimonies, and we believe that for the first time these women have been heard in their coherence as Eelam Tamil women, survivors of genocide. The Jury believes, however, that there could be further guidance and documentation of good practice to draw upon in similar circumstances. We recommend that the Permanent Peoples' Tribunal (PPT) adopt or develop guidelines on standards and procedures to support traumatised victims who are asked to appear as witnesses. This Tribunal further recommends that the sponsoring organisations consult with the PPT with a view to further gathering evidence from Tamil refugees and exiles in Eelam, including, inter alia, the nature of the LTTE, their experiences in the liberated Tamil territories and their subsequent treatment.

Recommendation to support Wikileaks Founder Julian Assange

The Wikileaks archive has been an important resource for this Tribunal. Beyond the published documents, the secret US diplomatic documents released by Wikileaks add a deeper layer that confirms in detail the policies and degree of close US involvement in SL.

This Tribunal has demonstrated, and Wikileaks epitomises, the need for independent investigative journalism. The imprisonment and incommunicado detention of Wikileaks founder Julian Assange in the UK, facing potential extradition to the USA, is of great concern to all those who defend truly independent media. The Jury urges the UK government to immediately release Julian Assange.

Annex 1: A BRIEF HISTORY OF THE PRECIOUS HOMELAND OF THE TAMIL EELAM PEOPLE

The island off southern India, formerly known as Ceylon and historically estimated to have been populated for thousands of years, was home to several ancestral kingdoms before being taken over by Western colonial powers: Portugal in the 16th and early 17th centuries, the Netherlands in the second half of the 17th and 18th centuries and Britain in the 19th and early 20th centuries. The various religious traditions that took root there over the centuries marked linguistic and cultural differences between two major ethnic groups: the Sinhalese, predominant in the centre, south and west (known as the Southern Sinhalese), and the Tamils, predominant in the north and east (known as the Northern Tamils). Due to their geographical proximity, the latter have had greater linguistic and cultural affinities with neighbouring India. Throughout history, until the British colonial era, there has been no single island-wide state structure dominated by a single ethno-religious group. In pre-colonial times, the right to rule was determined not by ethnicity but by the dynastic politics of the Indian subcontinent, which did not treat the island as entirely separate from the mainland. For many centuries before the British colonial period, there were overlapping histories and territories, as well as dual loyalties and shared sovereignty between the Sinhalese and Tamil regions, and between the island and mainland India.

The Island of SL as a Strategic Location for Imperial Powers

For all Western colonial powers, the island has been a strategic location in the Indian Ocean region in their imperialist consolidation and expansion in the East. The port of Trincomalee, one of the most strategic in Asia, is located in the Tamil region in the east of the island. After the arrival of the Portuguese in the coastal regions of the island in 1505, King Manuel of Portugal gave the following instructions to his regional agent in Goa:

We are informed that on your return voyage, if the good lord permits, you will be able to land in Ceylon, a very important kingdom of India. It has fabulous wealth and we can gain great profits from it. Therefore on your arrival you must build a fortress there and provide enough ships and men to guard it. We also understand because excellent Cinnamon, various Pearls, Elephants and other precious and valuables can be obtained in the island and is situated close to the harbour of Bengal and Malaka and to the place called Kayal and because no ship sailing between the straits of Malaka and the harbours of Bengal can pass unnoticed,... when you make this aforementioned isles your headquarters as decreed you become the center of all of our fortresses and possessions in the east and from this place you may organise everything better than from any other place. Therefore it is our wish and our decree that you endeavour to fulfil this.¹¹⁰

However, both the Portuguese and later the Dutch maintained two administrative units for the Sinhalese and Tamil regions, recognising the pre-existing autonomous domains. With the changing dynamics of capital accumulation and imperial expansion, Britain became the dominant imperial power in South Asia. Ceylon passed into the hands of the British Empire in 1815 through a treaty with the

110 Donald Ferguson "Discovery of Ceylon by the Portuguese in 1505", The Journal of the Ceylon Branch of the Royal Asiatic Society of Great Britain and Ireland, pp 284-285.

aristocracy of the last remaining Sinhalese kingdom in the island's central province. As India became the jewel in Britain's crown for resourcing the Industrial Revolution, Ceylon's strategic value increased for controlling India and competing with rival powers such as France in the Indian Ocean region. The British turned the island into a unitary political structure in 1833 by amalgamating the Tamil north and east into the Sinhalese south. In 1802, William Pitt, the British Prime Minister, described the island as "the most valuable colonial possession on the globe, giving to our [the British] Indian Empire a security which it had not enjoyed from its first establishment".¹¹¹

To this end, the British separated the island from the rest of the Indian subcontinent and presented the Sinhalese as the "true masters" of the whole island and the Tamils as "invaders" of India. India was treated as a land without history while Ceylon (particularly the Sinhalese) was treated as having a history like that of the Greco-Roman civilisation. By anthropological, archaeological and historiographical means, ancient dynastic and sectarian conflicts (of Buddhist and Hindu temples) were racially reinterpreted by presenting the Sinhalese as a superior Aryan race and as custodians of Buddhism exercising "a divine right" to rule the whole island and the Tamils of the north and east (who had lived on the island, like the Sinhalese, for thousands of years) as inferior Dravidians. In this way, the British colonial rulers laid the structural (unitary political structure) and ideological (Sinhalese racial superiority) foundations for the racial oppression of the Tamils. The newly emerging Sinhalese middle social classes under British rule adopted this racial supremacist ideology and state structure as their own and propagated it as Sinhala Buddhist nationalism. A statement by Anagarika Dharmapala, known to be the founding father of Sinhala Buddhist nationalism, vividly reflects the ideology against non-Sinhalese in the island and Sinhala loyalty to the British Crown:

What German is to the British, Mohammedan is to the Sinhalese. It is alien to the Sinhalese in religion, race and language. Its origin goes back to Arabia, while that of the Sinhalese is traced to India and Aryan sources.... For the Sinhalese, without Buddhism, death is preferable ... British officers can shoot, hang, quarter, imprison or do anything to the Sinhalese but there will always be bad blood between the Moors and the Sinhalese...but my loyalty to the British Throne is as solid as a rock and I have invariably expressed sentiments of loyalty to the King....

112

Historical evidence shows that the last colonial power, the British Empire, organised things before formal independence was granted in 1948 in such a way that a unitary state was formed under the rule of the majority ethnic Sinhalese to safeguard the Empire's interests, one of which was control of the sea routes to the East.

At the dawn of the 20th century, there were two paradigms of governance being contemplated by emerging local political leaders in the Indian subcontinent: one was to achieve dominion status under the British Empire, which was followed by the Sinhalese elite, and the other was to strive for total independence (autonomy) from British rule, which was advocated by the Indian Freedom Movement. The Tamil youth of northern and eastern Ceylon who formed the Jaffna Youth Congress (JYC) (1920-1935) followed the latter paradigm and demanded autonomy for the whole island, while

111 "Ceylon is still attracted by the colonial powers", <https://www.historyofceylontea.com/ceylon-publications/maxwell-fernando-archive/ceylon-remained-attracted-to-colonial-powers.html>.

112 Ananda Guruge, ed. *Return to Righteousness: A Collection of Speeches, Essays and Letters of Anagarika Dharmapala* (Colombo: Ministry of Cultural Affairs and Information, 1991), p541. Ananda Guruge, *Anagarika Dharmapala*, 3rd ed. (Colombo: The Department of Cultural Affairs, 1991, [1965]), p 46.

appealing to Sinhalese youth to form a common platform. The JYC also undertook a campaign for social transformation in their region by opposing religious, caste and gender discrimination. At his invitation, prominent leaders of the Indian Freedom Movement (including Mahatma Gandhi) visited the Tamil region. Sensing the danger of an alliance between India and the Sinhalese and Tamil youth demanding autonomy, the British government appointed the Donoughmore Commission in 1927 to introduce political reforms in Ceylon. A similar commission for India (the Simon Commission) had been appointed in 1926, but was boycotted by anti-colonial Indian national leaders, who rejected reforms while demanding full freedom. Following this example, the JYC called for a boycott of the Donoughmore Commission and appealed to Sinhalese leaders to join the all-island self-government movement. The JYC boycott was successful in the Tamil region, but the Sinhalese elite accepted the commission following the paradigm of the Dominion Status affecting the whole island and thus sidelining the Tamil movement for all-island Home Rule.

The British laid a death trap for political relations between Sinhalese and Tamils by introducing universal suffrage in Ceylon in 1931. Ceylon became the first British colony and the first non-white people to exercise this right to vote, whereby the Sinhalese were presented as the numerical majority on the island and the Tamils as the minority. The first attempt to unite Sinhalese and Tamils was thwarted. Ceylon was given a pseudo-democratic perspective that was essentially anti-Sinhalese. Since then, racial supremacy has been accompanied by Sinhala majoritarianism to protect the unitary political structure. It was under these colonial conditions, in the following decade, that the “father of the nation” D. S. Senanayake (later to become the first Prime Minister), applied for Dominion Status under British rule. As a minister in the British-ruled State Assembly, he spearheaded Sinhala settlements in the traditional Tamil region even before formal independence was granted in 1948. Local central power was in the hands of the Sinhalese, but under the Dominion Status granted by the British.

British Colonial Rule: the forging of a Sectarian State

In addition to the age-old Tamil populations on the island, during the colonial period the British brought a new group of Tamils, the so-called Hill Country Tamils, from South India to work in the tea plantations. The struggle for political freedom of the Tamil people came from the Eelam Tamils. The Hill Country Tamils, on the other hand, formed political parties and raised demands for fair wages and land rights. They frequently approached the Sinhalese governments as a means of winning their rights but were still unable to obtain them. Although this was the general rule, some of these Hill Country Tamils supported the Eelam Tamils, particularly because they were against the racism exercised against the Tamil people.

It is worth noting that their working conditions on the tea estates were highly exploitative. Even so, this group of Tamils helped generate the wealth of the colonial state, which was invested in establishing a welfare system, including the construction of Sinhala settlements in the Tamil region and the regeneration of ancient archaeological sites in the north-central region, which the colonial government presented as evidence of Sinhala Buddhist civilisation. The impression given was that the British were “reviving the ancient Sinhala Buddhist civilisation” that the invading Tamils had destroyed. Tamil labourers were over-exploited and kept in inhumane conditions. They used to be used to clear jungles in the regeneration of ancient Buddhist shrines.

The island’s first constitution was drafted by the British, and in its words did not allow discrimination against any group, but the British Empire let the new government of the Dominion of Ceylon act in the way it acted against the Tamils. Hill Country Tamils were denied citizenship at that time and thus overall

Tamil representation in the State Assembly was severely diminished. British strategic interests in the island against India, by extension against the Ceylon Tamils, were evident. For example, a 'Top Secret Report', dated 9 June 1947, sent to the Ceylon government by the British authorities stated:

There is always the danger of India (especially Congress India) interfering in Ceylonese internal politics and fomenting discontent among the powerful Indian minority..... Such disorders, however provoked, would have a serious effect upon the working of our service establishments. 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.¹¹³

It was at this moment of controlled 'independence' that a series of anti-Tamil laws were passed, commencing with the Ceylon Citizenship Act 1948 that introduced the test that proof must be given of fathers and grandfathers born on the island, that denied citizenship to the plantation Tamils whose forefathers had been immigrated from India in the late nineteenth century. Tamil leader S.J.V. Chelvanayakam from the north and east deplored this blatant violation of the rights of Hill Country Tamils, and prophesied the eminent attack on the Tamil language to come.

You are now hitting at the weakest section of the Tamils, you are hitting the innocent and the meek who are labouring in the chill and the cold of the plantations producing your wealth. We will know where we stand when our turn comes, when the next law in this series comes, the one that deals with our language.¹¹⁴

While the unitary state, officially independent but carved out by the colonisers, was being consolidated, a militant Buddhism dominated Parliament through two major political parties (United National Party (UNP) and Sri Lanka Freedom Party (SLFP), which competed with each other, each claiming to serve the Sinhalese in the name of Buddhism, while waging an anti-Tamil campaign. The Tamils, who professed various religions (Hindu, Christian and Muslim), responded through their Federal Party and campaigned for a Federal Constitution based on a pluralistic secular paradigm that was not anti-religious but advocated an equidistant approach to all religions while promoting the core values in them. In 1956, under the SLFP government, Parliament passed a law recognising only Sinhala as the language of the state, depriving Tamils of state and public sector employment. By denying the Federal Party's demand to grant equal status to both languages, S.W.R.D. Bandaranayake, who headed the government, echoed the fear of Tamils initially induced by the British:

With their books and their culture and the will and strength characteristic of their race, the Tamils (if parity were given) would soon rise to exert their dominant power over us.¹¹⁵

113 Defence Requirements in Ceylon Cabinet Paper (47) 179: 09 June 1947 / The National Archives, UK. <http://filestore.nationalarchives.gov.uk/pdfs/large/cab-129-19.pdf> In fact, this tribunal has investigated how several decades later the UK and the USA intervened decisively in strengthening the SL state to destroy the LTTE, which was seen as a threat to imperialist interests in the Indian Ocean region.

114 Navaratnam, V. (Toronto:1991). The Fall and Rise of the Tamil Nation (pp. 48-49). <https://www.puradsimedia.com/wp-content/uploads/2019/02/The-Fall-and-Rise-Of-the-Tamil-Nation.pdf>

115 Daily News (Colombo: 8 November 1995).

In the following years, the drastic decline in Tamil representation in the public sector was enormous.

From 1956 to 1970, the proportion of Tamils employed by the state fell from 60 to 10 per cent in the liberal professions, from 30 to 5 per cent in the administrative service, from 50 to 5 per cent in the clerical service and from 40 to 1 per cent in the armed forces.¹¹⁶

The Sinhala Only Act triggered an organised protest by the Tamil people, inspired by the nonviolent action or “satyagraha” (force of truth) pioneered by Mahatma Gandhi. A Tamil parliamentarian then in the Communist Party of SL shouted:

You will never crush the spirit of a people fighting for existence. You will never make it forget its history..... Outside the battles of the working class for its rights and its life, I cannot think of a fight more just and ennobling than the one which the Tamil people are today beginning for their language.¹¹⁷

State-sponsored Sinhalese groups reacted with intense violence against Tamil demonstrators. The famous book Emergency '58 records the events of this period, which marked the first of a series of anti-Tamil pogroms. It was written by journalist Tarzie Vittachi shortly after the pogrom (Vittachi was expelled by the government for publishing the book). The violence resulted in the loss of Tamil lives, the rape of many women and the destruction of property across the island. The estimated loss of Tamil lives ranged from 300 to 1500.¹¹⁸ Subsequently, several agreements were attempted between the Sinhalese governments and the Tamil Federal Party, which sought to obtain some measure of federalism in the form of administrative (not political) linguistic autonomy, but these agreements were quickly nullified by the government unilaterally in the face of protests from the other Sinhalese party which was not a signatory to the agreement. The two main political parties vied to protect the unitary political structure that went hand in hand with Sinhala supremacy and majoritarianism.

In 1971, a university admission system was adopted that barred many Tamils from university education as a blatantly discriminatory measure. This followed the 1971 uprising of Sinhala-educated marginalised youth against social injustices, in which more than 20,000 young men and women were massacred by the state security apparatus. These youth were led by the Janatha Vimukthi Peramuna (JVP) which, despite its opposition to elite-led governments, did not recognise the collective rights of Tamils. The JVP, however, also embraced the unitary political structure and Sinhala supremacist ideology despite the fact that its followers had genuine social grievances against successive Sinhala elite-led governments. A year later, in 1972, a new constitution was promulgated, renaming Ceylon Sri Lanka and enshrining Buddhism as the state religion, relegating Hindu, Christian and Muslim practices, predominant among the Tamils, to the margins. The state was formally declared a unitary state. The drastic reduction of university admissions for Tamils had dire consequences.

116 Timberman, D., & Gwendolyn, G. B. (USAID: 2001). Sri Lanka Democracy and Governance Assessment. Available at: http://pdf.usaid.gov/pdf_docs/PNADI157.pdf

117 DeVotta, N. (2004). Blowback: Linguistic Nationalism, Institutional Decay and Ethnic Conflict in Sri Lanka (pp. 89-90). California: Stanford University Press.

