

The International Crime Of Genocide: The Case Of The Tamil People In Sri Lanka



Tamil Information Centre

December 1997

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ISBN 1 85201 011 8
Published December 1997
Layout K Krishnarajah
Cover Photo Stephen Champion

ABOUT THE AUTHOR

Lutz Oette, a German citizen recently completed his LL.M at the University College of London. He was the winner of the 1996 Cheng Cheng Nan Prize in International Law. His research interests include International Protection of Human Rights, Human Rights in the Developing World and Asylum Law and Practice. He is currently working on a report on Torture and Inhuman and Degrading Punishment in Saudi Arabia. He also works as a research assistant for Professor Mendelson in London on various aspects of International Law. Mr Oette has produced several briefing papers on Iraqi Kurds addressing the current situation in terms of legal, political and socio-economic issues and assisted in the cases concerning Kurds in Turkey to be brought before the European Commission on Human Rights and European Court of Human Rights.

Acknowledgements

Tamil Information Centre (TIC) gratefully thanks all individuals and organisations who provided financial contributions, their time and shared information and source materials for this report. Our special gratitude, however, goes to the author and the volunteers without whose support and commitment this report would not have been possible.

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The greatest sage poet of classical Tamil literature Thiruvalluvar's statue in Jaffna desecrated by the Security forces in 1983 in a frenzied ethnocidal attack.

Contents

Introduction

The Historical Background

The Definition of Genocide

The Historical Background of The Genocide Convention and Its Current Status

The Definition of Genocide in the Genocide Convention

Critique of the Definition of Genocide in the Genocide Convention

Non-Legal Definitions of Genocide

The Genocidal Society: Causes And Functions of Genocide

The Process of Genocide

The Understanding of Genocide as Adopted in this Study

1

3

5

The Genocidal Process

The Right of the Tamil people To Self-Determination
 Political Self-Determination
 Colonisation
 Economic, Social and Cultural Development
 Language
 Religion
 Culture
 Education
 Economic Development
 Health
 Communication
 Violation of Fundamental Rights
 The Process of Dehumanisation
 Conclusion: Genocidal Process

Acts of Genocide

The Evidence
 The Charges
 The Acts
 Intent
 Government Responsibility

Enforcement of The Genocide Convention

The Existing Enforcement Mechanisms
 The UN Record of Preventing and Punishing Genocide
 UN Record on Sri Lanka
 Sri Lanka's Record of Enforcing the Genocide Convention
 Humanitarian Intervention
 The Indian Intervention in Sri Lanka
 Possible Alternative Enforcement Mechanisms

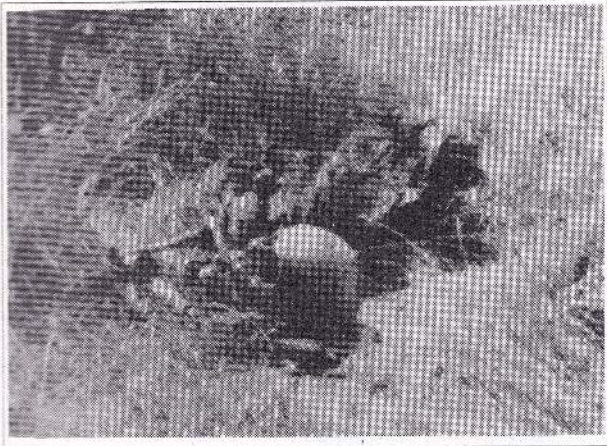
Preventing Future Genocide: Recommended Strategies

UN High Commissioner for Human Rights
 UN Commission on Human Rights
 1503 Procedure
 The International Community

Recommendations

Sri Lanka

Introduction



Skull and bones representing a Tamil victim

Genocide is the ultimate crime under international law, a crime against humanity. Bringing forward charges of genocide is a grave accusation.

In the case of Sri Lanka, which ratified the Genocide Convention in 1950, these charges have been brought forward by Tamils against members of the Sinhalese majority, in particular members of successive governments. This study will not set out to determine individual guilt since this would require a thorough judicial investigation. Rather, based on the legal definition of genocide and on sociological approaches on the genocidal process and the so-called genocidal society, it will focus on two interrelated issues.

Firstly, what characterises a society in which genocide is likely to occur and can Sri Lanka be described as being such a society? Secondly, have there been acts of genocide in Sri Lanka and, if so, who has been responsible for these as evidenced on a prima facie basis? This examination, while not ignoring the issue of punishment, will be focusing on the prevention of genocide. In this regard, enforcement mechanisms provided under the Genocide Convention and their effectiveness will be scrutinised. Finally, based on the findings of this study, a strategy will be developed with a view to prevent acts of genocide taking place in Sri Lanka in the future. □

TAMIL NATION: BRITAIN USES THE
CONCEPT OF TAMIL HOMELAND
TO ESTABLISH TWO TAMIL PROVINCES
IN 1873



The space-related identity of Sri Lankan Tamils

Source: Tennent J. Emerson, *Ceylon*, Volume II,
Longmans Press, 1859

"Two Different nations, from a very ancient period, have divided between them the possession of the Island: the Sinhalese inhabiting the interior in its Southern and Western parts from the river Wallouwe to Chilaw, and the Malabars (Tamils) who possess the Northern and Eastern Districts. These two nations differ entirely in their religion, language and manners."

Sir Hugh Cleghorn, British Colonial Secretary, June 1879.

The historical background

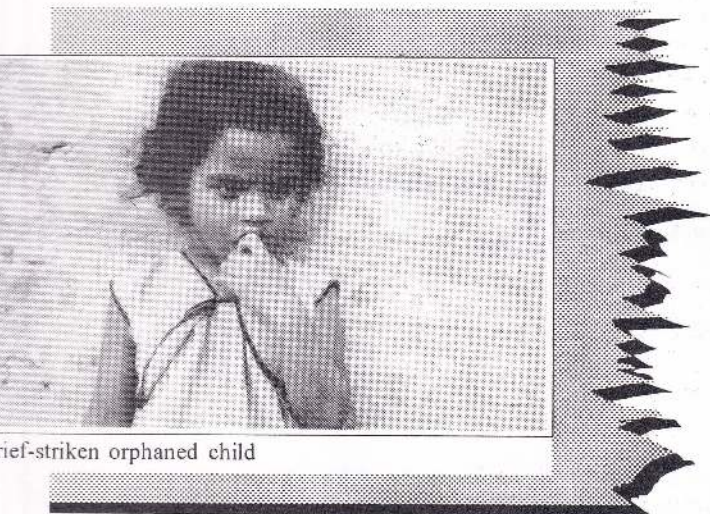
Sri Lanka is composed of several ethnic and religious communities. The two biggest are the Sinhalese majority, forming 74% of a total population of roughly 18 million, and the Sri Lankan Tamils, numbering about 2 million or 12 % of the total population.¹ Members of both communities have claimed that their ethnic group was the first to have arrived in Sri Lanka about 2500 years ago and has, by virtue of that temporal element, a superior claim to the country or parts of the country over the other ethnic groups. Both communities have lived in Sri Lanka for at least 2000 years and, if one is willing to use such an ideologically charged criterion as a historical, immemorial claim to a country, this claim has to be conceded to both communities regarding their traditional areas of settlement.²

Of more importance to the current conflict is the historical location and current geographic distribution of the communities.