118 Emergency '58 - The Story of the Ceylon Race Riots, Tarzie Vittachi, <http://tamilnation.co/books/Eelam/vitachi.htm>

The Tamil representation in science-based disciplines fell from 35.3% in 1970 to 19% in 1975. The Sinhala representation in all disciplines increased quite dramatically. In 1975, Sinhalese accounted for 78% of places in the science-based disciplines while in the humanities and social sciences they held over 86% of the placements.¹¹⁹

In promulgating the 1972 Constitution, the government rejected each and every amendment proposed by the Tamil political parties. In response, these parties formed a new alliance later called the Tamil United Liberation Front (TULF). At their 1976 convention, they unanimously adopted the Vattukottai Resolution, which for the first time in history called on the Tamil people to support the demand to form an independent state based on the right to self-determination, nationhood and homeland: “Independent Socialist Tamil Eelam”.

Although SL claimed to be a member of the Non-Aligned Movement, its state structure remained deeply colonial, serving British geostrategic interests in the Indian Ocean region, followed by those of the US since World War II. Since the election of the UNP government in 1977, SL has been openly oriented towards the Washington axis in the midst of the Cold War. So much so that the Sinhalese leader of the government, J.R. Jayawardena, who soon became the first executive president under a new constitution, was called “Yankee Dicky” because of his unabashedly pro-US stance. At the same time, he claimed to be in line with the ancient Sinhalese royal dynasties. An Israeli ‘interests section’ was opened in the US embassy in Colombo. Modernisation of the security forces accelerated. Protection of the unitary state became the top priority. This period saw the largest number of anti-Tamil pogroms sponsored by the state apparatus. The highly securitised anti-Tamil state became a normality under the accelerated implementation of neo-liberal economic reforms. Paradoxically, the country was constitutionally called the “Democratic Socialist Republic of Sri Lanka”, but it is one of the first countries to embrace neoliberal governmentality in the Global South. The other country that did the same during that decade was Chile. Both were under the military watch/supervision of the UK and the US. At that time, SL’s largest neighbour, India, was politically aligned with the Soviet Union and was alarmed by the open intrusion of the UK/US axis in SL. During this period, India attracted numerous Tamil youths outraged by the island’s politics and offered them military training and weapons to contain the pro-US SL government. The Tamil youth, exasperated by the horrors of continuous pogroms, especially the 1983 pogrom that claimed thousands of lives, turned to the formation of an organised armed insurgency to defend themselves against the SL State, asserting their right to resistance and self-determination. They did so after all the nonviolent and parliamentary means adopted by the previous generation had been brutally repressed by the SL governments.

Atrocities and the turn to Tamil Resistance for Self-determination

The right to national self-determination includes the right to resistance that takes the form of a national liberation movement, as occurred throughout Africa, in many parts of Latin America and in Asia, and is affirmed in the Algiers Declaration.¹²⁰ The Tamil liberation struggle began even before the formation of armed resistance and was dedicated to demanding constitutional reforms through nonviolent mass

119 Gunasinghe, N. (1984). ‘The open economy and its impact on ethnic relations in Sri Lanka’ in Sri Lanka, the Ethnic Conflict: Myths, Realities and Perspectives (p. 199). Colombo: Committee for Rational Development.

120 120 Algiers Declaration on the Rights of Peoples. Adopted on 4 July 1976 by a group of non-governmental participants, including trade unionists, liberation activists and NGOs.
<https://tamilnation.org/selfdetermination/instruments/760704algiers.htm>

defiance. However, each of these efforts to seek a peaceful solution within the framework of the SL State was met with total denial of collective rights and state-sponsored pogroms. The initial demand of the Tamils was not for a separate state, but for equal rights, which was denied and met with intense violence. The more the demands to curb oppression and repression increased, the more intense the pogroms sponsored by the Sinhalese political leadership and state security forces, became. In the pogroms, or widespread killings of Tamils, some were of horrifying proportions, claiming several thousand lives in a single night. Women were raped. Houses and businesses were burned. Cultural centres were destroyed.

In 1977, an island-wide pogrom was organised shortly after the election results were announced, indicating the Tamil people's support for a separate state. The TULF presented the Vattukottai Resolution to Tamil voters, who overwhelmingly backed it in the elections, giving the party 18 seats, more than 80% of the Tamil vote. As a result, the TULF became the second largest political party in Parliament. Tamil passengers travelling between Jaffna (a northern Tamil city) and Colombo were attacked on trains. Violence spread across the island. An estimated 1500 Tamils were killed and many Tamil properties were destroyed all over the island. In the 1981 pogrom, the Jaffna Library - a sanctuary of Tamil culture and a treasure chest of priceless and irreplaceable ancient and modern manuscripts, the largest collection of its kind in South Asia - was reduced to ashes with the support of government ministers and security forces. The large Jaffna market was set on fire. This was during another election period when Tamils were demanding their collective rights.

In the 1983 pogrom, dubbed "Black July", the largest of all, an estimated 3,000 people were killed in one week and half a million Tamils were displaced. This island-wide pogrom included the well-planned murder of 53 Tamil political prisoners in state custody. There were large-scale rapes and killings of Tamil women. The destruction of Tamil property and businesses dealt a severe blow to the Tamil economy. Sinhala nationalist writers insist that this pogrom was a reaction to the killing of 13 Sinhala soldiers in Jaffna by the LTTE. However, many researchers have clearly shown that it was well planned, well coordinated and had started before the killing of the 13 soldiers. The International Commission of Jurists observed: "The evidence clearly points to the conclusion that the violence of the Sinhalese rioters against the Tamils amounted to acts of genocide."¹²¹

The three large-scale pogroms mentioned above were unleashed against the Tamil people with the demand for a separate state arising after the SL state's outright refusal to grant equal rights. Massacres of Tamils, 1956-2008, published by the North East Secretariat for Human Rights (NESOHR) refers to 149 mass atrocities between 1956 and 2008, with 10,627 victims; between July 1983 and May 1987, 44 pogroms with 2,109 victims; and between May 1990 and May 1995, another 47 pogroms with 2,231 victims. In total, at least one million Tamils were displaced.

After the 1983 pogrom of unprecedented proportions, the mass of the people had to flee or fight. It was an existential moment, and thereafter the LTTE's armed struggle for national liberation fully corresponded with the political aspirations and commitments of the majority of Tamils, which were articulated in the Vattukottai Resolution and endorsed in the 1977 elections. As armed resistance by different Tamil political groups evolved in the early 1980s, in 1985, under Indian patronage, a round of political negotiations between Sinhalese and Tamil political leaders was held in Thimphu, capital of the Kingdom of Bhutan.

121 Sri Lanka: A Mounting Tragedy of Errors, by Paul Sieghart, International Commission of Jurists, March 1984.

The principles guiding the struggle not only of the Tiger guerrillas, but also of the other armed groups and the Tamil people in general, were spelled out:

- 1) to stop being considered a minority and to recognise them as a nation;
 - 2) respect for their ancestral homeland;
 - 3) respect for their right to self-determination as a Tamil people;
 - 4) respect for the right of citizenship of all Tamil speakers, including the Hill Country Tamils brought from India, who in 1948 were denied the right to citizenship and suffrage.
-

These 4 principles have since become known as the Thimphu Principles. As talks failed and state repression against the Tamils increased with modern counter-insurgency warfare, aided by the UK and USA, the LTTE rose to prominence in the resistance. Its acts of armed struggle quickly brought fame to its most daring battalions, such as the “Black Tigers” or the “Suicide Squad”, whose actions became known and feared throughout the world. The LTTE practically set out a programme of actions that would build a state for the Tamils, not only in defence of the people and the homeland against historical oppression, but also in the transformation of Tamil society against caste, gender and religious discrimination. Those who led this movement came from the most oppressed social classes and castes. The most notable achievement of the LTTE was the empowerment of women in all sectors of society that came under its administrative control.

Near the end of the Cold War in 1987, as India was moving away from the Moscow axis, the Indian and SL governments signed an agreement called the Indo-Lankan Peace Accord, based on the withdrawal of Sinhalese troops from the Tamil region, the surrender of arms by Tamil groups and the decentralisation of power. As part of this agreement, India sent a large contingent of troops to the Tamil region, ostensibly to “preserve peace”. In the agreement, the political solution (called Amendment 13 to the SL Constitution) was a reformist measure that provided for decentralisation of power to all regions of the island, while denying the Tamil right to self-determination and consolidating the unitary state. Several Tamil armed groups fully accepted the agreement and even aligned militarily with India, while the LTTE clung to the principles of Tamil sovereignty. Soon, the GoSL accelerated its Sinhalese colonisation of the region, including the construction of new police stations, while keeping its security force bases intact. Thileepan, the 23-year-old political leader of the LTTE, launched a fast unto death campaign demanding the Indian government to stop the oppressive and repressive agenda of the Sri Lankan government. This fast mobilised the entire Tamil region against the Indian and SL governments and galvanised unprecedented support for the LTTE. Thileepan’s fast ended in death and his sacrifice inspired a large number of young men and women to stand firmly for Tamil sovereignty. He pioneered the empowerment of Tamil women, who constantly suffered brutal repression by the security forces. Indian troops committed massacres, rape and sexual abuse against the Tamil population in an attempt to destroy the LTTE.

India, once a supporter of the Tamil resistance, has now turned against it by joining the Western axis. The LTTE had to resist both regional and world powers. During the same period, the SL security forces brutally suppressed the second Sinhalese youth uprising (1987-1989), led by the JVP, which demanded social justice in the face of growing socio-economic inequalities brought about by rapid neo-liberal economic reforms. Like the period of Tamil youth mobilisation in the 1920s, as noted above, the late 1980s created another historic moment of unity in the diversity of struggles between Sinhalese and

Tamils. In fact, the younger generation of both peoples had been suffering from the repression of the US/UK aided SL state and now joined by India near the end of the Cold War. The JVP also opposed the Indo-Lankan Peace Accord that brought Indian troops into the Tamil region, but the party was deeply rooted ideologically in fear of India and the Sinhala-dominated unitary state created by the British, and thus misperceived the Accord as a tool to divide the country; an “Indian invasion” to help the Tamils establish a separate state. The reality was just the opposite. India allied with SL to protect the unitary state. This reflects the deep-rooted refusal of the Sinhalese political leadership (not only on the political right but also on the left) to change the unitary character of the state as a solution to the national question. First, they do not recognise that there is a national question. The JVP vehemently rejected that Tamils have grievances merely because they are Tamils in the North and East. This deadly ideological blindness prevented the JVP leadership from joining hands with the LTTE to resist the SL and Indian states together. The JVP crackdown killed at least 60,000 people, mostly young Sinhalese men and women, including hundreds of young Buddhist monks.

A small group of surviving JVP activists who later formed the Hiru Group unconditionally recognised the Tamil struggle for self-determination and were treated by the party as traitors. The JVP majority continued to fully defend the unitary state structure even after such a massacre of its members and went to the extent of forming a coalition with the ruling elite later to support the war against the Tamil people. The formidable and tactical resistance of the LTTE made India withdraw its troops in 1990. Since then, the LTTE emerged as the main national liberation movement among the Tamils, not only in the form of armed resistance, but also as the leader/founder of a socially transformative Tamil Eelam state. Thereafter, the LTTE guerrillas, given their skill, discipline, coherence and unity, received massive support from the Tamil population, but at the same time deeply concerned Western countries. From 1983 onwards, there was a large exodus of Tamils to Western countries and a diaspora network began to form, sending resources to sustain the resistance.

As the Sri Lankan state’s brutality against the Tamil people increased, with the full backing of the world’s two most militarised states, the US and the UK - which gave the security forces a free hand to murder thousands of people, rape women and destroy villages - the Tamil armed struggle too became intense. Since the 1980s, the US, through the Israeli military, has coordinated technical assistance to SL. Through its Internal Security Service (Shinbet), Israel increased SL’s naval capacity and trained the armed forces, in particular the Special Force (police commandos). The UK was involved in training SL armed forces in counter-insurgency warfare tactics that were used against Irish Republican activists. The UK’s private security company, Keeni Meeni Services, was also involved in training the Special Task Force. On the advice of Israel, armed buffer zones were established with Sinhalese settlers, like those in the West Bank with Jewish settlers, on the borders acquired in the Tamil region. In the Eastern Province, where both Tamils and Tamil-speaking Muslims live, Muslim men were recruited into the SL intelligence services, creating a rift between the two communities that have coexisted peacefully for centuries.

The LTTE militarily confronted the Sinhalese settlers and ordered the Muslim community living under their political control to leave the region in 1990. The brutality of the SL security forces and the LTTE’s armed resistance to that brutality must be understood within the conditions created by the immense support given to the SL State by the two most militarised states on the planet. The message was clear. The Tamils must not claim the north and east as their homeland, where one of Asia’s most strategic ports, Trincomalee, is located. As long as they claim their homeland and refuse to live under the unitary state, their lives will be undignified and unbearable or, in essence, they (Eelam Tamils) will

not exist. The SL security forces were able to act against the Tamil people with impunity. In particular, they unleashed an unspeakable level of sexual violence against Tamil women, not because Sinhala men were inherently evil, but because of their militarised masculinity, necessary to protect the unitary geo-strategic state. Tamil Tiger fighters emerged not only as a counter-force to the brutality of the security forces, but also as a revolutionary movement for socially transformative practices that empowered women and the most disadvantaged sectors of society.

In 1994, Chandrika Kumaratunga, became the first woman president of SL promising to end the war and offer a political solution. A ceasefire was declared. There were several rounds of peace talks between the two sides for 6 months, but the government's political proposals were centred on the Sinhala state, and military strategies remained intact, which led to the failure of political negotiations with the LTTE. Above all, the military pact, the Status of Forces Agreement (SOFA), was signed with the US shortly after the president came to power. The president declared a new phase of war codified as a "war for peace" in late 1995 and presented the LTTE as inflexible.¹²² The US Green Berets began training SL security forces in 1996.¹²³ In the same year, six Israeli-made Kafir fighter jets were sold to SL.¹²⁴

The president also used another slogan on the economic front: "market economy with a human face", which in fact led to a high level of privatisation of the public and state sectors in the Sinhalese south. The revenues generated were invested in increasing the defence budget for the war. The period between 1995 and 2000 marks the height of the war and the LTTE's most decisive armed resistance. The government launched a large-scale military operation to capture Jaffna, the largest urban centre in the north, in late 1995. Nearly 400,000 people were uprooted and fled south to the Vanni area of the Tamil region. The LTTE completely resettled in the Vanni and accelerated the construction of the necessary infrastructure of a state to protect the population. In July 1996, the LTTE seized one of SL's largest military bases in the coastal region of Mullaitivu, killing some 1,300 soldiers. The government launched another long-term military operation, called Jayasikuru (victory assured), which lasted from 13 May 1997 to 4 December 1998, to connect the Jaffna peninsula with the Sinhalese south through the LTTE-administered Vanni area. The USA fully assisted the SL State by designating the LTTE as a foreign terrorist organisation from 8 October 1997, even before the SL State banned it. The government military operation eventually had to be abandoned due to strong Tamil resistance and casualties among government forces. At least 1000 soldiers were killed in this battle. In fact, in this battle, although the LTTE was in a tactically advantageous position, it created a corridor for a large number of fleeing soldiers to escape to the south.

The LTTE recaptured all the land that had been seized by government forces in the Vanni region, including the town of Killinochchi, which became their political headquarters. In April 2000, the LTTE seized two more large military compounds at Elephant Pass and Yakachchi, located between the Jaffna peninsula and the Vanni region. These are strategic garrisons built during the British era. In this battle, through its Sinhala language service on the Voice of Tigers radio channel, the LTTE announced to the Sinhala soldiers to surrender by guaranteeing them safe passage through the International Red Cross. The radio channel also gave a list of Sinhala soldiers who had been captured or had previously surrendered, and who were returned to their families in the Sinhalese south. These military victories

122 Mayuri Mukherjee, Sri Lanka-US military Ties in the Indo-Pacific, <https://www.vifindia.org/print/6620>

123 Seattle Times, <https://archive.seattletimes.com/archive/?date=19960628&slug=2336691>

124 Military history https://military-history.fandom.com/wiki/Sri_Lanka_Air_Force

further strengthened the Tamil national liberation struggle. In the same period, in March 2000, Britain banned the LTTE as a proscribed terrorist group.

Other LTTE military attacks in southern Sinhalese are well known. On 31 January 1996, the LTTE carried out an attack on the Central Bank to weaken the economic power of the state, in which 91 people were killed. In the midst of Operation Jayasikuru, the government promised the Sinhalese that the main road to the north would be completely taken over for the 50th anniversary of Independence Day, which fell on 04 February 1998. It was declared that the Tamils would be taken from the north to the premises of the Temple of the Sacred Tooth Relic of Lord Buddha in the central hills, where the anniversary celebrations were scheduled to take place. The continuing British-Sri Lankan colonial alliance was evident. Prince Charles (now King) was to be the chief guest at the event. A few days before the anniversary celebrations, the Tigers carried out an attack in the vicinity of the temple in which 13 people were killed. The celebrations near the temple were cancelled and the British royal did not arrive on the island. On 25 January 1998, the SL State banned the LTTE.

At the height of the war in the north, the government consistently refused to accept large numbers of soldiers' bodies for fear of a backlash from the Sinhalese people. Families were informed that these soldiers had disappeared. So much so that the government banned an internationally awarded film revealing the tragedy of a poor rural Sinhalese family whose son had died in the war. The Ministry of Defence often downplayed the number of its casualties or gave them in percentages. For example, President Kumaratunga's Defence Minister once said that only 2% of the security forces had been killed. In contrast, the LTTE readily accepted the bodies of their fighters and disclosed the casualty figures. The bodies of the soldiers who were rejected by the SL forces were cremated by the LTTE with honour. The Tribunal heard the testimonies of the surviving LTTE ex-combatants who revealed how the government troops had desecrated the bodies of the female combatants by mutilating their sexual organs. It was also revealed that the LTTE never desecrated the body of a fallen Sri Lankan soldier. The LTTE had built about 20 large-scale cemeteries with about 20,000 graves of fallen fighters and maintained them as sacred places. By the end of 2000, the LTTE had reached a military balance of power with the SL State at a time when the Sinhalese were entering a phase of war weariness and economic decline. The Hiru Group published in its newspaper, Hiru interviews with the families of the dead soldiers, mostly from the rural Sinhalese poor social classes, who saw the futility of the war.

By 2000, at least 70 per cent of the Tamil region had come under LTTE administration. With this political-military strength, the LTTE leader informed the Norwegian government at the end of the year that he was ready for a negotiated settlement, on the basis of which the EU issued a statement encouraging both sides to enter into dialogue. The EU's position was radically different from that of the USA and the UK. On 21 December 2000, the LTTE declared a unilateral ceasefire for one month, which was rejected by the government on 23 December, and continued its military offensive. On 23 January 2001, the LTTE extended the ceasefire for another month, which was again rejected by the government on 26 January, increasing its hostility. The LTTE offered two more ceasefire extensions, on 22 February and 22 March, even after losing 133 of its fighters. The government continued its war, causing the Tigers to abandon the ceasefire. Soon after, on 24 April, the government launched a massive military operation called Agni Kheela (flame of fire) to capture the northern sector of the Vanni, which was foiled by the LTTE causing heavy losses to the government. The SL Muslim Congress, which had been a partner of the government until then, withdrew its support in June that year because of the president's inaction to stop attacks on Muslims by Sinhalese mobs in a provincial town of Mawanella.

On 24 July, the LTTE carried out one of the most politically crucial and well-coordinated attacks in the history of their armed resistance, targeting the state's main air base, the most protected and closest to the international airport and the Free Trade Zone. Eight fighter jets; two Israeli-made Kafir aircraft, one Russian MIG aircraft, two MU 17 combat helicopters and three Chinese advanced training aircraft were destroyed. Three Sri Lankan Airline commercial aircraft and the oil depot were destroyed. All LTTE fighters were killed or committed suicide and 11 government airmen were killed and many wounded, but not a single civilian was killed. This attack was an unprecedented military, political and economic setback for the SL regime. The Sinhalese masses increasingly clamoured to abandon the war path and the president called for parliamentary elections. A new government was formed in December 2001 and came to power with the promise of peace and economic stability. The newly elected prime minister spoke of an interim autonomous authority for the Tamil region. It was clear that without a negotiated settlement with the Tamil national liberation movement, economic stability could not be achieved. The LTTE declared another unilateral ceasefire immediately after the election of the new government in December 2001. Both sides agreed to a permanent ceasefire on 23 February 2002 and signed a Memorandum of Understanding recognising the Line of Control between the two administrative units of the island (the GoSL and the LTTE). The MoU laid the foundation for the historic 2002 Peace Process (2002-2007). This is the 3rd and the most historic moment to achieve unity between Sinhalese and Tamils through a transformation of the colonially carved state, the first in the 1920s during the Indian Independence Movement and the second in the period 1987-89 during the Indian military occupation of the Tamil region at the time of the end of the Cold War.

From War to Peace process: The LTTE's de facto Tamil State as a Liberated Territory

During the first 30 years of nonviolent resistance, whenever Tamils demanded equal rights, the state not only denied them, but orchestrated pogroms that killed many Tamils almost every decade since the 1950s. In the subsequent 30 years of armed resistance, whenever the LTTE won military victories, it used them to demand peaceful political negotiations based on lifting embargoes, addressing humanitarian needs, releasing political prisoners, lifting bans against the LTTE, etc. The LTTE made these demands as the leaders of a well-functioning state (especially since the early 1990s) approaching another state. The LTTE's armed resistance was aimed at a political solution. Whenever they were strong, they declared their intention to engage in political negotiations. Whenever they were weak, they engaged in armed resistance in different ways. When they became strong, by liberating large parts of Tamil Eelam in the late 1990s, they openly expressed their willingness to negotiate and also ensured that war casualties, including those of the SL security forces, were reduced. Despite the GoSL's continued rejection of the LTTE's ceasefire declarations and its call for a negotiated settlement, the LTTE managed to create the conditions for the 2002 Peace Process, which had the full support of the EU, but was derailed by the USA and the UK, as determined by the Bremen Tribunal, and the Berlin Tribunal confirms this.¹²⁵

It is necessary to note the remarkable characteristics of the emerging state of Eelam Tamil, which was recognised by both the GoSL and the international community as having a Line of Control with the SL State in the 2002 Peace Process.

As mentioned above, the formation of the de facto Tamil Eelam state as a structure began with the withdrawal of Indian troops in the early 1990s and accelerated following the displacement of a large part of the Tamil population to the Vanni due to the government's military operation in Jaffna in 1995. Testimonies received from those who took refuge or consciously integrated into this de facto state

125 Bremen PPT session, 2013, no. 5,1,4,2,

reveal its exemplary character. There was not only civil-military coordination of functions and services to meet the daily needs of such a large population. There was also a very creative social movement that built an alternative model of society, based on values and principles that overcame caste, race, religion, gender and class discrimination. Tamil Eelam was a true nation-state, a de facto state and a society under construction on an egalitarian basis. The situation of women deserves special attention, as mentioned above. Almost all testimonies allude to overcoming the trauma of the siege and sexual abuse in which they had remained under military control for many decades. Analyses of the reasons that led many women to join the armed resistance or many sectors of the political and social structures of the de facto state show that the LTTE was precisely the spearhead for shaking off the fears, prejudices and consequences of machismo linked to forms of national oppression, along with gender and caste discrimination. The same analyses reveal that the LTTE was far ahead of Western liberal feminism that reduces women's rights to mere individual rights. Tamil Eelam feminism was intersectional (nation, class, caste, religion) and at the same time aimed at radical equality of rights and treatment for both genders. Empowering women by transforming oppressive gender and caste relations was an integral part of the new Tamil Eelam state.

The success of the Tamil liberation movement lay in its social revolution and the LTTE could not be destroyed because of this revolutionary social base. In other words, the LTTE could not be destroyed without at the same time destroying the population of this liberated territory, particularly the women, who had been empowered at all levels of society; military, political and civilian administrations. One of the institutions that reveal the humanitarian sensitivity of the de facto state were the Children's Homes, which refused to be called "orphans' homes". They were run with the best pedagogical expertise available, trying to heal the traumas of war in all its dimensions, as war wounds abounded. This Tamil state was organised in 6 institutional spaces: military, political, international, financial, intelligence and police. The armed militants had their own independent spaces and lines of command and the civilian population had theirs, in which the economic, environmental, educational, health, labour, media, cultural, religious and recreational sectors were developed with great creativity, commitment and intensity. There was a strong welfare system to care for the most vulnerable groups in society. Building social spaces where their ancestral and community traditions were not repressed permeated the atmosphere. The Tamil Eelam state was secular and pluralistic. It was not anti-religious, but promoted the progressive features of each religion, while maintaining an equidistant approach to all religions. Not only Sinhalese civil society groups, but also many governmental and non-governmental groups from Europe who travelled to the de facto Tamil state during the peace process witnessed these historic social transformations. Many European women, especially in Germany, who ran development agencies, became involved in the peace process because of this socially transformative character of the Tamil state. During the peace process, the LTTE was mandated by the Tamil people to represent them. This mandate was clearly expressed in the 2004 parliamentary elections, when the Tamil National Alliance presented to the people the five principles of its manifesto: nationhood, self-determination, homeland, authorising the LTTE to represent the Tamil people and demanding an interim self-governing authority for the Tamil region in the North and East under LTTE tutelage. The TNA won 20 seats, 90% of the Tamil vote. This election result exceeded the support base of the 1977 elections, which was 80%. At the beginning of the 2002 ceasefire agreement, the LTTE was a proscribed organisation in SL under the Prevention of Terrorism Act.. The LTTE demanded the lifting of this ban prior to the peace talks. On 5 September 2002 the ban was lifted and the first round of talks was held in Thailand from 16-18 September 2002. Instead of seeking a final solution, the LTTE demanded an interim administration for the Tamil region, which the government opposed, citing constitutional constraints. However, both sides

discussed without hostility a wide range of humanitarian issues: demining, refugee needs, enforced disappearances, land acquisition by security forces, political prisoners, problems of the Muslim population, and so on. After decades of war, the two sides developed a working relationship. Prior to the peace talks, the LTTE and the SL Muslim Congress had signed a Memorandum of Understanding to work together on a number of issues, including refugee needs. The LTTE's immediate expectation was to address the needs of thousands of refugees (including Tamil Muslims) who have been waiting for years to return home. During the war, the security forces had acquired thousands of hectares in Jaffna to create a high security zone, including beaches and fertile land, displacing hundreds of thousands of people.

At the second round of talks, held again in Thailand from 31 October to 2 November, a breakthrough was made to form three sub-committees:

1) Immediate Humanitarian Needs and Rehabilitation, 2) De-escalation and Normalisation, which would return land acquired by the security forces to civilians, and 3) Political Affairs.

These committees were to be represented by both the LTTE and the GoSL and were in fact based on the principles of shared sovereignty that can overcome the absolutism of the Sinhala unitary state structure. A donor conference to support rehabilitation and reconstruction was held in Oslo on 25 November, in which many governments participated. While the EU, Japan and Norway fully supported the negotiated solution at this meeting, US Deputy Secretary of State Richard Armitage demanded that the LTTE renounce terrorism and abandon the claim to a separate state. At this meeting, the LTTE delegation met directly with SL Prime Minister Ranil Wickremesinghe in an attempt to move the peace process forward despite US interventions. It was decided that the next donors' conference would be held in Japan in May 2003.

Just before the 3rd round of talks (2-5 December 2002) in Norway, the LTTE leader, in his annual National Heroes Day speech (27 November), expressed the LTTE's willingness to consider substantial regional autonomy based on the right to self-determination of the Tamil people on the basis of the Thimphu principles. He also stated that if this is denied, there is no option but a separate independent state. At the 3rd session of the peace negotiations, the North East Reconstruction Fund was set up to accelerate the resettlement processes. The LTTE agreed to partner with the United Nations Children's Fund to rehabilitate war-affected children. A sub-committee was formed to address gender issues. Despite the security forces' refusal to hand over land to civilians and to participate in demining, the LTTE initiated a large-scale demining programme in the Vanni region. However, the SL army commander in Jaffna echoed the US position and demanded that the LTTE disarm as a condition for de-escalation and resettlement of the displaced. The GoSL obtained a security assessment report by an Indian military commander on the High Security Zone, which reiterated the need to disarm the LTTE as a condition for returning land to the refugees. The LTTE rejected the proposal outrightly. The De-escalation Sub-Committee became defunct.

Despite some setbacks, at the 4th round of talks in Thailand, it was decided to accelerate rehabilitation and reconstruction efforts, which were fully supported by many European governments. In particular, the German government's international development agency was heavily involved in this work, despite the GoSL's increasing reluctance to cooperate. At the 5th round of talks held in Germany on 7-8 February 2003, the LTTE reiterated the need to accelerate attention to the needs of the war-affected masses. In response to the issue of "child soldiers", the LTTE pointed out that it had been maintaining children's homes for thousands of war-affected children by expending a large amount of resources. It was revealed that at least 350 underage LTTE members were returned to their guardians. In fact, there

have been underage members of the LTTE (under 18 years of age), but no underage combatants or as the West portrays 'child soldiers'. Not all those who were LTTE members fought in the war.

There have not been reports of underage members getting killed in battlefields. One wonders how the LTTE would conduct highly sophisticated military operations with the deployment of so called child soldiers! An agreement was reached with UNICEF to implement an action plan to rehabilitate underage members. The LTTE requested that the rehabilitation of these young people be formalised by requesting funds to build vocational training institutes for them, a request that was never heeded by others involved in the peace process. International concern focused on the child soldier narrative, but not on the inhumane conditions that the GoSL's war against the Tamil nation had created, nor on the socially progressive measures that the LTTE had undertaken to transform these conditions in the midst of a brutal war.

The 6th round of talks was held in Japan from 18-21 March 2003, a few days before the US/UK invasion of Iraq. The Sub-Committee on Immediate Humanitarian and Rehabilitation Needs (SIHRN) found it difficult to make progress due to the continued reluctance of the GoSL. However, the two sides reached a consensus to move forward on other issues, including the development of a road map for the protection of human rights, the promotion of reconciliation between the Tamils and the Tamil-speaking Muslim communities in the Eastern Province. In addition, the LTTE announced that it had included 21 members in the Political Affairs Committee to conduct a comprehensive study of various models of federal governments based on the right to self-determination. This committee travelled to many countries in Europe and involved constitutional experts, various parliamentarians and other intellectuals in the search for a viable model for a lasting political solution. Both sides agreed to hold the 7th round from 29 April to 2 May 2003 in Thailand. SL was at the dawn of peace, but the world was on the brink of war. Many EU countries, led by Germany and France, opposed the US and UK-led invasion of Iraq. The LTTE clearly marked its opposition to the unilateral invasion of Iraq.

US and UK use “terrorism” as an excuse to break up the Peace Process that led to the Genocidal Massacres of 2009¹²⁶

For the US and the UK, the urgency of regaining SL's unitary political structure in the face of the LTTE increased as part of the encirclement of China and the push for military intervention in the Middle East with the invasion of Iraq. The island is located just in between these two major geopolitical regions; China and the Middle East. On 14 February 2003, Richard Armitage, US Deputy Secretary of State, speaking at the Center for Strategic and International Studies in Washington, DC, on the topic “Sri Lanka and the Prospects for Peace”, said:

the parties to the conflict appear to be ready to reach a resolution, more so than at any other time in the past twenty years ... Logically, down the road, this is going to include disarmament [...] Internal self-determination, within the framework of one Sri Lanka, is not going to be consistent with separate armies and navies for different parts of the country.¹²⁷

126 See the jury's reasoning in Accusation 1.

127 http://www.slembassyusa.org/statements/2003/armitage_csis_14feb03.html

It has become clear that the US was determined to protect the unitary state not just in words but in deeds. The US took another less than literal decision: to hold a preparatory meeting for the next peace process donors' conference in Washington, thus excluding the LTTE, banned as a terrorist organisation. The last and most decisive, deliberate and destructive US blow to the peace process was the EU's banning of the LTTE in 2006. In fact, the EU had to be subjugated by the US to to destroy the LTTE in achieving the US strategic military ambitions in the Indian Ocean region. From then on the "gates of hell" were opened. The obstacle (EU support for the peace process) to the "final solution" that marked the climax of the genocide was removed. It was a shift from peace to war gradually orchestrated by the US in a sustained and coordinated manner, with the aim of derailing the peace process. What the EU ban did was to give the definitive international signal to that effect.