The Sri Lankan Tamils had been living in a separate kingdom in the Jaffna region for 407 years until the Portuguese ended their independent reign in 1621.³ The Tamils have also historically constituted the majority of the population in the Eastern region, which is now claimed as part of a separate state of Tamil Eelam. The background to the current conflict was the British decision, following a proposal by the Colebrook Cameron Commission in 1833, to bring together the two separate, ancient, and disparate communities of Sinhalese and Tamils into a single colonial unity, thereby establishing the plural society of Ceylon.⁴

The Hill Country Tamils, who make up about 5% of the total population, were brought to the then Ceylon by British colonialists from 1825 onwards to work on the coffee, and later tea plantations.⁵ They live mainly in the central highlands of the Central, Uva and Sabragamuwa provinces.

The Sinhalese have been living predominantly in the south and the west of the country. Since independence, colonisation schemes have resulted in demographic changes by bringing in Sinhalese settlers to the East. Moreover, through social mobility, members of all communities have come to live in all parts of the country although the main Southwest- Northeast divide between Sinhalese and Tamils still remains intact.



Grief-stricken orphaned child

Another large minority group are the Muslims who are thought to have come to Sri Lanka as merchants and seafarers around the 13th Century. They constitute 7% of the current population, are Tamil speaking and have their largest communities in the East around Trincomalee and Batticaloa.⁶

There are other, small communities living in Sri Lanka, particularly the indigenous Veddas, whose survival is threatened by their small number and the encroachment of the majority, which makes it difficult for this community to retain their ancient lands and distinct identity in Sri Lanka.⁷

A further important factor in the ethnic conflict is religious affiliation which is mainly, but not exclusively along ethnic lines. The Sinhalese are predominantly Buddhist, whereas the Tamils are predominantly Hindu. However, both communities have considerable number of Christians among them as a legacy of the colonial period.⁸

The ethnic conflict between “the” Sinhalese and “the” Tamils is characterised by the struggle for power in a post-colonial country that has been unified through colonisation rather than through mutual agreement of the concerned communities. Major themes of the conflict are political unity versus federalism, territorial unity versus communal homelands, and language, religion and culture in the context of communal identity and socio-economic advantages for one group to the detriment of the other. Whereas Sinhalese politicians and others frequently maintained that Sri Lanka is one state in which the Sinhalese constitute the majority and consequently are entitled to enjoy a dominant position in all the mentioned areas, the

Tamils perceived themselves as a distinct nation and equal partners within Sri Lanka entitled to communal integrity and equal rights.

Since Tamil representatives, i.e. politicians of the Federal Party until 1972, the Tamil United Front (TUF) and the Tamil United Liberation Front (TULF) thereafter, and currently the LTTE (Liberation Tigers of Tamil Eelam), as well as Tamil- Non-Governmental Organisations (NGOs) and individual authors, considered pro-Sinhalese policies as being biased and anti-Tamil, they have brought forward charges of discrimination and of instigation and complicity in acts of genocide against successive governments after Sri Lanka’s (called Ceylon until 1972) independence. Both intermittently ruling parties, the United National Party - in power during the years 1948-1956, 1965-1970 and 1977-1994 - and the Sri Lanka Freedom Party in power, either alone or in coalition, from 1956-1965, 1970-1977 and since 1994 until the time of writing, as the People’s Alliance - have adopted a number of pro-Sinhalese policies that were antagonistic in nature and resulted in a deep division of the country along ethnic lines. The resolution of the TULF at its convention in 1976 summarised the Tamil perception of Sinhalese policies by stating that the Tamil nation had been deprived of its territory, language, citizenship, economic life, opportunities of employment and education.⁹ Since then, large-scale anti-Tamil riots, repressive laws and warfare in the name of fighting Tamil terrorism, resulting in thousands of deaths, devastation and a Tamil mass exodus, have added another dimension to Tamil charges: the destruction of a people, called genocide.¹⁰ □

¹ Estimates of the Department of Census and Statistics, Ministry of Finance, Planning, Ethnic Affairs and National Integration: Statistical Abstract of the Democratic Social Republic of Sri Lanka 1995, pp. 34,41

² see S.D.Muni: Pangs of Proximity, pp.40,41 and H.J.Whall: Right to Self-Determination, pp.189-191. See also A R Arudpragasam: The Traditional Homeland of the Tamils, 1996.

³ see S.Ponnambalam: Tamil Liberation Struggle, p.29

⁴ see L.Kuper: Prevention of Genocide, p.220

⁵ see S.J.Tambiah: Ethnic Fratricide, p.4

⁶ see *ibid.*

⁷ see P.Hyndman: A Study in Microcosm, pp.278-280

⁸ see E.Nissan: A Bitter Harvest, p.8

⁹ see H.J. Whall: Right to Self-Determination, pp.367-370

¹⁰ see M.S. Venkatachalam: Genocide in Sri Lanka, Gian Publishing House, Delhi, 1987 and also: S.Bose: States, Nations, Sovereignty: Sri Lanka, India and the Tamil Eelam Movement, Sage Publications, New Delhi, Thousand Oaks, London, 1994, pp.80,81

The definition of genocide

The historical background of the Genocide Convention and its current status

The word “genocide” was coined by the jurist Raphael Lemkin who was the first man to campaign vigorously for a genocide convention.¹¹ The term, a new word for an old crime, is a hybrid of the Greek word *genos* (race, nation or tribe) and the Latin *cide* (killing).¹²