Since then, the international community has called on the LTTE to lay down its arms, a complete reversal of the position adopted in the 2002 Peace Process, which maintained the Line of Control between the GoSL and the LTTE-administered regions of the island. On 2 February 2009, the co-chairs of the peace process (EU, Japan, Norway and USA) issued a statement calling on the LTTE to "discuss with the Government of Sri Lanka the modalities for ending hostilities, including the laying down of arms".¹²⁸ On 13 May 2009, US President Barack Obama and the UN Security Council demanded that the LTTE lay down its arms. Obama stated: "So I urge the Tamil Tigers to lay down their arms and let civilians go. Their forced recruitment of civilians and their use of civilians as human shields is deplorable".¹²⁹ The evidence gathered in the Tribunal's three sessions on the last phase of the war reveals just the opposite. The more the SL military attacks intensified, the more the population moved into the LTTE-administered region. They did not voluntarily move to the areas controlled by the SL military. Due to the unbearable firepower of the military, they were forced to flee their homeland. The LTTE was the "human shield" that put up stiff resistance to defend the civilians under the historical mandate given to them by the people. The place where the final massacre took place on 18 May is called Mullivaikkal. This name has become not only the name of a crime but also a place of relentless resistance by the Tamil people led by the LTTE. The Bremen Tribunal recommended that Mullivaikkal Remembrance Day be commemorated all over the world in search of justice for the Tamil people of Eelam.

Genocide as a Social Process of Extermination of the Eelam Tamil nation

In order to arrive at the qualification of Genocide as a crime, the Bremen Tribunal examined the *dolus specialis* or specific intent to destroy in whole or in part a protected group, such as the Eelam Tamils. In doing so, it analysed the circumstantial characteristics of the various practices that have led to the elimination of this group of human beings. The ICTY recommends in its judgments that the specific intent of the crimes should be deduced from serial or systematic facts and circumstances, which demonstrate the nature of the atrocities against a specific group: the scale or volume of the acts, their discriminatory character, the doctrinal elements motivating the acts, the methodical characteristics of the killings and the manner of disposal of the corpses. Whereas the 1948 International Convention against Genocide restricted the passive application of the term genocide to national, ethnic, racial and religious groups, the Eelam Tamils fall into both the national and ethnic group categories. The UN Rapporteur for the draft Code of Crimes against the Peace and Security of Mankind defined a national group as one that has "a common will to live together, a common ideal, a common purpose and common inspirations", and an ethnic group as one that "is founded on the values of civilisation

128 <https://tamilnation.org/conflictresolution/tamileelam/090203cochairs.htm>

129 <https://www.oneindia.com/2009/05/14/obama-urges-lanka-to-stop-shelling-tamil-civilians.html>

and is characterised by a common way of life, a common way of thinking, a common conception of life and of things". However, in both senses, the main defining principle of Eelam's Tamil identity is its intrinsic relationship with its territory, with the north and east of the island, which they consider their homeland. The structure of the SL (unitary) State has been forged and protected to deny the Tamils this connection to the land, as such a link threatens the geostrategic utility of the island to the powers that be. For this reason, a genocidal process was unleashed and the de facto state of Tamil Eelam - which protected the Tamil people from this genocide - was destroyed, marking the climax of this genocide.

If both the Tamils and the Sinhalese were to be considered as members of the same national group by virtue of being formally integrated into the unitary state of SL, it is clear that their common life projects, ideals and inspirations are divergent. Moreover, the Permanent Peoples' Tribunal, at its 48th session on Genocide in Colombia (2021), made it clear that genocide may well be perpetrated against one part of a national group by another part of the same national group, without the notion of genocide requiring that the perpetrator and the victim have to belong to different national groups. In fact, the national consciousness of Eelam Tamils emerged as resistance to the Sinhala supremacist unitary state structure of colonial origin. Genocide, according to the conception of the author of the term, Polish jurist Raphael Lemkin, is the destruction of the identity of an oppressed group and the imposition of the oppressor group's identity on the oppressed. Genocide is often in the interest of reorganising the social relations of the national whole by alienating the oppressed group from its experience and history and taking away its control over its own past, present and future. It is clear that the ethnic identity of the Eelam Tamils is different from the ethnic identity of the Sinhala people, given their ancestral languages, cultures, territories, history and traditions. The SL State was built and war was waged against the resistance to deny this distinct identity and re-impose the oppressive identity on the oppressed. The Bremen Tribunal was also presented with texts from political and military leaders of the SL State, which on numerous occasions, from the formal independence of SL to the present day, are full of expressions of hatred and intentions to subjugate, humiliate, despise and wish to exterminate the ethnic-national Tamil group. Some of these expressions were recorded in the Bremen judgment, no. 5.1.4.2, illustrating in a very concrete way the specific intent or *dolus specialis* of genocide.

The Bremen Tribunal judgement did not reduce the crime of genocide to the atrocious events in Mullivaikkal (May 2009), but examined compelling documents of the historical processes of denial and extermination of the collective rights of ethnic Tamils. The foundations of Sinhala racism against the Tamils were laid by the British colonial rulers on which the SL State was built. After formal independence, the genocidal practices of destroying the essential foundations of the Tamil nation continued unabated. The creation of the de facto state of Tamil Eelam under the leadership of the LTTE halted this genocidal process and thus weakened the strategic utility of the island as a unitary state. Moreover, in the 2002 Peace Process between the two sides, the usefulness of the Trincomalee port for US military purposes would have been considerably reduced. Such a peace would be detrimental to the US's intended encirclement of China. The reasons behind the US's destructive moves against the peace process can only be understood in such a geopolitical scenario. It is here that the intention to destroy peace must be investigated. Had the US not destroyed the peace process, which initially had the support of the majority Sinhalese in 2002, the Sinhalese racist forces, which were marginal at the time, would not have been able to turn support for peace into a war campaign that destroyed the LTTE in 2009. In effect, the Tamil Eelam state was a practical programme and structure that stopped the historical process of genocide. The destruction of the LTTE is the condition for a genocidal massacre of the Eelam Tamils. Although the racial intent of the Sinhala supremacist political leaders, who are the

direct perpetrators of the genocide, has been established beyond doubt at the Bremen Tribunal, the geopolitical conditions for such a crime were created by the intention of the USA and UK to destroy the peace process and thus the LTTE, the subject of the Berlin Tribunal.

International Complicity

The argument put forward by some Western countries and NGOs that “...the government has won the war. Now it must win the peace” is totally misleading. The war was fought by deliberately dismantling the 2002 Peace Process. The war was never intended to build peace. Moreover, in the absence of any international moral, legal, economic and political pressure on the government, why should it consider redressing injustices?

Let us examine the external dynamics of the ongoing genocidal process. While the local processes of consolidating the unitary state structure are unfolding, another programme of actions has been set in motion at the international level to control the narrative on SL. This is done through the US-sponsored UNHRC Resolutions on “Promoting Reconciliation and Accountability in Sri Lanka” since 2012. This upholds SL as a sovereign state, which is at the core of the decades-long conflict, and reaffirms the demand to abide by international law in the fight against terrorism, implying that the LTTE is a terrorist organisation. By extension, the Tamil right to self-determination is denied. Instead, human rights violations are reduced to violations of individual rights rather than collective violations. The perpetrator is not the state, but individuals or perhaps regimes. In protecting SL’s sovereignty and justifying the destruction of the LTTE, former US Secretary of State John Kerry, on his visit to the island in May 2015, stated the following:

Let me be very clear about this: it is sometimes necessary to go to war, despite the pain it brings. For all my country’s disagreements with the previous Sri Lankan government over how it fought the LTTE, we clearly understood the necessity of ridding this country of a murderous terrorist group and the fear it sowed.... And Sri Lanka’s military has much more to contribute in defending this country, protecting vital sea lanes, and taking part in UN peacekeeping missions all over the world. And as your armed forces make that transition, we’re going to be very eager to work with you and to work with them and to help.... Sri Lankans should take enormous pride – I’m sure you do – in what has been happening within your borders. But every nation also has to look beyond its borders as well... For Sri Lankans, that’s nothing new. Your country sits at the crossroads of Africa, South Asia, and East Asia. And for centuries, it’s served as a gateway for merchant ships. The Indian Ocean is the world’s most important commercial highway. Today, 40 percent of all seaborne oil passes through the Strait of Hormuz and half of the world’s merchant fleet capacity sails through the Straits of Malacca. And with its strategic location near deep-water ports in India and Myanmar, Sri Lanka could serve as the fulcrum of a modern and dynamic Indo-Pacific region.¹³⁰

During this visit, he reiterated the need to implement the UNHRC Resolution, while safeguarding “the heroism and professionalism” of Sri Lanka’s security forces.

From a geopolitical perspective, as China moved closer to the SL regime, US sponsorship of the UN Resolution on SL, by extension, points to China as the protector of a regime that has violated human rights and, therefore, to China as primarily responsible. China sides with the SL regime against the UN Resolution by asserting the principle of non-interference and sovereignty. The Tamils, both locally and

130 <http://lki.lk/wp-content/uploads/2016/08/Kerry-Speech.pdf>

in the diaspora, are promised justice by the US and the Sinhalese believe that the Western powers are interfering in SL's sovereignty through the UN Resolutions. A deep and false polarisation is taking place. In fact, yes, the UN Resolutions are an intervention, but not against the Sinhala state, but to protect it and to deprive the Tamils of their right to self-determination and bring them under the unitary state structure. In the same vein, it aims to threaten the regime into distancing itself from China and favouring US geopolitical interests in the Indian Ocean region. Some Latin American countries that follow China have opposed the Resolution and have contributed to this false polarisation that ultimately obscures the deep structural relationship between the US and the SL State. An alternative resolution based on the historical struggle of the Tamil people is needed to contain the imperialist momentum in the Indian Ocean led by the US, now with the support of India.

Countries such as Germany, which support the UNHRC Resolutions on SL, has criminalised Eelam Tamil activists for raising funds for the LTTE during the last phase of the war. Germany has thus abandoned its previous stance of support for the Peace Process. Nathan Thambi (who testified before the Berlin Tribunal) and Anandarajah have pleaded not guilty and argued that it was their legitimate right to resist a genocidal process by raising funds for the LTTE and that it was the EU ban that paved the way for the genocidal war. The law in the EU has been manipulated for political reasons which advances US geo-strategic interests in the Indian Ocean region.

At the time of the Berlin Tribunal hearing, SL was in political crisis due to severe economic difficulties caused by massive debt. For months there were large protests, mainly by Sinhalese, against the Rajapaksa regime. One of the main protesters testified in the Tribunal. The lion flag, a symbol of Sinhala supremacy, was visible at many protest sites. The security forces did not react in the same way as they did against the Tamils. The agitation was not against atrocities committed against Tamils and Tamil-speaking Muslims, but against corruption and economic hardship. The Western media covered the events extensively. The US embassy in Colombo constantly defended the right to peaceful protests. The CIA chief laid the blame for SL's economic crisis squarely on China and warned countries dependent on China. In fact, SL is only 10% in debt to China. About 47% are international sovereign bonds. Soon Ranil Wickremesinghe was elected president by the parliament, who ordered the security forces to evacuate the protesters and ordered the police to arrest more than 3000 protesters while the IMF bailout was being negotiated. Neither the US embassy nor other Western countries maintained their opposition to these arrests in the same way as they did against the previous regime. It can be argued that in the absence of this regime change, the protest could have escalated to the point of destabilising the entire state and creating a space for Sinhala-Tamil unity. This could have been the fourth historical moment when a common struggle could have been formed to campaign for debt cancellation while recognising the Tamil right to self-determination and resisting foreign intervention in the island. It was necessary to avoid such a situation in order to protect the structure of the state and maintain the military victory over the Tamils. That moment was again stolen from SL by powers bent on maintaining the island as a strategic military location in the Indian Ocean.

It is at this crucial moment in the island's history that the Berlin Tribunal is of paramount importance to reclaim the truth about the historic achievements of the 2002 Peace Process and to identify those most responsible for its destruction. In fact, the truth is that it was the Tamil Eelam's liberation struggle for self-determination that implicitly protected the sovereignty of the entire island. Berlin Tribunal is necessary to overcome the control of narratives by the US-led bloc through the UNHRC Resolutions and to expose the false polarisation between the Sinhalese and the Tamils concerning sovereignty of the island. Indeed, had the 2002 Peace Process been successful, the economic crisis would not have

surfaced. The island's geo-strategic military usability – which severely affects the sovereignty of the island – could have been contained. Peace in the Indian Ocean region could have been pursued. Many other regional progressive social and political movements could have been strengthened. The subjugation and dehumanisation of women could have been formidably resisted within the island and in South Asia. It is necessary to reveal the truth to the oppressed peoples of the world about the Eelam Tamil liberation struggle, as well as to appeal to the conscience of those in Europe who supported the 2002 Peace Process. The Tribunal is an appeal to all the progressive forces in the world to stand with the real victims/survivors of the genocide and bring to light the truth behind this crime so that they can continue their struggle for justice and freedom.

Annex 2: ANALYSIS OF THE CATEGORY OF TERRORISM AS AN INSTRUMENT OF INTERVENTION AND WARFARE

CONFRONTATION OF RIGHTS

When the British Empire, acting as a colonial power, began to take steps to declare the colony of Ceylon an “independent state”, it kept intact the unitary political character it had forged in 1833 under the central rule of the ethnic Sinhalese. The Tamils soon realised the hostile bias of the nominally independent state that was taking shape, and soon formed the Federal Party, which demanded a Federal Constitution. This fostered progressive hostility between Sinhalese and Tamils, as state sovereignty meant rule by the Sinhalese (the numerical majority) over and against the Tamils (the numerical minority). As oppression and repression of resistance increased, the Tamils moved from demanding equal rights to self-determination; from non-violent to armed struggle and built the state of Tamil Eelam with a view to overcoming their national oppression.

The San Francisco Charter, the roadmap of the United Nations (1945), was proclaimed in the name of the peoples: “We, the peoples of the United Nations” is its identifying icon in the first paragraph and sentence and in proclaiming its purposes and principles, it states in paragraph 2: “To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace”.¹³¹

The subjects of rights in the UN take on various characteristics and, while states are conceived of as legal structures and nations through a more inclusive concept encompassing diverse human collectives, peoples are the more primary subject, as they include human collectives evidencing a relationship with a territory and with common and specific ethnic, historical, linguistic, cultural and religious features. Undoubtedly, Eelam Tamil constitutes a people in the UN sense, and is therefore an addressee of the primary right proclaimed in Article 1 of Part I of the International Covenant on Civil and Political Rights (1966):

All peoples have the right of self-determination. By virtue of this right they freely determine their political status and freely pursue their economic, social and cultural development (...) in no case may a people be deprived of its own means of subsistence.¹³²

In the historical development of the UN, priority was given to states, with little attention paid to peoples who fell by the wayside or were denied statehood due to colonial architecture. However, in 1960, General Assembly Resolution 1514 granted independence to colonial countries and peoples. That document emphatically reiterated the right of peoples to self-determination, stating in Article 2:

“All peoples have the right of self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development”.

131 UN General Assembly Resolution 1514/61 Declaration on the Granting of Independence to Colonial Countries and Peoples <https://digitallibrary.un.org/record/206145> <https://www.un.org/en/about-us/un-charter/full-text>

132 https://treaties.un.org/doc/treaties/1976/03/19760323%2006-17%20am/ch_iv_04.pdf

The previous article had established the thesis that:

The subjection of peoples to alien subjugation, domination and exploitation constitutes a denial of fundamental human rights, is contrary to the UN Charter and is an impediment to the promotion of world peace and cooperation.¹³³

But from its first decades, the states involved in the UN wanted to prevent the autonomy claims of many peoples, embedded in oppressive states, from being used to legitimise secessionist movements that sought to break the unity of already recognised unitary states. Thus, Article 6 of Resolution 1514/60 states that

“any attempt aimed at the partial or total disruption of the national unity and territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations”.

This led 10 years later, in another General Assembly Resolution 2625 of 1970, to address the problem of friendly relations and cooperation between states, which were set out in an extensive annex, specifying the purposes and principles of the UN. In relation to the danger of secessionism, this Resolution stated the following:

Nothing in the preceding paragraphs shall be construed as authorising or encouraging any action which would dismember or impair, totally or in part, the territorial integrity of sovereign and independent States conducting themselves in compliance with the principle of equal rights and self-determination of peoples, as set forth above, and thus possessed of a government representative of the whole people belonging to the territory without distinction as to race, creed or colour.¹³⁴

Another purpose and principle relevant to this case, found in the same Resolution, states that

“The use of force to deprive peoples of their national identity constitutes a violation of their inalienable rights and of the principle of non-intervention”.

It is in the light of these principles and purposes that the conflictual and violent relationship between the Sinhala and Tamil peoples in Ceylon/SL must be examined, not least the role played by the colonial powers (UK) and that of world powers such as the US, EU, India, Israel and Pakistan, among others.

The account, supported by numerous testimonies of victims recorded in previous Tribunals and by Tamil historians, characterises the relationship between Sinhalese and Tamils, even before the establishment of the formally independent state from British colonial rule, but especially afterwards,

133 UN General Assembly Resolution 1514/61 Declaration on the Granting of Independence to Colonial Countries and Peoples <https://digitallibrary.un.org/record/206145>

134 UN General Assembly Resolution 2625/70 Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations. <https://digitallibrary.un.org/record/202170>

as one of domination and oppression, affected by progressive practices of genocide and crimes against humanity. The curtailment of ethnic rights, such as the disenfranchisement of huge swathes of ethnic Tamils; the non-recognition of their language as belonging to the national culture; laws providing for university discrimination; the adoption of a state religion historically identified with the dominant ethnic group; the destruction of the Jaffna Library as the age-old shrine of Tamil culture, cannot be described in any other way. The adoption of an instrument of repression repudiated as illegitimate by numerous UN institutions and international humanitarian organisations, such as the “Prevention of Terrorism Act”, but above all the series of pogroms or mass killings of Tamils, endorsed by the Sinhala-dominated state government and which horrified the world by the number of victims and the cruelty of the executions, not to mention land disposessions, rape and sexual abuse aimed at modifying racial genetic patterns, torture practices, the judicial set-ups, forced disappearances and forced displacements, the dismantling of ceasefire agreements and peace negotiations, and the barbarity of the final offensive of 2008/2009, presented to the international community as a legal triumph against a terrorist gang and a “humanitarian operation” to “liberate” the people taken hostage by that gang, are genocidal acts of maximum repression and cruelty against a people who fought against their subjugation and annihilation as a distinct nation in their homeland.

A careful analysis of these facts leads to condemnation of the most important organs of the UN for not having been competent to enforce its principles and purposes; for not having defended the most essential rights of peoples: the right to political, social and cultural self-determination and the right to equality. If one looks at the text of General Assembly Resolution 2625/70 itself, the essential requirements for opposing a secessionist movement, let alone the establishment of a federal state that respects the basic self-determination of an ancestral people, subjected to the horrors of violent domination and genocide, were not met in this case. Indeed, Resolution 2625/70 requires that a state seeking to oppose illegal secession must be a state that “conducts itself in accordance with the principle of equal rights and self-determination of peoples described above, and is thus endowed with a government representative of the whole people belonging to the territory, without distinction as to race, creed or colour”. The formally independent state of Ceylon/SL did not respect the rights of the Tamil people at all, let alone their right to self-determination and equality, and did not represent and does not represent the entirety of the people who have ancestrally inhabited that territory. Therefore, it has no legitimacy whatsoever to oppose a movement that claims the right to self-determination through formulas of federalism or independence.

DISCERNMENT OF THE MEANS OF STRUGGLE

In general, it is observed that the UN organs concentrate on the problems of states and their legal problems and pay little or no attention to the problems of peoples, unprotected by the power structures and often victimised by them, especially when the assertion of their rights involves some kind of violation of state interests. This explains why the crimes perpetrated by the SL State against Tamil Eelam over so many decades have been treated by the UNHRC with obvious complicity with the Sinhala state, silencing its genocidal practices in its Resolutions, avoiding any reference to the obvious genocide and even the legal qualification of the crime, avoiding any analysis of the Tamil people’s right to rebellion and refraining from pointing out and supporting effective means that could serve as a defence for the Tamil people in the face of such monstrous aggressions, which led to the elimination of thousands of human lives, the disregard of vital collective rights on a massive scale and such enormous suffering that affected and continues to affect, thanks to systemic impunity, all of humanity.

The historical account and the numerous testimonies received have shown us that the first reaction of the Tamil people to the disregard of their rights was a nonviolent struggle inspired by Mahatma Gandhi's "satyagraha" method, as mentioned above. This struggle was met by the SL state with unbridled violence, and its most systematic practice was the widespread and territorially extended pogrom or massacre, sometimes claiming several thousand Tamil lives in a single night. The acknowledged scholars of the "just war", both theologians and classical philosophers and jurists, endorsed the legitimacy of armed struggle by peoples under certain conditions, the most widely shared being that of "last resort", i.e., the requirement to try all possible nonviolent means of conflict resolution before resorting to arms. History tells us that after a long period of nonviolent resistance, in the late 1970s and more clearly in the early 1980s, Tamil youth movements decided to form an armed insurgency in which the LTTE became predominant and waged a formidable resistance to the point of forming the de facto state of Tamil Eelam in the north an east of the island which is considered to be the traditional homeland of the Eelam Tamils.

A series of historical references of universal projection helped to shape the collective Right of Rebellion, which came to be recognised as an integral part of international law. The Act of Independence of the United States of America, in 1776, formulated it as follows:

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed. That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness.¹³⁵

The Declaration of the Rights of Man and of the Citizen, the central text of the French Revolution in 1789, validated this right, but its formulation is further developed in the last articles of the version redrafted on 24 June 1793:

Article 33. Resistance to oppression is a consequence of the other rights of man. There is oppression against the social body when any one of its members is oppressed. There is oppression against each member when the social body is oppressed. When the government violates the rights of the people, insurrection is, for the people and for every part of the people, the most sacred of rights and the most indispensable of duties.¹³⁶

On the other hand, in the 1948 Universal Declaration of Human Rights, the roadmap of the United Nations, this right is implicit in the Preamble, as follows:

135 <https://www.archives.gov/founding-docs/declaration-transcript>

136 <http://www.columbia.edu/~iw6/docs/dec1793.html>

“it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law.”¹³⁷

THE RIGHT OF REBELLION AS A REMEDY TO OPPRESSION

This same conception is embodied in the profound exposition of the English jurist Anthony Maurice Honoré, Professor of Law at Oxford University, England, when he states that the right of rebellion has the character of a “restorative right”, i.e. it is not a primary but a secondary right, because “it exists only when a wrong has been committed. Its purpose is to provide a remedy when primary rights have eventually been violated on a large scale”. But the qualification of secondary does not mean attributing to it a less important status; on the contrary, Honoré goes so far as to assert that if there is no right of rebellion, there is no human right at all:

If on the other hand citizens do not in any circumstances have the right to rebel there is ultimately no way in which they can vindicate for themselves and others those items which are listed as human rights in documents such as UDHR [Universal Declaration of Human Rights]. In that case, would it not be better frankly to concede that there are no human rights? Or at any rate no rights of this sort, viz rights against states as opposed to rights against the world-wide human community, supposing that there is one, and against human beings as members of that community?¹³⁸

Honoré understands by the right to revolt: “the right of an individual or a group to resort to violence, if necessary, on a large scale, in order to...”. Here he identifies three objectives: to secure a change of government or political structures in a society; to resist a change of government or political structures; and the third, more applicable to the case of Tamil Eelam: “to achieve, on behalf of a group considered distinct, the right to independence from the society to which it currently belongs (rebellion with a view to self-determination)”.¹³⁹

PREVENTION OF TERRORISM AS AN EXCUSE FOR GENOCIDAL AND REPRESSIVE PRACTICES

One of the mechanisms that states affected by rebel movements have adopted to deal with them has been the qualification of rebellion as a form of terrorism. Since 1978, the SL State has adopted a legal instrument called the “Prevention of Terrorism Act”, which has become the centrepiece of its repressive policies, not only against members of the Tiger guerrillas and civil movements reclaiming Tamil Eelam, but also against those Sinhalese who exercise their right to resistance (not necessarily to the oppressive structure of the unitary state, but to other forms of injustice by different governments), as this instrument guarantees huge spaces for arbitrariness. Several UN bodies and numerous international humanitarian organisations have condemned this instrument as illegal and illegitimate, as it does not meet the minimum requirements of an instrument to investigate and sanction illegal

137 <https://www.un.org/en/about-us/universal-declaration-of-human-rights>

138 Tony Honore, “The Right to Rebel”, Oxford Journal of Legal Studies 8, no. 1 (1988): 34-54; pp39-40.

139 Ibid, p. 36.

or criminal actions. SL governments have repeatedly promised to reform it and bring it into line with international law, but the reforms have failed to address its underlying problems and, on the contrary, have reinforced its dangerousness.

All the genocidal and repressive practices carried out by the SL State against Tamil Eelam have been justified as action against terrorism. Even the horrendous massacre of tens of thousands of Tamils between 2008 and 2009 was presented to the world as the ultimate triumph against a terrorist force - presenting the war as “a rescue operation” of Tamil civilians held “hostage” by the LTTE - and, with the same argument, the GoSL has justified impunity for this barbarity before the UNHRC.

As early as 1996, the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities was confronted with numerous contradictions between terrorism and human rights and decided to commission an in-depth study of these relations. In 1997, the expert Kalliopi K. Koufa submitted a working paper on the subject and was appointed Special Rapporteur. Between 1999 and 2004, she submitted a preliminary report (1999), three progress reports (2001, 2002 and 2003) and a final report (2004).¹⁴⁰ In this set of studies, she analysed in detail the terrorism-related aspects of international, regional and many states’ conventions and treaties, as well as expert opinions at many levels. In examining 24 conventional counter-terrorism instruments, she found that 21 of them criminalised certain activities as terrorist, but none contained any definition of terrorism.

In this first assessment, the Rapporteur agreed with the authors of the well-publicised study on terrorism in France, Jean-François Gayraud, former Chief Commissioner of the French Police, and David Sénat, former magistrate, both graduates in Criminology and Criminal Law, who considered:

...whether legal or academic, definitions of terrorism are often puzzling. They insist on the end pursued (violence for political ends), or on the means used (attacks, kidnappings, etc.), or on the expected consequences (creation of terror). These definitions thus fall into two obvious traps. The first is that of tautology. Claiming that terrorism is fear or political violence is circular reasoning. The second is enumeration. A simple list of crimes has no explanatory power. French law has not escaped these two uncertainties.¹⁴¹

Rapporteur Kalliopi Koufa addresses the profound obstacles that have long prevented the United Nations from arriving at a definition of terrorism. Examining the different types of terrorism mentioned in legal and political literature - state terrorism and terrorism by non-state groups - the search for a definition is confronted by different blocs of states and experts, some of whom argue that human rights violations only concern states and others who argue that any private group or individual can violate human rights and be subject to UN sanctions. Above all, the confusion that has become widespread between terrorism and the right to rebellion means that many actions, processes and movements related to the self-determination of peoples are stigmatised as “terrorist”. This is the view of the Rapporteur:

140 <https://www.ohchr.org/en/special-procedures/sr-terrorism/special-rapporteur-human-rights-and-terrorism-sub-com-mission-promotion-and-protection-human-rights>

141 Jean-François Gayraud and David Sénat, *Le Terrorisme*, Presses Universitaires de France, 2002, p. 33.

... admittedly, one of the major difficulties standing in the way of consensus has been the continuing controversy about wars of national liberation and the motives advanced to justify violence. It is thus that the difficulty of drawing the boundaries between what is legitimate and what is illegitimate, between the right way to fight and the wrong way to fight, has brought high political stakes to the task of definition.¹⁴²

The impossibility of a definition that would protect any definition of terrorism from ambiguity and bias was affirmed in the Rapporteur's reports. In the 2001 Progress Report, she already stated:

Indeed, it may be that the definitional problem is the major factor in the controversy regarding terrorism. This is all the more true when considering the high political stakes attendant upon the task of definition. For the term terrorism is emotive and highly loaded politically. It is habitually accompanied by an implicit negative judgement and is used selectively. In this connection, some writers have aptly underlined a tendency amongst commentators in the field to mix definitions with value judgements and either qualify as terrorism violent activity or behaviour which they are opposed to or, conversely, reject the use of the term when it relates to activities and situations which they approve of.¹⁴³

It is not, therefore, a term that can be handled neutrally or objectively, subject to discernment of the essential factors of identity, which arise from surrounding contexts, circumstances, choices and emotions. Given its intertwining with circumstances, the "terrorist" for some is a "hero" for others. The Rapporteur further notes that:

State terrorism in the form of "regime" or "government terror" is characterized by such actions as the kidnapping and assassination of political opponents of the government by the police or the secret service or security forces or the army; systems of imprisonment without trial; persecution and torture; massacres of racial or religious minorities or of certain social classes; incarceration of citizens in concentration camps; and, generally speaking, government by fear.¹⁴⁴

This description compiles most of the genocidal practices of the SL governments in its periods of confrontation with Tamil Eelam. The pseudo-legal instrument that has endorsed all this barbarism has been the Prevention of Terrorism Act, which has been in force for over 40 years.

However, Kalliopi Koufa, in her later Progress Report, discusses in general a number of international law instruments that include alleged anti-terrorism mechanisms, with no legal definition of what is alleged to be an international crime or offence:

142 Kalliopi Koufa, Working Paper 1997, E/CN.4/Sub.2/1997/28, p. 6.

143 Kalliopi Koufa, Progress Report 2001, E/CN.4/Sub.2/2001/31, p. 8.

144 Kalliopi Koufa, Progress Report 2001, E/CN.4/Sub.2/2001/31, p12.

Any legal definition of a crime, not only at the national (or domestic) but also at the international level, must be in conformity with established principles of criminal law and of international human rights law. With regard to criminal law, there are two basic principles that should always be kept in mind: the principle of legality of the offence - *nullum crimen sine lege* - and the principle of subjective responsibility. As regards international human rights law, it is necessary to reinforce that the qualification of a behavior as an offence should not criminalize any legitimate form of exercise of fundamental freedoms.¹⁴⁵

The Rapporteur adds that the Principle of Legality is a fundamental pillar of universal criminal law and cites numerous treaties that recognise and specify it, adding that any act or omission must be defined in the law applicable at the time of the offence and that the definition of the offence must be precise, comprehensible and unambiguous, from which two other conclusions follow: the prohibition of analogies and the prohibition of any retroactive application.

The charge of terrorism, according to the Special Rapporteur, has been further developed in recent years, and in particular after the events of 11 September 2001 in New York with the destruction of the Twin Towers, through a new technique of drawing up and disseminating lists of terrorist groups and criminalising mere membership of or collaboration with such groups. The Rapporteur notes that the list system blatantly violates one of the principles of criminal law: that of individual responsibility. At the same time, the Rapporteur warns about national legislations that qualify as terrorism or terrorist acts, conduct protected by international law such as the exercise of fundamental rights and freedoms, such as the right to participate in public affairs, the right to freedom of expression, association, strike, protest, or forms of political, ideological or social opposition. Related to this is the tendency to link terrorism with political crime and the progressive limitation of political crime. Although there is no international definition of a political offence, some national laws criminalise conduct that in other states amounts to political offences as ordinary crimes. However, international law provides for rules on political offences applicable in cases of extradition, asylum, amnesties or sanctions.¹⁴⁶

All this leads to the conclusion that the word “terrorism” does not really have any legal content, as it does not meet the minimum requirements of criminal law or international law to be qualified as a crime. However, the qualification of terrorism has been used by the GoSL and all governments complicit in the genocide against Tamil Eelam as a “legal” legitimisation of the barbarity perpetrated. The law that has underpinned all this barbarism, the Prevention of Terrorism Act adopted since 1978, has allowed widespread detention without warrant for unspecified “illegal” activities, with detainees held for up to 18 months without being brought before any court and many remanded in custody for years and decades without trial or finally convicted on confessions under torture.