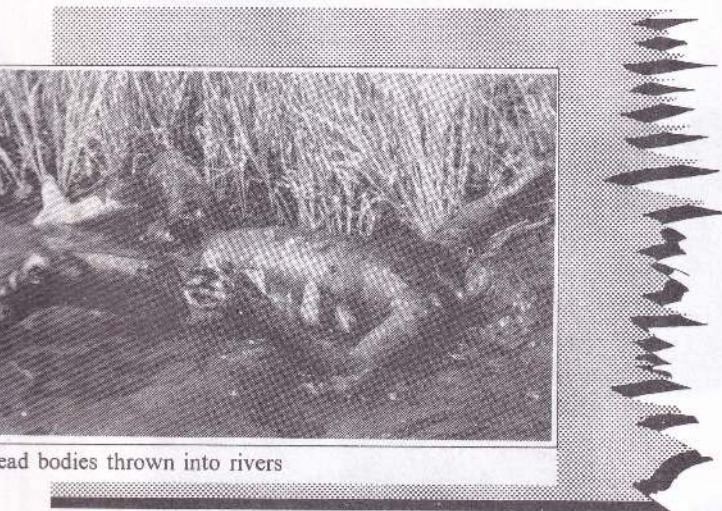
The term genocide appeared for the first time in a legal setting in the indictment of the major German war criminals at the International Tribunal at Nuremberg in 1945. They were charged with crimes against humanity, which consisted of, inter alia, “*deliberate and systematic genocide, viz., the extermination of racial and national groups.*”¹³

The importance accorded to the punishment of genocide was underscored in the first session of the United Nations in 1946. The General Assembly unanimously passed two resolutions: Resolution 95 (1) which affirmed the principles of international law recognized by the Charter of the Nuremberg Tribunal and the

judgement of the Tribunal, and Resolution 96 (1) which affirmed that genocide is a crime under international law which the civilised world condemns, and for the commission of which principals and accomplices are punishable. It also requested the UN Economic and Social Council to draw up a draft convention on the crime of genocide.¹⁴

The ensuing debates on the draft convention finally resulted in the *Convention on the Prevention and Punishment of the Crime of Genocide*, 1948, which came into force on 12 January 1961. In Article 1, the contracting parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and punish.

The Genocide Convention, which had 120 contracting parties as of 31/12/1995, is the sole treaty on genocide, even though aspects of genocide might be dealt with in other instruments, for example, the right to life in the International Covenant on Civil and Political Rights. The Genocide Convention is regarded to be declaratory of customary international law.¹⁵ This means that states are bound by its provisions as a matter of general international law, even though they might not have ratified it. The binding force of the Genocide Convention is absolute since its provisions constitute *jus cogens*, or a peremptory norm, from which no derogation is permitted.¹⁶ □



Dead bodies thrown into rivers

¹¹ see L.Kuper: *International Action against Genocide*, p.3

¹² see R.Lemkin: *Axis Rule in Occupied Europe*

¹³ UN Special Rapporteur 1985, p.8

¹⁴ see *ibid.*, p.11

¹⁵ see T.Meron: *Human Rights and Humanitarian Norms as Customary Law*, Clarendon Press, Oxford, 1989, p.11

¹⁶ see A.Cassese: *Human Rights*, p.79

"The war has created what is perhaps Sri Lanka's most humanitarian problem, its refugees. In successive waves over the past decade, more than 200,000 Sri Lankan Tamil and Muslim refugees have fled their homes in the Northern Province and sought safety in India. Another 300,000 have fled to western countries and over 600,000 are currently displaced within Sri Lanka itself, out of a total population of about 17 million. In 1990, the numbers were almost twice that.

"A legacy of government policies and initiatives which tolerated and at times encouraged gross violations of human rights, and the continuing lack of accountability for past abuses lie behind this crisis. For refugees and the displaced, security has been further diminished by resettlement into what are effectively war zones."

Asia Watch, Vol.5 Issue II, August 11,1993



Exodus of Refugees

The definition of genocide in the Genocide Convention

Article 2 of the Genocide Convention contains the legal definition of genocide:

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.

There are three main parts in the definition of genocide whose understanding is crucial for an interpretation of what acts amount to genocide under the Convention. Firstly, the acts constituting genocide. Secondly, the intent to destroy, in whole or in part, a group. Thirdly, the definition of the group as being national, ethnical, racial or religious.

1. Genocide is confined to acts aimed at physical harm to members of a group or annihilation of a group, thus excluding acts such as cultural genocide. There has been some debate on the extent of the destruction of a group, i.e. whether the killing of one person could constitute genocide.¹⁷ This question appears to be rather theoretical since charges of genocide are usually brought in cases of mass killings.

2. The intent to destroy must be a particular intent (*dolus specialis*). Crimes against a number of individuals must be directed at their collectivity or at them in their collective character or capacity. The motive of the crime is irrelevant.¹⁸ The proposal to replace the strict subjective element by the words "aimed at the physical destruction of groups" was not accepted.¹⁹ In the absence of particular intent to destroy the group in question, in whole or in part, whatever the degree of atrocity of an act and however similar it might be to the acts described in the Convention, that act would still not amount to genocide.²⁰ The UN Special Rapporteur on Genocide suggested that a court should be able to infer the necessary intent from sufficient evidence, and that in certain cases this would include actions or omissions of such a degree of criminal negligence or recklessness that the defendant must reasonably be assumed to have been aware of the consequences of his conduct.²¹

3. The definition of each of the stipulated groups as well as their relation to each other was subject to debate in the drafting stages of the Genocide Convention. If one accords a distinct meaning to each concept of a group as used in the Genocide Convention, the following definitions appear to be helpful:

- *A nation is a community marked by distinct historical and cultural links or features.*

- *Race means a category of persons who are distinguished by common and constant, and therefore, hereditary, features.*

- *Ethnic designates a community of persons linked by the same customs, the same language and the same race.*²² □

¹⁷ see UN Special Rapporteur 1985, pp.16,29

¹⁸ *ibid.*, p.19

¹⁹ UN Special Rapporteur 1978, pp.25,98

²⁰ *ibid.* pp.25,96

²¹ see UN Special Rapporteur 1985, pp.19,39

²² S. Glaser: *Droit international penal conventionell* (Brussels, Etablissements Emile Bruylant, 1970),pp.111-112 cited in UN Special Rapporteur 1978, p. 57



Deaths in custody

"...described cases of persons killed after being taken away by the security forces. They were apparently shot after arrest, and their bodies were either left on the spot, or, as happened in many cases, were removed by the security forces and burnt. Only in a few cases in which the bodies of the victims were found are inquests known to have been held."

Amnesty International on Deaths in Custody in Sri Lanka: Recent reports of "Disappearances" and torture, May 1987.

Critique of the definition of genocide in the Genocide Convention



Destruction of community centres and social institutions

The definition of genocide in the Genocide Convention has been repeatedly attacked for its narrow focus which is largely blamed for the failure of the Genocide Convention as such. Three points of controversy have crystallised over the years, which will be considered according to the importance that has been attached to them in the legal debates concerning the Genocide Convention.

1. The exclusion of political groups was the result of the objection to its inclusion by the Soviet Union.²³ This subject caused an intensive debate in the Sixth Committee commissioned with the drafting of the Genocide Convention, a debate which is mirrored in the frequent criticism levelled in the literature on genocide against the exclusion of political groups.²⁴ The main arguments against the inclusion of political groups were the lack of stability of political groups which depended on the will of their members, the possible involvement of the United Nations in internal political struggles, the need for a government to fight subversive elements, the follow-up question of protection for economic and professional groups, and the possibility to better protect political groups un-

der national legislation and the Universal Declaration of Human Rights.²⁵ The counter-arguments stressed that political groups were characterised by common beliefs just as much as religious groups. Moreover, there was no compelling reason to exclude mass killings for ideological reasons, as they were a major category of modern genocide.²⁶ Furthermore, the protection of political groups under international human rights instruments, as important as it may be, is tailored to individual rights and exceptionally to group or minority rights, but not to genocidal acts which threaten to wipe out an entire group and are committed on a different magnitude, at least in terms of their ultimate aim.

The major argument for the inclusion of political groups is that its omission offers a wide and dangerous loophole which permits any designated group to be exterminated, ostensibly under the excuse that this is for political reasons.²⁷ This argument is the most far-reaching as it highlights the risk of governments disclaiming responsibility for acts of genocide by means of defining groups as political. Particularly in a domestic struggle between national and ethnic

groups in a pluralistic society, the involved groups will necessarily become politicised to assert their rights, which renders the distinction between national or ethnic groups and political groups impossible.

2. The element of intent has been the subject of widespread criticism. The most apparent one is that governments are reluctant to admit that their repressive policies were aimed at destroying the targeted group.²⁸

This, in conjunction with the likely non-existence of government documents which demonstrate the intent, renders the existence of the subjective element difficult to establish.²⁹ The subjective formulation of the intent element has been regarded as one of the key factors in the failure of the Genocide Convention and was proposed to be replaced by an objective criterion.³⁰ However, the element of intent has also been viewed as the distinguishing criterion between genocide and ordinary murder as well as war crimes,³¹ and has come to be, at least for the time being, an essential component of the crime of genocide.

3. The third subject of contention was the one of cultural genocide. The Ad Hoc Committee preparing the Convention had proposed including a provision concerning cultural genocide in the Genocide Convention: "*Any deliberate act committed with intent to destroy the language, religion or culture of a national, racial or religious group on grounds of national or racial origin or religious beliefs as such: 1. Prohibiting the use of the language of the group in daily intercourse or in schools, or the printing and circulation of publications in the language of the group; 2. Destroying or preventing the use of libraries, museums, schools, historical monuments, places of worship.*"³² This proposal was not adopted in the final text of the Genocide Convention as it was



Mass killings

regarded to be too vague and capable of inviting the risk of political interference in the domestic affairs of states. Moreover, the protection of minorities' culture was viewed as being primarily a matter for other international bodies.³³ Cultural genocide was excluded despite Lemkin's definition of genocide which included synchronised attacks on political and social institutions, culture (by prohibiting or destroying cultural institutions and cultural activities), language, national feelings, religion, and the economic existence of the group.³⁴ There has been some support for the proposition that a group could be suppressed by extinguishing their specific traits, as well as by physical destruction.³⁵ However, the distinction between genocide as a form of concerted mass killings and cultural genocide as primarily a denial of minorities' rights appears by now to be well established. The arguments brought forward for the inclusion of cultural genocide in the Convention are nevertheless not futile as they might contribute to a better understanding of the genocidal process whose understanding will be identified as being pivotal in the efforts to prevent genocide as defined in the Genocide Convention. □

²³ L.Kuper: International Action against Genocide, p.3

²⁴ see G.J. Andreopoulos: The Calculus of Genocide in G.J.Andreopoulos: Genocide, p.2 and I.W.Charny: Towards a Generic Definition of Genocide in: G.J.Andreopoulos: Genocide, p.70

²⁵ see UN Special Rapporteur 1985, pp.18,35

²⁶ see *ibid.*:p.18,36

²⁷ see P.Drost: The Crime of State, II Genocide quoted *ibid.*, pp.19,36

²⁸ see G.J. Andreopoulos: Genocide, p.7

²⁹ see L.Kuper:Genocide, p.33

³⁰ see UN Special Rapporteur 1978, pp.26,100

³¹ see *ibid.*, p.26

³² E/794, pp.21,27 and 28. See E/CN.4/Sub.2/416, para. 441-461

³³ see UN Special Rapporteur 1985, p.17

³⁴ see R.Lemkin: Axis Rule in Occupied Europe, pp.X-XI

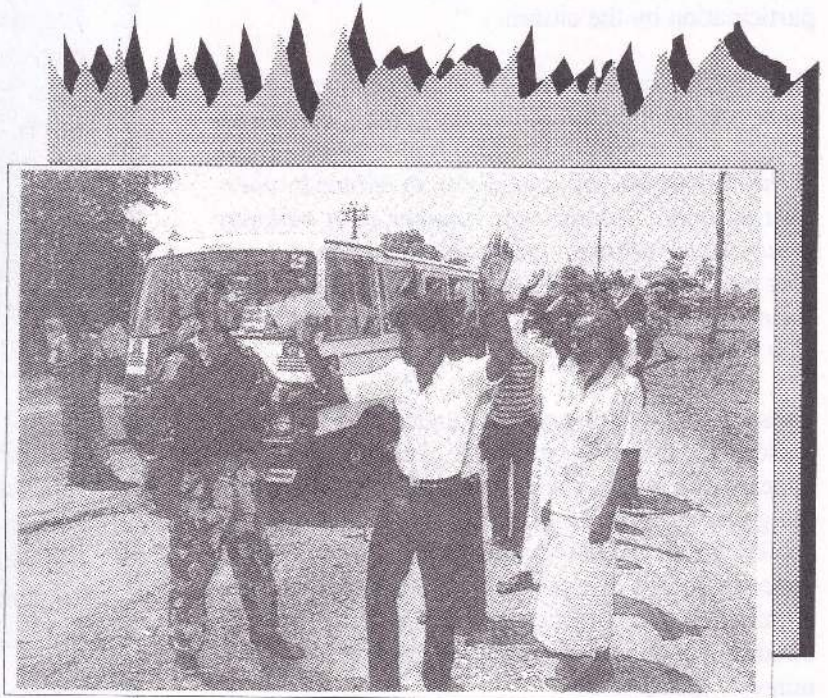
³⁵ see UN Special Rapporteur 1978, pp.124,125