145 Kalliopi Koufa, Additional Progress Report 2003, E/CN.4/Sub.2/2003/WP.1, p. 20.

146 Kalliopi Koufa, Additional Progress Report 2003, nos. 72-82, E/CN.4/Sub.2/2003/WP.1, pp. 23-26.

SL'S "FIGHT AGAINST TERRORISM" IS STATE TERROR

On 9 December 2021, seven UN human rights procedures, including special rapporteurs and working groups, addressed a petition to the GoSL setting out five benchmarks for reforming the law to bring it in line with the minimum requirements of international law: using consistent definitions of terrorism, ensuring legal certainty when human rights and fundamental freedoms are affected, abolishing arbitrary deprivation of liberty, torture and enforced disappearance, and guaranteeing due process, regretting that these repeated demands have not been met. For its part, the European Parliament issued a lengthy Resolution on 10 June 2021 condemning the degrading human rights situation in SL and explicitly referring to the Prevention of Terrorism Act in these terms:

C. whereas the controversial Prevention of Terrorism Act (PTA) has been in place in Sri Lanka since 1979 and grants the police broad powers to search, arrest and detain civilian suspects; whereas the wide-ranging powers provided for in the PTA have led to consistent and well-founded allegations of torture and sexual abuse, forced confessions and systematic denials of due process;

... 2. Reiterates its strong opposition to the continued application of the current PTA; calls on the Sri Lankan authorities to fulfil their pledge to review and repeal the act and replace it with anti-terrorism legislation which adheres to international best practices; further calls for the immediate suspension of the deradicalisation regulations;

... 9. Calls on the Commission to urgently evaluate its funding for the UN Office on Drugs and Crime and INTERPOL project 'Support to Sri Lanka on Counter-Terrorism' while counterterrorism in Sri Lanka is in certain cases being used as a pretext on which to persecute members of ethnic and religious groups and civil society, including human rights defenders; calls on the EU Delegation to Sri Lanka and the Member States' representations to increase their support to civil society, especially human rights defenders, environmental defenders and journalists;

... 14. Underlines that the GSP+ scheme offered to Sri Lanka has made a significant contribution to the country's economy, from which exports to the EU have increased to EUR 2.3 billion, making the EU Sri Lanka's second-largest export market; highlights the ongoing monitoring of Sri Lanka's eligibility for GSP+ status and stresses that the continuance of GSP+ trade preferences is not automatic; calls on the Commission and the European External Action Service (EEAS) to take into due account current events when assessing Sri Lanka's eligibility for GSP+ status; further calls on the Commission and the EEAS to use the GSP+ as a leverage to push for advancement on Sri Lanka's human rights obligations and demand the repeal or replacement of the PTA, to carefully assess whether there is sufficient reason, as a last resort, to initiate a procedure for the temporary withdrawal of Sri Lanka's GSP+ status and the benefits that come with it, and to report to Parliament on this matter as soon as possible;¹⁴⁷

147 European Parliament The situation in Sri Lanka, in particular the arrests under the Prevention of Terrorism Act https://www.europarl.europa.eu/doceo/document/TA-9-2021-0290_EN.html

For her part, the UN High Commissioner for Human Rights, in a powerful report submitted to the UNHRC in February 2021, states:

36. The High Commissioner is concerned that the [SL] Government has continued to use the Prevention of Terrorism Act despite repeated calls over many years by United Nations human rights mechanisms to repeal it [...]

48. During the forty-third session of the Human Rights Council, the Government renewed its pledge to undertake a review of the Prevention of Terrorism Act. 61 The counter-terrorism bill that had been drafted by the previous Government and that would have replaced the Prevention of Terrorism Act had been withdrawn. 62 The Government has confirmed to OHCHR its intention of reviewing certain provisions of the Prevention of Terrorism Act and of establishing a court dedicated to the expeditious disposal of cases concerning the remaining ex-LTTE cadres in detention. [...]

52. Nearly 12 years since the end of the war, domestic initiatives for accountability and reconciliation have repeatedly failed to produce results, more deeply entrenching impunity and exacerbating victims' distrust of the system. Sri Lanka remains in a state of denial about the past, with truth-seeking efforts aborted and State officials at the highest levels refusing to acknowledge past crimes. This has a direct impact on the present and the future. Failure to implement any vetting or comprehensive reforms in the security sector means that the State apparatus and some of its members credibly implicated in alleged grave crimes and human rights violations remain in place. The 2015 reforms that offered more checks and balances on executive power have been rolled back, further eroding the independence of the judiciary and other key institutions. The beginnings of a more inclusive national discourse that promised greater recognition and respect of and reconciliation with minority communities have been reversed. Far from achieving the guarantees of non-recurrence set out in Human Rights Council Resolution 30/1, the current trajectory of Sri Lanka sets the scene for a return to the policies and practices that gave rise to grave human rights violations.¹⁴⁸ (emphasis in original report)

The long and complex trajectory of how and with what responsibilities the history of Tamil Eelam has been transformed from a collective subject of a liberation and self-determination process into an ongoing genocide has been the subject of attention (narrative and judgement) of the Peoples' Tribunals with the judgements of Dublin (2010) and Bremen (2013). The reports and testimonies presented at this Berlin Tribunal have made it possible to integrate the available evidence, especially with regard to the responsibilities of the different actors in the geopolitical scenarios in the region and globally, both in terms of the acute phases of the genocide and the continuation and expressions of genocidal policies in the territory of SL, and more broadly of the Tamil people in the different contexts of its exiled members.

148 Report of the United Nations High Commissioner for Human Rights A/HRC/46/20 Promoting reconciliation, accountability and human rights in Sri Lanka pp11, 13, 14.
<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G21/028/52/PDF/G2102852.pdf>

THE CULPABILITY OF THE USA

One aspect that has been explored in particular, because of the more direct implications for the recognition of the rights to identity and life of the Eelam Tamil people, concerns the direct culpability of the USA, the role of the international community, the use and justification of the categories of law that have been used to make possible the genocidal, extensive, systematic, unpunished and non-punishable process, beyond all the legal elements that this Tribunal has highlighted in its judgements as legitimately defining the crime of genocide.

It is unanimously recognised that the decisive event which has tragically changed the processes which, despite great and long-standing difficulties, had been set in motion specifically in the early years of the new century, must be identified in the official position of the US government not to recognise as a legitimate and indispensable interlocutor the Tamil Eelam people themselves, due to their classification as terrorists. The historical and political details of how the US position has produced the ultimate failure of the 2002 Peace Process, enabling and promoting the evolution towards the genocidal massacres of 2008-2009, have been documented in the two preceding reports of the Tribunal, and confirmed in the reports and documents presented in Berlin.

The point to underline refers to the legal-political arbitrariness of classifying as “terrorism” a long, documented and recognised process of liberation and self-determination of a people, with the consequence of excluding its representatives from the universe of subjects of legitimate and inviolable rights recognised by international law.

The reports produced over several years by the UN rapporteur on the subject, and confirmed in her subsequent conclusions and comments as noted above, make it abundantly clear that the adoption of the terrorism qualification has no binding legal value either doctrinally or, even more so, in its application to specific cases. In the specific case of Eelam Tamil, the available evidence on the situation of fundamental rights in the period of self-rule of the Eelam Tamil people documents not only the intention but, more importantly, the capacity to promote and ensure the concrete application of the same principles, including in relation to women’s rights, health, education, welfare and a policy of peace.

US culpability is even greater for two additional reasons:

1. The totally arbitrary political pressure on European governments to share the label of terrorism against the Eelam Tamil people, applied both to justify the genocidal events of 2008-2009, and the persecution of the Eelam Tamil people in the time thereafter and to this day, with the implications for asylum and migration rights in all countries: which coincides with the continuation of a genocidal intent and practice against the human and self-determination rights of the Eelam Tamils in their traditional homeland .

2. The application of a term such as terrorism, so arbitrarily translated into a policy of exclusion as the annulment of a people’s very right to identity and self-determination, appears all the more as an intolerable, unpunished and unsanctionable violation when it is applied as a pure expression of power by a country, which considers itself immune from its obligations to the international community and therefore claims absolute impunity.

In the critical geopolitical context of this region of the world, we, the Jury, maintain that consideration

of Tamil Eelam's right to existence and self-determination must be a top priority to underpin the international community's commitment to building peaceful relations between the peoples and powers of the region.

Annex 3: NATHAN THAMBI'S STATEMENT TO THE TRIBUNAL

Nathan Thambi, a Tamil activist based in Europe, is fighting the German state's prosecution of him for refusing to accept fundraising for the Tamil Liberation Movement as a crime. Nathan referred in the Berlin Tribunal to his own statement to the German court proceedings against him. It is reproduced here in full:

"Greetings,

Venerating the heroes who sacrificed their lives for the welfare of Tamils, greetings to all present.

My name is [Nathan Thambi] and I am an Eelam Tamil. I currently live in the city of Beelen in Nordrhein-Westfalen where I have lived most of my stay in Germany. I came to Germany as a refugee.

Since 1994 I have worked in a meat factory and several restaurants and at present I am working in a warehouse. My wife and myself have two children one aged 13 and the other aged 18 months.

I am making this statement in response to the accusation against me that I committed a crime by raising funds for the LTTE between 2007 and 2009 and the German state has classified the LTTE as a terrorist organization.

Such trials have been going on for the last 12 years in Germany, since 2010.

Even thirteen years after the Mullivaikkal massacre in which tens of thousands of Eelam Tamils were killed, such trials are still going on against others as well as against me.

Not only did the Tamil diaspora have to watch from afar as tens of thousands of their fellow human beings were slaughtered by the Sri Lankan army, but now they have to stand trial in Germany because they wanted to help stop the massacres.

Like many houses of Eelam Tamils here in Germany, my house was also searched by police officers in 2016 and I was treated like a criminal. 6 years later I am on trial.

Before me, many Eelam Tamils had to stand trial in Germany, many were sentenced, and had to go to prison. Many have admitted they have committed crimes and paid fines for similar charges that I'm facing.

I don't believe any of these people should have been charged with crimes.

I was offered by the German public prosecutor's office to pay a fine to end the proceedings. However, this would have meant that I admit to having committed a crime. It is true that the fine was not so high, and it is true that I could have paid it. I was told that if I didn't pay the fine and faced the court, it would make my life more difficult and I could face much more severe punishment. I knew that if I paid the fine, it would be easier for me, and that I would be out of the public spotlight and would be able to continue with my life.

But I have refused this because I do not want to minimise this trial as a trivial matter.

It is true that I collected money donations for the self-defence of the Tamil people. I did this to protect my family and my people from the Sinhala-Buddhist supremacist state and to get freedom for the people of Tamil Eelam so that they could live peacefully. All the people who had given me money voluntarily donated funds for the same cause. By collecting donations, I have not acted against Germany or as a threat to the security of any other country.

I was very grateful to Germany, for giving me refuge and keeping me alive until today by guaranteeing me all my rights. I will always love this country as the second mother who adopted me. But it is also this son's duty to help my homeland and my people as they struggle to survive. I have raised money

for this task.

Because of the war and the oppression, there have been many people who have lost their lives, who have been injured, who have starved. There are so many orphans, there is so much destruction, there is no civilian infrastructure. The Eelam Tamils were all on their own because the Sri Lankan government imposed an embargo and expelled all aid organizations from my homeland. I felt it was my duty to help my people because no one else was doing it.

I supported the Liberation Tigers of Tamil Eelam (LTTE) because they were the only group that fought for the liberation of the Tamils and had the mass support of the Eelam Tamils.

I admit that I have collected money, but I cannot accept that this is a crime.

I feel very strongly that I can't just accept that what I did was a crime - it would be repudiating what I have worked for in my life up till now. I believe fighting against this charge is important for the rights and the dignity of Eelam Tamils.

This case and my punishment are deeply connected to the massacre in Mullivaikkal, where hundreds of thousands of Eelam Tamils were instructed to move into 'no fire zones' by the Sri Lankan government, and then they bombarded my people by land, sea and air, killing tens of thousands, while international powers gave their tacit approval.

The demonisation, criminalisation of the LTTE internationally allowed these killings to begin and to continue, it was this demonisation and criminalisation that gave the Sri Lankan government the green light to begin its war against the Eelam Tamils in 2006, destroying the peace.

The demonization and criminalization of the LTTE in 2006 was a massive interference in the peace process, and stole all hope for peace and self-determination. That the LTTE was criminalised and demonized to legitimise the Sri Lankan government's aggressive war, but that the Sri Lankan government was not demonized and criminalised in the same way, is very cynical. Until today this demonisation and criminalisation of the LTTE justifies severe abuses by the government against the Eelam Tamils.

The criminalisation, during the peace process, against only one side of a negotiation, was an interference in the Eelam Tamils fundamental rights, a denial for them to resist oppression, to exist as a group, rights which I hoped the German state would protect.

This question of criminalization is not just important for Eelam Tamils but all oppressed groups around the world who are fighting racist regimes. It is question about whether Germany and the EU has obligations to support a just peace in upholding the rights of the oppressed peoples, or whether these principles should stand above its relations with other foreign powers.

For these reasons and others, I believe this criminalisation is deeply wrong, and I must stand against it. I was born in Jaffna in the Tamil homeland.... my early life as a child in my home village involved visiting relations, going to the temple, and school. The economic situation was ok for me as my father was a builder with a successful business.

When I grew up, many people including my father were discussing and worrying about the genocide committed by the Sinhala state. I have been told about the 1915 Sinhala attacks on the Muslim (Tamil speaking), the 1956 massacre carried out by the Sri Lankan government on Tamils in Inginiyagala, the 1977 attacks and the massacre at the Jaffna Research Conference. These attacks were committed with government support and the perpetrators enjoyed impunity. Many Tamils also saw other policies motivated by Sinhala-Buddhist supremacy, such as university standardisation, were aimed at eliminating the possibilities for Eelam Tamils existence on the island by other means. The Sinhala-Buddhist supremacist government does not consider us as people of Sri Lanka.

When our people and political leaders who had been fighting peacefully against the Sinhala genocidal state were massacred and oppressed by the Sinhala state's terrorist attacks, many young people came to the conclusion that Tamils could only survive if they themselves were also armed.

My first memory of such attacks was when I was 8 years old. Sinhala gangs massacred Tamils in Colombo and other parts of the country. Tamils were burnt to death in the streets. We saw it on the news and in our village, word spread fast about these events.

I also remember when I was 10 years old, my brother-in-law who lived in Sithankerny during the military siege and my cousin who lived in Sanganai were arrested and imprisoned in Boosa concentration camp. I also personally witnessed many attacks, mainly by Indian armed forces and paramilitary groups, and on many occasions my family and I narrowly survived the attacks.

India had initially supported the Eelam Tamils, by intervening against some of the major attacks of the Sri Lankan government against the Eelam Tamils and allowed Eelam Tamil fighters a safe haven in Tamil Nadu. In 1987, I was 12 years old. The Indian army came to our soil under the Sri Lanka-India Accord. Many Eelam Tamils welcomed them and thought there would be peace. However, the Indian Army gave the weapons to their sub-groups (paramilitary groups) EPRLF and ENDLF and turned them against the Eelam Tamils to control them.

Many of my relatives and other innocent people lost their lives and property in the attacks by the Indian army or their paramilitaries. In addition, Tamil land was expropriated, women abducted and raped, children and youth hacked to death and innocent people killed by bombs and artillery attacks. Three of my acquaintances who were injured in an artillery attack by Indian troops were taken to the Jaffna hospital. The car in which they were transported was set on fire in front of the hospital and they were killed.

Every day when we went to school, we saw the bodies of people that had been shot and stabbed in the streets.

During the Indian military occupation, women did not sleep alone at home and no one was allowed to leave the house after 5pm.

The Indian army tortured people in homes, arrested them and took them to camps, many of whom were killed and very many are still missing. Many were wounded and maimed in their attacks.

The paramilitary forces sponsored by the Sri Lankan government and the Indian government arrested and forcibly recruited many children and adults, regardless of age. I very often had a narrow escape.

On one occasion, the Indian paramilitary, the ENDLF, snatched young people as I was walking on the street, on the way to the market. They were forcibly recruited by them.

The uncle of one of my friends was abducted and was murdered. My friend now lives in Germany.

If the paramilitary forces went to the street and they shot the people, no one could be an eye witness as they will shoot the witnesses too. Some of my neighbours who witnessed atrocities by the paramilitary forces were themselves killed.

I knew of many things that happened, which we would hear about later in the community.

Such atrocities against the Tamil people create deep scars in our hearts and minds as school children. Even at that age we felt the only option was to take up arms to fight against these forces. We also had faith in the LTTE as our guardians and this was deeply ingrained in us.

From the late eighties onwards the LTTE stepped in to cater to the needs of the people that the Sri Lankan state had not attended to. This is because the Sri Lankan state systematically disadvantaged the Tamil areas, and the people became poor and had hardly any supplies. They made every effort to provide basic needs to us. They, for example set up tuition for children in villages and a mobile medical services were established in every village. My sister participated in such a medical service. These were very necessary because there were no Sri Lankan government services to help people who were injured by the army or paramilitary attacks. As the courts were not functioning, they formed an arbitration council to solve the problems in the villages.

In 1990, the Indian army had to withdraw from our land and return to India, and the LTTE took control

of a lot of the territory of Tamil Eelam. In response the government imposed a blockade on these areas only letting in certain goods in a limited way. However, apart from their being no electricity, fuel and gas I remember we were able to get basic food by earning a basic income. We were generally happy without threats, rape, murderers that had occurred before.