Non-legal definitions of genocide

The legalistic and narrow focus of the definition of genocide as constituting an international crime under the Genocide Convention and its exclusion of the structural, systematic and psychological aspects of genocide has prompted, in particular, sociologists to examine the phenomenon of genocide from different perspectives. Their work has produced a wide array of explanations concerning the causes, preconditions and execution of various types of genocide, especially in the 20th Century. Even though none of them has any positive binding force under either national or international law, they are an invaluable complement to the legal definition for the understanding of the genocidal process. Thus, the following excursion serves not only as a background in understanding some of the deficiencies of the legal definition but mainly as a theoretical inquiry into the causes and preconditions of genocide, the understanding of which will be of importance in considering the case of the Tamils in Sri Lanka and in devising possible measures and actions to prevent genocide.

● The genocidal society: causes and functions of genocide

Genocide is a multi-faceted phenomenon that is usually the result of a massive confrontation, either rooted in history or ideology. It can take place at the international or national level. Concerning Sri Lanka, Leo Kuper's typology of a domestic genocide which arises from internal divisions within a society will be used.³⁶ He identifies several types of domestic genocide, among them: Genocide following upon decolonization of a two-tier structure of domination and genocide in the process of struggles for power by ethnic or racial or religious groups, or struggles for greater autonomy or for secession, for example the genocide in Bangladesh in 1971.³⁷



Military Rule

Based on a comparison of types of domestic genocide, Kuper identifies the following features they have in common: (1) *inequality of participation*, (2) *growing polarisation in the form of communal and territorial separation*, (3) *a history of conflict expressed in the crystallisation of historic memories and in hostile and dehumanising perceptions of the other group*, (4) *the effect of which is total identities based on race, nationality, ethnicity or religion*³⁸ and, i) *In many cases there are differences of religion between the aggressors and victims*, ii) *The catalyst is often a situation of change and of threat*, iii) *The crime is committed mostly by governments, though not exclusively by them*, iv) *It is a phenomenon of plural societies, i.e. societies characterised by deep and pervasive cleavages between ethnic, racial and/or religious groups*, v) *Many of the highly destructive conflicts involve struggles for greater autonomy or for secession, and arise from the denial of the right to self-determination*.³⁹

Applying Kuper's typology to the situation in Sri Lanka, it becomes apparent that all the structural elements of a situation characteristic for domestic genocide are present. Kuper's analysis shows that genocide is not accidental under these circumstances. On the contrary, it is "*a fundamental mechanism for*

the unification of the national state." It represents a systematic effort over time to liquidate a national population, usually a minority, and functions as a fundamental political policy to assure conformity and participation by the citizenry.⁴⁰

Genocide has in this context also been defined as "the successful attempt by a dominant group, vested with formal authority and/or with preponderant access to the overall resources of power, to reduce by coercion or lethal violence the number of a minority group whose ultimate extermination is held desirable and useful and whose respective vulnerability is a major factor contributing to the decision of genocide."⁴¹

These definitions uncover the underlying structural reasons for the strategic use of genocide. Genocide appears as a strategy which is used by the elites, i.e. the government and influential classes, in order to achieve political and economic stability and/or dominance by means of a populist policy employing discrimination and violence in the process of nation-building which is necessarily at the expense of the minority group.

The preceding concepts and explanations attempt to show under what circumstances domestic genocide is likely to take place. They provide structural and functional explanations for the causes of genocide by identifying preconditions of a genocidal society. However, whether a society becomes fully genocidal is to a very large degree dependent on the country in question, in particular the willingness of the elite to employ genocide as a means to achieve their ends as well as objections and resistance within that country to the use of genocide against a particular group.

● The process of genocide

The genocidal process in a domestic setting implies the more or less visible suppression and extermination of groups living within the society. It has been stressed by psychologists that people are generally reluctant to engage in gross discrimination and mass killings.⁴² For this reason, dehumanisation has been identified as essential to provide some justification for dealing with other human beings as one would treat dangerous animals: exterminate them. The term denotes the denial of human status and individuality and involves processes by which the usual moral institutions against violence become weakened.⁴³ These processes are inextricably bound up with the monopoly of state power which is claimed

"Genocide - the deliberate wiping out of one race or ethnic group by another - is the extreme form of abuse of human rights. Until recently the term has tended to be associated with a single historic event, the so called 'holocaust' - the attempted extermination by Nazi Germany of the Jews throughout Europe. But more immediate events in Bosnia and in Rwanda and Burundi suggest that the urge within a group to 'cleanse itself' of others (whether differing in colour, creed, or ethnicity) is much more general. Indeed, it may be that a latent impulse towards genocide is as old as the human race itself."

Donald Acheson: Preventing genocide- Episodes must be exposed, documented, and punished. British Medical Journal, 7 December 1997.

as a matter of sovereignty. Thus, the engineering of death is held to be made possible by a set of value-laden assumptions that the state, whether to purify its racial base or amplify its economic base, has the right to decide how many sacrifices are required to achieve its goal.⁴⁴

The process of genocide is usually geared towards its final result: "the destruction of a nation or an ethnic group."⁴⁵ This is carried out in two phases: the destruction of the national pattern of the oppressed group, and the imposition of the national pattern of the oppressor.⁴⁶ The destruction of a nation or an ethnic group is primarily effected by means of mass killings. However, the original definition of the acts of genocide given by Raphael Lemkin is much broader than the one in the Genocide Convention:

“Genocide is effected through a synchronised attack on different aspects of life of the captive peoples: in the political field (through destroying institutions of self-government, imposing the oppressors’ pattern of administration, and through colonisation), in the social field (through disrupting the social cohesion of the nation involved); in the cultural field (by prohibiting or destroying cultural institutions and cultural activities); in the economic field (by shifting the wealth to the oppressor); in the biological field (by a policy of depopulation); in the field of physical existence (by mass killings); in the religious field (by interfering with the activities of the church).”⁴⁷

Although Lemkin was referring to the genocide committed against the Jews by the Germans, it is apparent that his enumeration of aspects is applicable to any case of genocide. Indeed, it is a broad understanding of the term that acknowledges the concerted nature of genocide as a process instead of consigning interrelated parts of the life of a people to a variety of human rights compartments and thereby taking them out of context. It is also a definition that has been the forerunner for a number of other definitions or descriptions of genocide that regard it as an integrated process that has to be viewed against its ultimate impact: the destruction of a people.

● The understanding of genocide as adopted in this study

Genocide can be viewed in purely legal terms as an international crime as stipulated in the Genocide Convention or in the broadest terms as a result of specific structures and systematic policies which characterise a genocidal society. This study is pri-

marily concerned with the legal interpretation of genocide since only the definition of genocide in the Convention is legally binding on states and represents the current understanding of the constitutive features of genocide as a crime. It is therefore also the main basis for any possible action by the international community to prevent and/or punish genocide. The definition of genocide in the Genocide Convention is however silent on the causes and processes leading to genocide. Thus, it appears to be ill-designed to prevent genocide if action can only be taken when any of the described acts have already been committed since they are often the last and ultimate step in the process of the destruction of a nation or an ethnic group. The prevention of genocide requires a broader understanding of its setting, functions, and mechanisms of implementation.

Thus, the treatment of Tamils in Sri Lanka will be examined against the background of the genocidal process. Keeping Lemkin’s account and Kuper’s typology of genocide in mind, the process of destroying the Tamils as a nation and ethnic group will be analysed on the basis of the denial of the right to self-determination and the denial of fundamental human rights of the Tamils, which will serve as indicators as to how far the destruction of the Tamils as a people has proceeded. The denial of these rights will be viewed against its impact on the life of the Tamil community. This will provide for an assessment of the current situation in the light of history which is hoped to be helpful in devising preventative mechanisms. However, acts that can possibly be called genocidal will be examined with a view to establishing the commission of the crime and to determine the identity of the culprits in order to do justice to the other main focus of the Genocide Convention: punishment. □

³⁶ see L.Kuper: International Action against Genocide, p.5

³⁷ see *ibid.*, see also H.Fein’s model of a retributive genocide which is a response to challenges to the structure of domination when two peoples are locked into an ethnically stratified order in a plural society in: Scenarios of Genocide: Models of Genocide and Critical Responses in: I.W.Charny: Toward the Understanding and Prevention of Genocide, p.11

³⁸ L. Kuper: Prevention of Genocide, p.200

³⁹ L.Kuper: International Action against Genocide, p.7

⁴⁰ I.L.Horowitz: Genocide; State Power and Mass Murder, pp.79 and 18, see also V.N.Dadrian: Genocide as a Problem of National and International Law: The World War I Armenian Case and Its Contemporary Ramifications in: Yale Journal of International Law, Vol.14, Nr.2, Summer 1989, pp.325,326

⁴¹ V.N.Dadrian: A Typology of Genocide in: International Review of Modern Sociology 5, Fall 1975, pp.201-212

⁴² see I.W.Charny: How can we commit the unthinkable?, p.109

⁴³ see *ibid.*, pp.108,109 and 190,206,207 and F.Chalk & K.Jonassohn: History and Sociology of Genocide, p.28

⁴⁴ see I.L.Horowitz: Taking Lives, p.6

⁴⁵ see Lemkin’s definition, *supra* Fn.34

⁴⁶ see P.Thornberry: International Law and the Right of Minorities, Clarendon Press, Oxford, 1991, p.62

⁴⁷ see *supra* Fn.34

**Shops burnt to ashes
in front of the Police station
at Chunnakam in Jaffna District
in 1983.**



Destruction of shops and business establishments

The Genocidal Process

The right of the Tamil people to self-determination

The right to self-determination is stipulated in Article 1,1 of both the International Covenant on Social, Economic and Cultural Rights and the International Covenant on Civil and Political Rights: "*All peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.*"

There is no authoritative legal definition of what constitutes "people". A UNESCO meeting of Experts on Further Study of the Rights of Peoples considered a group of individuals to be people having the right to self-determination if they enjoy a common historical tradition, racial or ethnic identity, cultural homogeneity, linguistic unity, religious affinity, territorial connection, common life and must be of a considerable number who share the consciousness of being a 'people'.⁴⁸

The Tamil people fulfil all these criteria, at least as far as the Sri Lankan Tamils are concerned. However, it has rightly been suggested that the self-definition of a group should be the decisive factor in determining its existence and the according of its right to self-determination.⁴⁹ The self-perception of the Tamils has during the history of Sri Lanka evolved from one of asserting the distinct nationality of the Tamils in the state of Ceylon to a full-fledged claim to self-determination in 1976.⁵⁰ It was asserted at the first national convention of the Tamil United Liberation Front on 14 May 1976 by means of a resolution which called for a free State of Tamil Eelam on the basis of self-determination. The right of the Tamils was claimed by virtue of their language, their reli-

gions, their separate culture and heritage, their history of independent existence as a separate state over a distinct territory for several centuries and above all by their will to exist as a separate entity ruling themselves in their own territory.⁵¹

The question which is currently at the centre of controversy in Sri Lanka, namely whether the right to self-determination entitles peoples to secession, has been the subject of debate and of objection by states which have asserted a superior principle of territorial integrity. Secession or external self-determination in an independent state has commonly been contrasted with internal self-determination which means that full guarantees must be provided for a democratic process in which every citizen can participate under conditions of full equality.⁵² Internal and external self-determination are closely interrelated and there is a strong case for external self-determination if internal self-determination is being denied. In the context of a genocidal society, a call for external self-determination will in general be the stronger, the worse the denial of the right to internal self-determination is. The latter thus provides an indicator as to whether a people are treated equally within a society as a people or whether they are discriminated against by virtue of being a people, possibly up to the stage of genocide.