The LTTE grew with the support of the people and the liberation struggle of Tamil Eelam also grew. For example, in this period they would establish their own court system, and you had the right also to take LTTE members to court if they violated people's rights.

But apart from the blockade the government also started attacking LTTE controlled areas. With the withdrawal of the Indian army, the SL State terrorism began to bombard the Tamils by telling the world that they were attacking the LTTE, but in reality, hundreds of civilians were killed. This situation brought the civilians and the LTTE even closer together.

While most of Jaffna was under control of the LTTE, the SL army had a base in Palaly, and also the Jaffna Fort base, from where they conducted artillery attacks, and our house was in its range. I got displaced many times because of army attacks. This happened more than 4 or 5 times in the year. I couldn't go to the same school for example. My schooling became mobile.

Many who had lost their loved ones in these attacks joined the struggle. Many of my friends joined the struggle. We had to make a choice between fight or flight. It was in this context my parents decided to send me away from my home in Jaffna. I did not want to leave my homeland, but it was their decision. As a result, I had to live separated from my family since 1990 at the age of 15. Eventually I reached Germany when (I was 18) and applied for political asylum at the end of 1994. It was a very difficult transition for me as a child growing up in a world surrounded by my Tamil speaking family, relatives and friends, to being by myself in Germany.

After I came abroad, I was in frequent contact with my family and the situation back home.

My father told me how I could help from Germany. He said instead of sending money to the family I should work to build security for all the Eelam Tamil people. From the beginning my family knew I was collecting the money for the Tigers even at the risk of threats against them. The Tigers were the only organisation that were genuinely fighting for the liberation of the Tamil people.

1995 the war escalated with the support of British and US forces working very closely with the Sri Lankan forces. Around 1995 the US authorities proscribed the Tigers as a terrorist group, and also started training the Sri Lankan forces in the island.

After the LTTE was forced out of Jaffna in 1995/1996 my family was displaced to Thenmaradchi. The Sri Lankan army took over Jaffna and supported gangs and paramilitaries who started ruling the cities, knocking on doors demanding money while introducing drugs and other behaviours which damaged the social fabric.

Despite this renewed assault which President Chandrika Kumaratunga called a 'war for peace', the government wasn't able to defeat the Tigers. However, the government committed many atrocities against the Tamil people in their attempts to defeat the Tigers.

In this context of a military stalemate, in 2000 the EU gave its full support to a peace process between the LTTE and the government of Sri Lanka to reach a negotiated political settlement.

This was very significant to us as the EU had never taken this position before, which was different from what the US and UK were doing. The EU was supporting peace through negotiations countering the US policy of a military solution.

Eelam Tamils were very hopeful that a permanent peace would come about. I completely believed, 100%, there would be permanent peace in my homeland after the beginning of the peace process.

The support of the EU and Germany given to the peace process was a reason behind my belief. The EU Commissioner went to Kilinochchi to meet the LTTE leader Prabhakaran and many LTTE leaders also

came to Europe. These increased my hope in peace. After the Asian Tsunami the EU strongly supported a joint LTTE-Sri Lankan government committee for aid spending (PTOMS) and committed to giving significant amount of money to help reconstruct the country for all the affected communities.

It was clear Germany was a major supporter of peace as German officials and Ministers were meeting with the LTTE, LTTE-affiliated organisations and political parties assuring Germany's support for the LTTE's initiatives for peace. The LTTE came to Germany a number of times, including for a round of negotiations with the Sri Lankan government in Berlin and the German government supported these meetings. We in the Eelam Tamil community in Germany were also able to meet with the LTTE leaders when they came here to community events. These actions by Germany helped normalise the de facto reality on the island, and made us believe that a permanent peace would be soon at hand.

In this period, we also collected a lot of money for the LTTE-controlled areas, and the German government helped to build the infrastructure within these areas.

I was very grateful that Germany, who had given me refuge and kept me alive, and guaranteed me all my rights, was now supporting my family and people's right back in my first home.

The peace process also had concrete positive results for Eelam Tamils in the homeland as the violence against the Eelam Tamils dropped greatly and the economic situation improved significantly with the blockade of LTTE controlled areas lifted by the Sri Lankan government and international aid and support coming in.

What we are most proud of are the changes made to the society within the Vanni during the peace process. With the military hostilities halted our dedicated fighters were able to put their energies into social issues. Tamil women who had been the victims of Sri Lankan army who used rape as a weapon of war, and had risen up to fight the enemy, were rapidly changing women's position in society. The oppression of the caste system was further weakened. The war had produced very many handicapped people. The Vanni society honoured them and many concrete steps were taken to uplift the condition of all handicapped people during the peace.

The peace process also led to positive changes in other areas outside of direct LTTE control areas. When the LTTE political-wing established their political offices in the Jaffna peninsula which was controlled by the Sri Lankan army the LTTE could help people to deal with the social problems caused by gangs and paramilitaries.

The period of the peace process had all the promise of social progress but the criminalisation of the Tigers and the war that followed destroyed all of this.

During the time of the UK Presidency of the EU a travel ban on the LTTE in late 2005 was imposed. I went to a demonstration in Brussels with several thousands of other Tamil refugees, urging the EU not to ban the LTTE. We said that it would give the racist forces within Sri Lanka and the military a reason to start the war again.

But then in May 2006, the EU put the ban on the LTTE. This was a devastating blow for our hopes. Our hope of peace was shattered.

We were shocked by the EU's decision to list the LTTE as terrorist organisation. We learnt that this was because the EU had come under heavy pressure from the US and the UK, and it wasn't a decision in the interest of the EU or peace or justice, but a political decision that the US wanted to advance their interests in this strategically important island.

Soon after this decision the war started as predicted by many of those who were engaged in the peace process.

After this point there were increasing atrocities against the Eelam Tamils, and culminated in the mass killings in the Vanni in 2009.

Day by day we could see these atrocities from videos sent from the Vanni, but no one in the world

seemed to be interested despite having major demonstrations by Tamils around the world. Even when the government of Sri Lanka had started to bomb the 'no fire zone's' it had declared, the US and UK stated the LTTE were terrorists and the government was conducting a legitimate war. Today the LTTE and scores of Tamil civilians have been annihilated. The rest of the Tamils are treated as slaves by the Sinhala genocidal state. The tears of the parents continue to flow for the many Tamil youth who have been forcibly made to disappear by the Sinhala government.

I continue to support the Eelam Tamil people through some projects, however the future existence of the Eelam Tamils as a group on the island will disappear unless countries like Germany change their policies.

Now I find myself in front of this court on the basis of this criminalisation process of the LTTE, knowing what devastating consequences this had.

It is for this reason I cannot accept I committed any crime. It would be to accept that the Tamils have no rights. If I accept what I did as a crime it would legitimate the political intervention of criminalisation to start the war of extermination and continue the same process.

We know the banning of the LTTE by the EU didn't come from the EU. That is why I hope that Germany can find a different position in supporting the fundamental rights of people against racism and against aggressive war and repression.

If the criminalisation had not happened by the EU, the tens of thousands of Eelam Tamils who were massacred in 2009 would still be alive, and there would be peace on the island and freedom not only for Eelam Tamil people but also for all communities would have prevailed on the island. Even the current economic crisis on the island finds its roots in this decision by the EU to abandon the peace.

The court has the opportunity to do the right thing in this case. I hope the evidence about the EU ban and why the Eelam Tamils like me are being prosecuted will not be obstructed from being heard by the court or the German state, like in the first trials of the Eelam Tamils.

I hope my statement here in court will help lay the foundations for bringing justice, a peaceful life, and the possibility for Eelam Tamils to determine their own future and for Europe to be a force for justice and peace rather than war.

I have said everything that I feel is important to me about this case at the moment, and I would not like to answer questions by the court for now.

Annex 4: PEOPLE’S RESOLUTION ON JUSTICE FOR EELAM TAMILS IN AN INDIAN OCEAN OF PEACE

The resistance of the Eelam Tamils is not only for autonomy but also for peace in the Indian Ocean region. The resolution below is proposed in order to promote an alternative approach to the US-led agenda in SL and the Indian Ocean region.

Peoples’ Resolution

Right of resistance of Eelam Tamil people to genocide and right to determine their own future within an Indian Ocean Zone of Peace

Recognition of Eelam Tamils as a people, and their right to resist against genocide

Recalling the rights of oppressed people to resist genocide, to struggle for self-determination and obligations of international community to support such resistance and struggle.

Recalling the 1987 Indo-Lanka Accord signed between Sri Lanka and India, “recognising that the Northern and the Eastern Provinces have been areas of historical habitation of Sri Lankan Tamil speaking peoples, who have at all times hitherto lived together in this territory with other ethnic groups”

Recognition of positive role of the European Union in promoting the peace process so that both parties can arrive at a constitutional agreement through negotiations.

Recognising the European Union support for a peace process between the Liberation Tigers of Tamil Eelam and the Sri Lankan state in the late 1990s for a ‘negotiated solution’ to the conflict represented a significant change in policy of part of the Global North towards Sri Lanka, in opposition to the policy of the US and UK for a ‘military solution’.

Noting that the European Union declared it was “strongly in favour of” peace negotiations between Sri Lankan State and the Liberation Tigers of Tamil Eelam in December 2000.¹⁴⁹ Noting the support of the European Union for the Sri Lankan Peace Process including funding for negotiations, diplomatic meetings with representatives of the Sri Lankan State and Liberation Tigers of Tamil Eelam both in Sri Lanka and in Europe between 2002 and 2005, including the European Commissioner meeting with the Liberation Tigers of Tamil Eelam leader in Sri Lanka.

Noting the European Union support for conditionality on aid funds to the Sri Lankan State, and the European Union commitment to support and give funds to the Post-Tsunami Operational Management System (P-TOMS) agreement, a joint Liberation Tigers of Tamil Eelam and Sri Lankan state authority to distribute international aid funds after the devastating Asian-Tsunami in 2005.

149 https://ec.europa.eu/commission/presscorner/detail/en/PESC_00_175

Recalling Chinese government officials also met with representatives of the Liberation Tigers of Tamil Eelam and Sri Lankan State in support of the Peace Process in 2002.

Recalling the positive developments of the Sri Lankan Peace Process for all communities but especially Eelam Tamils

Recalling the 2002 Ceasefire Agreement signed by the Liberation Tigers of Tamil Eelam and Sri Lankan State which demarcated 'Lines of Control' between the Liberation Tigers of Tamil Eelam-held and Sri Lankan State-held territory, permitted the free travel of Liberation Tigers of Tamil Eelam members within Sri Lanka, ended the Sri Lankan State's economic embargo on Liberation Tigers of Tamil Eelam-held territory, suspended the use of the Prevention of Terrorism Act, provided for the withdrawal of Sri Lankan military from Tamil civilian land in military High Security Zones, and the disarming of Sri Lankan state paramilitary forces.

Recalling that in Oslo and Berlin the Sri Lankan State and Liberation Tigers of Tamil Eelam agreed to explore an arrangement for shared sovereignty of the island and agreed to move towards this through joint management of financial resources. Recalling that the President of Sri Lanka and Liberation Tigers of Tamil Eelam signed the Post-Tsunami Operational Management System (P-TOMS) agreement in 2005 to establish a joint authority to distribute international aid funds after the devastating Asian Tsunami. Noting the Liberation Tigers of Tamil Eelam was not proscribed by the Sri Lankan State during the Peace Process and enjoyed 'parity of esteem'.

Recalling the United States policy undermining the Sri Lankan Peace Process and giving military support to Sri Lankan State

Recalling the United States began openly training Sri Lankan security forces in Sri Lanka in the mid-90s, listed the Liberation Tigers of Tamil Eelam as a terrorist organisation in 1997, that the US navy visited Sri Lanka for the first time after 8 years in 2002 at the beginning of the Peace Process. Noting that the US sent military advisors to reorganise and train the Sri Lankan military at the beginning of the Peace Process and sold or gave critical military equipment to the Sri Lankan State to defeat the Liberation Tigers of Tamil Eelam.

Recalling the US policy during the Sri Lankan Peace Process not to meet with the Liberation Tigers of Tamil Eelam and continued to list them as a terrorist organisation, that on the eve of the United States-led invasion of Iraq — opposed by major European Union powers, that were also supporting the Sri Lankan Peace Process. The United States organised and then prevented the Liberation Tigers of Tamil Eelam from attending the Washington Conference at which distribution of aid funds to Sri Lanka was discussed in 2003.

Noting the United States opposition to place conditions on giving aid to the Sri Lankan State, and its refusal to give money to the joint Liberation Tigers of Tamil Eelam-Sri Lankan State P-TOMS authority in 2005 on the basis that one party was a terrorist organisation.

Noting that the US blocked funds collected by well-established US-based NGOs from being sent through the P-TOMS mechanism. Noting that the United States exerted heavy pressure on the European Union

to proscribe the Liberation Tigers of Tamil Eelam in 2006 during a fragile moment in the Peace Process.

Noting that after the outbreak of war by the Sri Lankan state in 2006, the US convened international 'contact groups' to prevent the Liberation Tigers of Tamil Eelam receiving money and arms to defend its population and provided intelligence to other governments for this purpose including to the Sri Lankan government.

Noting that after the outbreak of war in 2006 it arrested members of the Eelam Tamil community in the US and pushed for similar arrests outside its borders.

Noting that in 2007 the United States and Sri Lankan State signed the Acquisition Cross-Servicing Agreement, to allow greater United States military access to the island.

Recalling the terrible consequences, especially on Eelam Tamils, of the change in the European Union policy to align with United States on Sri Lanka

Recalling the sharp increase in grave human rights violations on the island particularly against the Eelam Tamil population and full-scale war by the Sri Lankan State began shortly after the European Union listing of the Liberation Tigers of Tamil Eelam as a 'terrorist organisation' in 2006.

Noting the resumption of the use of the Prevention of Terrorism Act by the Sri Lankan State after the European Union listing.

Recalling the outflow of Eelam Tamil refugees after the European Union listing.

Noting the massive crimes committed in 2009 at the culmination of this war against the Eelam Tamils, which also destroyed the Liberation Tigers of Tamil Eelam de-facto state, and calls from Eelam Tamil representatives that these killings and other acts, as part of historic and current actions, be recognised genocide.

Acknowledging the ongoing impact on Eelam Tamils of the destruction of the Sri Lankan Peace Process and the Liberation Tigers of Tamil Eelam, especially on land and women

Noting that since 2009, there has been an increased militarisation of the traditional Tamil-speaking areas, including population transfers of Sinhalese-Buddhist settlers into the North and Eastern Provinces, breaking up the contiguity of the Tamil homeland on the island, as well as military backed activities including mining and fishing which are destroying the traditional livelihoods, water and land of Tamil-speaking people.

Noting the pervasive insecurity facing Eelam Tamils especially women, who now live under a heavy Sri Lankan military presence.

Recognising the reversal of the improvement of the status of Eelam Tamil women achieved during the period of control of Liberation Tigers of Tamil Eelam, noting their significant roles in the military,

political and civilian administration and noting the specific focus of improving women's status during the Sri Lankan Peace Process.

Recalling continuing international efforts against Eelam Tamil self-determination

Noting that the United States (or United Kingdom in its absence) has used the UN Human Rights Council to continually put forward Resolutions on 'promoting reconciliation, accountability and human rights in Sri Lanka' since 2012 which has polarised the UN Human Rights Council, not recognised the Tamil genocide nor their right to self-determination, but rather criminalised both sides and excluded consideration of the role of international powers.

Noting the ongoing criminalisation of Liberation Tigers of Tamil Eelam members and supporters in Western states for supporting the Liberation Tigers of Tamil Eelam during the Sri Lankan Peace Process including in Germany.

Recalling international commitments to an Indian Ocean of Peace and acknowledging the destruction of the Sri Lankan Peace Process as a move away from this commitment

Recalling the 1970 Conference of the Non-Aligned Movement called for the United Nations to adopt a "Declaration calling upon all States to consider and respect the Indian Ocean as a zone of peace from which great power rivalries and competition, either army, navy or air force bases, are excluded. The area should also be free of nuclear weapons."¹⁵⁰

Recalling that the UN General Assembly adopted in 1971 the Declaration of the Indian Ocean as a Zone of Peace (put forward by the Republic of Ceylon (now Sri Lanka) and the United Republic of Tanzania).¹⁵¹

Noting that this Declaration called for the elimination "from the Indian Ocean all bases, military installations and logistical supply facilities, the disposition of nuclear weapons and weapons of mass destruction and any manifestation of great Power military presence in the Indian Ocean conceived in the context of great power rivalry;" as well as "military installations and logistical supply facilities or those that can be used for external forces."