The main factors to be considered to assess the granting or denial of internal self-determination are political rights that acknowledge the distinct nature of the peoples, i.e. usually some form of federal structure and regional self-government, as well as an equal participation in the economic, social and cultural development of the state in question on a democratic basis. Equality of treatment in granting fundamental rights has to be viewed as intrinsic in a democratic concept of internal self-determination. The treatment of the Tamils throughout Sri Lanka's history will be examined with a view to determine whether there has been a gross denial of the right to self-determination leading to a genocidal society. □

⁴⁸ see H.J.Whall: Right to Self-Determination,p.73

⁴⁹ see *ibid.*p.72

⁵⁰ see *ibid.*pp.153

⁵¹ The Tamil United Liberation Front National Convention, Pannakam (Vaddukoddai Constituency), 14 May 1976, see *supra* Fn. 9

⁵² see H.Hannum: Rethinking Self-Determination in: *Virginia Journal of International Law*, Vol.34, 1994. pp.41-57 and N Jayawickrama: Right of Self-Determination, pp 3-5

Political self-determination

Since Sri Lanka gained independence in 1948, none of the Tamil demands for political self-government has been successfully implemented by successive governments. Sri Lanka has until today been governed as a unitary state, initially on the basis of regional representation stemming from the time of British colonial rule.

The Soulbury Commission, which was to decide upon the political make up of an independent Ceylon, rejected a demand by G G Ponnambalam of the All Ceylon Tamil Congress in 1945 for a fifty-fifty representation of Tamils and Sinhalese in parliament. This was sought for as a check against discriminatory legislation but was opposed by the Commission as being contrary to democratic principles.⁵³ At the time of independence, the Tamils were thus faced with a unitary state based on regional, i.e. a 5:1 ratio in favour of the Sinhalese, representation.

In 1972, the first Sri Lankan constitution was passed without the participation of Tamil representatives. The constitution enshrined the unitary nature of Sri Lanka and the dominant position of Buddhism and did away with Section 29 (2) of the pre-independence Soulbury Constitution, which prohibited the discrimination of any community.⁵⁴ The unitary nature of the state and the dominant position of Buddhism

"The Sinhalese population of Sri Lanka has historically considered the Tamils as invaders, infringing on Sinhalese territory. Sinhalese myths and legends often refer to the triumph of Sinhalese kings over Tamil rulers ... The identification of the Buddhist religion with Sinhalese nationalism is an important element in understanding the roots of ethnic conflict in Sri Lanka..."

Prof. Virginia A Leary. *Ethnic Conflict and Violence in Sri Lanka. Report of a Mission to Sri Lanka in July-August 1981 on behalf of the International Commission of Jurists, August 1983*

were maintained in the 1978 constitution, which introduced a presidential system and is still in force today. The latter enshrined the unitary nature of Sri Lanka in the form of an entrenched provision that can only be altered by a 2/3 majority in parliament and an additional approving by the people at a national referendum. It provides for equality of treatment of individuals, which is subject to derogations, instead of some form of Tamil self-government. The unitary nature of the state means that Tamil affairs have been subject to the decisions of the Sinhalese majority, since the Tamils lack any regional self-determination, be it in the form of a federal structure or autonomy.

"When in 1982, I expressed alarm to the Sri Lanka ambassador in Geneva at the threatening nature of the ethnic conflict between the majority Buddhist Sinhalese and the minority Tamils, largely Hindu, the situation seemed to be one of long term risk."

Prof. Leo Kuper. *The Prevention of Genocide*. Yale University, Press, 1985

Since 1948, several attempts by Tamil representatives to attain political self-determination through a devolution of power have failed, most notably the Bandaranaike-Chelvanayakam Pact in 1957⁵⁵, the Dudley Senanayake-Chelvanayakam Pact in 1965⁵⁶, the formation of the District Development Councils in 1981⁵⁷ and the establishment of regional councils pursuant to the thirteenth amendment of the constitution in 1987.⁵⁸ This failure was due to the abrogation of the two pacts following violent protests of radical Sinhalese politicians and extremists, and the lacking political commitment of successive Sinhalese governments to substantially devolve power by providing not only the legal but also the financial and administrative means to do so.⁵⁹

Moreover, one group of Tamils, the Hill Country Tamils, had until 1988 been deprived of their right to citizenship and their right to vote, thus rendering them completely powerless.⁶⁰ This had been the result of three Acts passed immediately after independence, the Ceylon Citizenship Act No. 18 of 1948, the Ceylon (Parliamentary Elections) Amendment Act of 1949 and the Indian and Pakistani Residents (Citizenship) Act No.3 of 1949, which stripped the Hill Country Tamils, who then numbered about a million and supported the left-oriented Ceylon Indian Congress, of their citizenship and vote.⁶¹ After two Indo-Sri Lankan repatriation agreements and despite two legislations - Grant of Citizenship to the Stateless Persons Act of 1986 and Grant of Citizenship to the Stateless Persons (Special Provisions) Act of 1988 - there still remain today 85,000 Hill Country Tamils who are stateless.⁶² Hill Country Tamils granted citizenship by registration continue to suffer disabilities by provisions of the Citizenship Act 1948 which have become entrenched by provisions in the 1978 Constitution.

The war in the Northeast, which began in 1983, has changed the dynamics of political self-determination. The LTTE (Liberation Tigers of Tamil Eelam) has come to be the major political representative of the Tamils by virtue of its military potential. The growing militancy was at least partly fuelled by the anti-Tamil riots in 1983 and the subsequent Sixth Amendment to the Constitution in the same year, which required MPs to swear an oath renouncing support for a separate state and made any separatist activities a criminal offence. The members of the TULF, the then major opposition party, refused to take the oath and lost their seats accordingly.⁶³

Between 1983 and 1993, several peace talks, partly with Indian mediation, were held. The extent of self-determination granted to the Tamils by the Sri Lankan government played a major part in these talks, most notably resulting in the 13th Amendment of the Constitution as an implementation of the 1987 Indo-Sri Lanka accord which was entered into without Tamil representation. The 13th Amendment provided for new, elected provincial councils with devolved legislative powers from the centre. The Northern and Eastern Provinces, which had been described as the 'historical habitation of Sri Lankan Tamil-speaking peoples' in the Indo-Sri Lanka accord, would be merged into one provincial unit pending the outcome of a referendum in the east.

"The Tamil population of the Northern and Eastern parts of the island of Sri Lanka clearly meet the definition of 'peoples' set out under international standards. And, most importantly, the relationship to their territory was specially recognised by the government of Sri Lanka in the Bandaranaike-Chelvanayakam Pact of 1957. The Tamils have their own language, a religious and cultural basis distinct from the Sinhala majority, and increasingly, are united by a passionate yearning for autonomy if not independence from Sinhala domination. The intensity and urgency of their demand for their full self-determination has only increased under the Sri Lankan government's action that threatened their very physical survival."