Recalling that the 1974 General Assembly Resolution 3314 (XXIX) agreed that an act of aggression, or crime against peace, was the "action of a State in allowing its territory, which it has placed at the disposal of another State, to be used by that other State for perpetrating an act of aggression against a third State".

Recalling the concerns of India of the use of Trincomalee harbour by foreign militaries, in particular the United States, during its correspondence regarding the 1987 Indo-Lanka Accord with Sri Lanka.¹⁵² That the Liberation Tigers of Tamil Eelam also declared their support for the Indian Ocean Zone of

150 https://www.africaportal.org/documents/7241/SAIIA_RESOLUTIONS_OF_THE_THIRD_CONFERENCE_OF_NON-ALIGNED_STATES.pdf

151 <https://www.refworld.org/docid/528c9f6b4.html>

152 <https://tamilnation.org/conflictresolution/tamileelam/87peaceaccord.htm#a2>

Peace. That the presence of the Liberation Tigers of Tamil Eelam in the seas near Trincomalee Harbour, prevented its use by external military forces. That after 1990 with the dissolution of the Soviet Union, and new geopolitical alliances, India has developed new military cooperation with the US, and its commitment to the Indian Ocean Zone of Peace has now been questioned. That in relation to this in Mar 2018 a group of Mauricians, Rodriguans and Agalégans met to form the Koalision Zilwa Pou Lape (Islanders Coalition for Peace) based on solidarity with the people of Agaléga, as well as those in Chagos (Diego Garcia) and Assumption (Seychelles) who have called for the Indian Ocean to be declared as a “zone of peace” in opposition to their homelands on the archipelago of Agaléga (Mauritius) being turned into an Indian naval base.¹⁵³

Recalling the work of journalist Dharmaratnam Sivaram, assassinated during the Sri Lanka Peace Process, who worked to expose the geopolitical significance of the island of Sri Lanka, Trincomalee Harbour and the interests of the United States and other states.¹⁵⁴

Recalling international militarisation of Sri Lanka and expanding US military footprint in Sri Lanka as part of the US ‘Indo-Pacific Strategy’

Noting that since 2009 the increasing military presence in Tamil areas, in particular in Trincomalee Harbour by the United States and its closest allies, including training of Sri Lankan security forces.

Noting the numerous naval visits to Sri Lanka by the US and allied forces including the first Nimitz-class nuclear-powered US aircraft carrier visit to the island in 30 years to Trincomalee Harbour in 2018.

Noting that in connection with this visit the US forces established for the first time, according to US naval reporting, a logistics hub in Sri Lanka to “provide mission-critical supplies and services to US navy ships transiting through and operating in the Indian Ocean,” and also to “to demonstrate the U.S. navy’s ability to establish a temporary logistics hub ashore where no enduring US navy logistics footprint exists.”¹⁵⁵

Noting the re-signing of the Acquisition and Cross-Servicing Agreement in 2017.

1. **Asserts** that the UN Human Rights Council should not be used as a tool of great power rivalry, but rather be a forum in which the interests of the oppressed people of the world are heard and advanced, and that the concept of Human Rights should be reclaimed as an ethical principle which must be the basis for the peaceful coexistence of peoples of the globe in harmony with the earth.
2. **Affirms** the absolute right of the Tamil-speaking people of the North and Eastern Province of Sri Lanka (Tamil Eelam), as oppressed people, to self-determination, meaning the right to return to their lands of historical habitation, to provide their own security forces and the right to oppose external military forces in their land, both Sri Lankan military and other militaries.
3. **Calls upon Sri Lanka**, to end population transfer, militarisation, environmental destruction, demographic cultural change in Tamil Eelam and expresses grave concern at the fragmentation and the

153 <https://www.thehindu.com/opinion/op-ed/about-a-small-mauritian-island/article24073692.ece>

154 https://humanrights.de/wp-content/uploads/videos/sivaram_geo_es.mp4

155 <https://www.c7f.navy.mil/Media/News/Display/Article/1706047/uss-john-c-stennis-leverages-logistics-hub-in-sri-lanka/>

changes in the demographic composition of the North and Eastern Provinces which undermines the possibility of Tamil-speaking people realising their right to self-determination.

4. **Calls upon all States** to ensure their obligations of non-aid or assistance with regard to ongoing acts of genocide, the denial of exercise of the right to self-determination of the Eelam Tamils, and also calls upon States to cooperate further to bring, through lawful means, an end to these serious breaches and a reversal of Sri Lanka's illegal policies and practices.

5. **Calls on States, in particular those who supported the Sri Lankan Peace Process** and other non-aligned States to oppose the militarisation of Trincomalee Harbour and the island generally.

6. **Calls to establish an international inquiry independent of powers with material or military interest in Sri Lanka** into the role of the Global North in the failure of the Sri Lankan Peace Process, including the circumstances of the 2006 European Union ban of the Liberation Tigers of Tamil Eelam, the grave abuses committed in Sri Lanka in particular against the Eelam Tamil people, including the crime of genocide in the period of 2009 and after. The inquiry must be led, staffed and funded by states and organisations without material or military interest in Sri Lanka.

Annex 5: Special Statement by Denis Halliday, Former Assistant Secretary-General to the United Nations

In agreement with the decision of my fellow judges, I come to this with my own experiences. I have been one of the judges of all the three sessions of the Peoples' Tribunal on Sri Lanka (Dublin 2010, Bremen, 2013 and Berlin 2022). It is my firm conviction that the genocidal massacre of the Eelam Tamils in Sri Lanka fits into the broader picture of what was happening in the Middle East at the time. Working at a senior level for the United Nations I saw first hand in Iraq how its people suffered greatly from the constant interference of the United States, Britain and the West into its affairs. I resigned my post as Assistant Secretary General of the United Nations in 1998 in protest against the sanctions that were already killing children, I simply could not implement those sanctions. The US had already committed war crimes by strafing Iraqi soldiers as they were retreating from Kuwait, and its use of depleted uranium weapons. But, because of its control of the UN, the US enjoyed impunity for these crimes.

Iraq was raped by the West, the Shock and Awe invasion of 2003 committed genocide there. The people of Iraq were destroyed by the West whose real motivation was to exploit the oil and keep military control of the wider Gulf region. The people of Iraq were wronged by Europe as well as the United States. Europe should have stood up against the war policy consistently, but it didn't and the Iraqi people paid the consequences.

I see what the US and Britain enforced in Sri Lanka as an extension of their Middle East policies. Sri Lanka was just too important for them, it lies at the centre of the Indian Ocean right beside the most important oil export route in the whole world. They are committed to using Trincomalee as a port. That requires trade-off with Colombo. It's a big game. China of course is sniffing around also. So they connived with Sri Lanka to destroy the formative independence of the Eelam Tamils who sought peace in the Indian Ocean region. For US and Britain, the Indian Ocean has to be converted into a war zone with the support of India against China.

The land question is very important here. A people need their homeland. I see what Sri Lanka is doing after 2009 as a continuation of the genocide. First, they destroyed the de facto state of the LTTE that secured land for the Tamil people. Now is the time for the land grab. One way of destroying people is to take their land. And the occupation is displacing people, making them refugees. Separation of the Tamil people from the land in the north and east is pivotal in gaining full control of Trincomalee harbour. That is what is happening now.

The evidence brought to the Bremen Tribunal in 2013 convinced me that clearly a genocide had taken place. In fact, the evidence is overwhelming and, on the facts, alone it is unconscionable that the UN Human Rights Council has not recognised the genocide. The following year I spoke on this with the Tamil communities in Geneva who had rallied to lobby the Council. But the Council has ignored the lobbies just as it ignores all the evidence. The hard truth is that it decides what the US wants it to decide. This continuing cover up has itself become part of the ongoing genocidal process on an international level.

All the three sessions of the Tribunal hold the US and Britain responsible for breaking down of the 2002 Peace Process, particularly by putting pressure on the EU to ban the LTTE. It was a deliberate move made by these powers to destroy the de facto state of Tamil Eelam and the LTTE. The climax of genocide in 2009 happened because of EU ban that changed the power balance between the two parties in conflict. The Tamils had no option except to resist in many ways to stop the carnage in their homeland. Today, in Germany Tamil activists who supported resistance on the ground in

their homeland are criminalised. Victims have been criminalised by those who are complicit and even culpable in supporting the Sri Lankan state in waging a war against the Tamils. I will stand by the victims and oppose their criminalisation while pointing my finger towards those powers who backed the Sri Lankan state in multiple ways.

Incidentally, the genocide has in the end not helped any of the communities in Sri Lanka. We have seen in the last two years how they have been held to ransom by international creditors, causing a wipe out in their public services. The use of debt is one more weapon of international control. The real power is with the military and finance. However, Sri Lanka's value for the major powers is not economic, but geo-strategic.

The complete failure of the UN to protect human rights of Eelam Tamils is why an impartial and independent process is so necessary. The Peoples Tribunal has provided that. At the very least the truth has at last come out. Let us now act on it.

Writing from Ireland, another country that has known colonialism and still suffers its legacies, I wish the convening organisations and my fellow judges, and above all the Eelam Tamil people all the very best. I hold in highest possible esteem those who testified at the Tribunal, particularly many women who once were an essential part of Eelam Tamil resistance and later were handed over to the Sri Lankan security forces by the same powers in the West who speak about women's rights.

**Denis Halliday,
Former Assistant Secretary-General to the United Nations**

Annex 6: An Appeal Stop the Persecution of Anandarajah, a Tamil Rights Activist in Germany Do not Blame the Victims for Resisting Genocide

On the day of the announcement of the verdict of the 3rd Session of the Peoples' Tribunal on Sri Lanka (Berlin Tribunal) on 25 September 2023 the Foreigners' Police in Germany took away Anandarajah's 'Blue Passport' which protected him from deportation to Sri Lanka. Anandarajah is a Tamil born in Sri Lanka. He had to flee in the 1980s as a result of the anti-Tamil pogroms and Sri Lankan state repression. He came to Germany nearly four decades ago, and his wife, children, and grandchildren all have German passports. He is 70 years old.

Anandarajah was the coordinator of the Tamil Rehabilitation Organisation (TRO) in Germany for many years. The TRO was a highly respected non-governmental organisation which raised funds to provide humanitarian aid and rebuild the war devastated areas of the North and East of the island where the LTTE had built the de facto state of Tamil Eelam with a well-organized civil administration. In particular, during the period of the Peace Process, 2002-2006, the TRO was joined by the International Development Agency of Germany as well as of other European countries to fund projects in this region. In fact, during the period of the Peace Process, hundreds of church organisations, non-governmental organisations, governmental bodies, and supra-national entities like the Asian Development Bank participated in the processes of rehabilitation and reconstruction. Hundreds of millions of Euros were sent to the North and East, including to the LTTE administered Vanni. This money from the international community added to what was collected by the energetic fundraising from the Tamil Diaspora through the TRO. The peace dividend benefitted the Sinhala majority south too, even more than the population in the North and East, making the Peace Process a truly win-win situation – at least for population in the island. Not only was the TRO, in which Anandarajah played the leading role in Germany, fully recognised, and collaborated with by the European governments, even the then Sri Lankan president Chandrika Kumaratunga felt obliged to present the TRO with an award for its outstanding work during the post-Tsunami period.

Germany had played a central role in supporting the 2002 Peace Process between the Sri Lankan government and the Liberation Tigers of Tamil Eelam (LTTE). Many LTTE leaders travelled to Germany and to many other parts of Europe to gather support for a peaceful solution to the decades long conflict. Many European political leaders, diplomats and humanitarian workers met with the LTTE leadership in the Vanni. However, due to intense

USA/UK pressure, and against the advice of the international experts, the EU banned the LTTE in 2006 – in the midst of the Peace Process. This ban marked the end of international support for the Peace Process and allowed the USA/UK to aid and abet the Sri Lankan government to wage total war between 2006-2009 culminating in the genocidal massacre at Mullivaikal. The entire de facto state of Tamil Eelam and the LTTE were destroyed.

According to the UN reports at least 70,000 Tamils, up to a quarter of the population of the Vanni were exterminated during the last 4 months of the war. During this period of war many Eelam Tamil activists

in Europe including Anandarajah and Nathan Thambi collected funds to support the LTTE to resist the ongoing massacres and to protect their loved ones and homeland.

It was only after the massacre in 2009, that Germany filed court cases against many Eelam Tamil activists on the charges of supporting 'terrorism'. Anandarajah and Nathan Thambi stood out because they clearly stated that it was their duty to support resistance to genocide and they did not commit a crime. The court hearings began in April 2022.

Anandarajah and Nathan Thambi pleaded 'not guilty' to committing a criminal offence for collecting money for the LTTE during the period 2007 till 2009. They went further to state that it is the EU ban against the LTTE, which was imposed to advance the interests of the USA/UK which paved the way for genocide. Therefore, those powers are responsible for the genocide.

In fact, on the basis of thoroughly investigated evidence all the three sessions of the Peoples' Tribunal on Sri Lanka (Dublin 2010, Bremen 2013 and Berlin 2023) have declared -most explicitly at the Berlin session – that the USA/UK are primarily responsible for the breakdown of the 2002 Peace Process and the subsequent massacre of Eelam Tamils. The ban was put in place by the EU – albeit under heavy pressure from the USA/UK – with the full knowledge that it would encourage the Sri Lankan government to restart the war.

Anandarajah and Nathan Thambi argued that this ban was a crime against peace. The USA/UK broke peace in Sri Lanka and engineered genocide to get free access to the strategic harbour in Trincomalee which is in the traditional Tamil homeland and use it as a military asset against the Middle East and China. The 2002 Peace Process not only gave the hope of justice to the Tamils but also of peace in the Indian Ocean which went against the US-led geopolitical strategy in encircling China. This is because the LTTE had consistently made clear that under their control the Trincomalee harbour will not be allowed to be used by the USA as a military post to attack other countries.

In June, 2022 Anandarajah and Nathan Thambi were given suspended sentences of one and half years, against which they have lodged an appeal with the German Constitutional Court that has not yet been decided.

Several months later, shockingly on 25 September 2023, as stated above the Foreigner's Police in Germany took away Anandarajah's Blue Passport, thus removing any protection from being deported to Sri Lanka. After taking the Blue Passport from him the police ordered him to go to the Sri Lankan embassy to get a Sri Lankan passport, so facilitating his subsequent deportation. It is a way of handing over the victim to the perpetrator. This is despite the fact that the danger he faces in Sri Lanka has considerably increased because of his recent conviction, which labels him a supporter of terrorism.

When Anandarajah stated that he is not happy to go to the Sri Lankan embassy because he is likely to be mistreated because of his high-profile case, the policeman threatened him with arrest if he does not comply. The policeman stated, that not complying would mean that Anandarajah would be breaking the law, and thereby activating the suspended sentence he received as punishment at the Dusseldorf court. He went on to say that while Anandarajah was in prison, the German authorities would obtain an emergency passport from the Sri Lankan embassy so that he can be deported. The German authorities have presented Anandarajah with an impossible choice between two different routes to his own deportation that either way would lead to his persecution, and probable detention and torture. It seems that the authorities want to terrorise him because together with Nathan Thambi, Anandarajah

is exposing the EU banning of the LTTE – under USA/UK pressure – in the middle of a functioning Peace Process was nothing to do with whether the LTTE was terrorist or not, but everything to do with US/UK geopolitical interests in the island. The police are threatening to doubly punish him by adding an unlimited sentence to the limited sentence of the Duesseldorf court. We appeal for an immediate intervention against this unjust persecution, and that the relevant state authorities in Germany restore Anandarajah's Blue Passport status. Please see www.humanrights.de for further information. Thank you for your urgent attention.

Annex 7: A Testimony of Resistance

We are not **REMORSEFUL** of supporting the LTTE nor do we **CONFESS** to any guilt.



We will not **DISTANCE OURSELVES** from those who fought to defend our people from Genocide.

We will not plead for **MITIGATION** from a court in a country, which, as part of the EU had destroyed the peace process by banning the LTTE. In fact, justice will only be done when the German and European court systems recognise that the EU's shameful repudiation of their initial support for the peace process under coercive pressure from the US and the UK is the real crime – the 'crime against peace'.

*Anandarajah
Nathan Thambi*

Why did the EU support for peace end in support for war?



www.pt3lanka.org