Statement of International Education Development at the 48th Sessions of the UN Commission on Human Rights, Geneva, February 1992

In the same year, the constitutionality of the 13th Amendment was challenged before the Supreme Court. It was argued that the amendment modified the unitary nature of the state and would thus have required acceptance at a referendum in addition to a two-thirds majority in parliament in order to be valid. The Court upheld the constitutionality of the amendment, i.e. not requiring a referendum because it did not modify the unitary nature of the state, by a narrow majority, finding that the devolution of legislative power was subordinate rather than coordinate with the law-making competence of the sovereign legislature at the centre. *"Indeed, as a critical assessment of the judgements in the Thirteenth Amendment cases cannot but indicate, the unitary struc-*


ture can no longer accommodate the existing devolutionary arrangements without palpable artificiality of reasoning and the use of implausible semantics".⁶⁴

In 1988, the Eelam People's Revolutionary Liberation Front (EPRLF) gained control of the Northeastern Provincial Council as a result of an election victory. However, the Council was not given comprehensive powers and financial means by the central government, and was dissolved after the Indian troops left Sri Lanka in 1990 and has since then ceased to operate.⁶⁵

In 1994, when the People's Alliance came into power and Chandrika Bandaranaike Kumaratunga was elected president on a platform for peace, new peace talks were entered into and a cease-fire agreed upon. The LTTE broke the cease-fire in 1995, accusing the government of lacking co-operation in fulfilling their demands. The government responded by launching a "peace through war" campaign, resulting in intensified warfare. Amid the continuing war, the government presented devolution proposals. The implementation of the proposals is subject to a two-thirds majority approval in parliament and a national referendum, which has not yet been held. According to the Constitutional Affairs minister, G L Peiris, a non-binding referendum for the areas of devolution of power to the regions, abolition of the executive presidency, transfer of current executive power to parliament, establishment of a second parliament chamber to allow more representation to minority communities and increase of powers of the Supreme Court will be held if the main opposition United National Party (UNP) continues to oppose the devolution proposals in parliament.⁶⁶ The government has a wafer-thin majority in Parliament and the support of the UNP is essential for a two-thirds majority. In addition to UNP's opposition, the devolution propos-

als have been drafted without the participation of Tamil representatives and are rejected by several Tamil groups as not being far-reaching enough to satisfy the aspirations of the Tamil people.⁶⁷

The history of Sri Lanka and its general state policy have been marked by the promotion of national unity at the expense of the Tamils.⁶⁸ A real, lasting form of political self-determination within, politically and constitutionally recognised by the state of Sri Lanka has yet to be achieved. □



"Maximum resistance is to be expected from governments when the demand takes the form of secessionist self-determination. I recall a discussion at Geneva with the ambassador for Sri Lanka who commented, with I think a note of horror in his voice, that the Tamil opposition party was seeking to secede. 'No government', he added 'would agree to that'. And I suppose this is generally true, but it is no reason for excluding the possibility of secession. However, criteria for legitimacy need to be established."

Prof. Leo Kuper: *The Prevention of Genocide*, Yale University Press, 1985.

⁶³ see S.S.Misra: *Ethnic Conflict*, p.42

⁶⁴ see K.M.De Silva: *Managing Ethnic Tensions*, p.252

⁶⁵ see K.Jayawardena: *Ethnic and Class Conflicts*, p.98

⁶⁶ see K.M. De Silva: *Managing Ethnic Tensions*, p.191

⁶⁷ see E.Nissan: *A Bitter Harvest*, p.15

⁶⁸ see H.J.Whall: *Right to Self-Determination*, pp.211-230

⁶⁹ see P.Hyndman: *Human Rights in Sri Lanka*, p.343 and E.Nissan: *A Bitter Harvest*, pp.13,17

⁶⁰ see *ibid.*, pp.31,32

⁶¹ see S.Ponnambalam: *Tamil Liberation Struggle*, pp.75-79

⁶² see U.S. State Department: *Country Report 1996*, Section 5

⁶³ see P.Hyndman: *Human Rights in Sri Lanka*, p.345

⁶⁴ G.L.Peiris: *Continuing Ethnic Conflict in Sri Lanka: Current Constitutional Dimensions in: Public Law, 1988*, p.523

⁶⁵ see E.Nissan: *A Bitter Harvest*, p.17 and TIC: *Sri Lanka: Devolution Proposals*, p.2

⁶⁶ see *Sri Lanka Monitor*, No.108, January 1997, p.1

⁶⁷ see TIC: *Sri Lanka: Devolution Proposals*, p.1

⁶⁸ B.Cashman, J.Laffon, P.Nanda: *Human Rights Crisis*, p.373

Colonisation

Colonisation denotes government sponsored settlement of families as peasant colonies in areas demarcated for agricultural development.⁶⁹

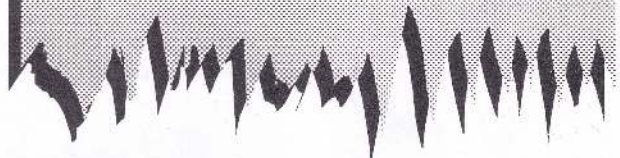
It began in 1935 but took on a political dimension after independence, when successive Sinhalese governments used colonisation to bring about a shift in the demographic composition of the north and east by inducing Sinhalese peasants and fishermen to settle in these areas.⁷⁰ Moreover, colonisation was accompanied by massive projects, aimed at reconstructing ancient irrigation works and exploiting natural resources.⁷¹

Successive governments always maintained that Sri Lanka was one country where everybody was allowed to settle anywhere. Moreover, the region in question, the jungle-cleared dry lands in the north and east, was previously sparsely populated and purportedly colonised to favour the landless peasants and underprivileged.⁷² The Tamils objected to the government-planned and executed colonisation of what they regard to be their traditional homeland. The influx of Sinhalese settlers slowly eroded the Tamil majority in the East, thereby undermining the Tamils' communal homogeneity and territorial base for self-determination.⁷³ The Sri Lankan government in 1963 carved out an electorate for the Sinhalese, Ampara, by splitting the Batticaloa district into two electorates, after the area had been specially targeted for colonisation.⁷⁴ Furthermore, the benefits of colonisation projects did primarily accrue to the Sinhalese majority.⁷⁵

Since the 1950s, several agreements between the government and Tamil leaders, providing for a colo-

"The Tamil concern about colonisation is related to insecurity about their physical safety and to fears that Tamils will become a minority in their traditional homelands...The Tamils answer that they are not opposed to individual migration but only to large-scale government colonisation schemes which change the ethnic composition of an area."

Prof. Virginia A. Leary, *Ethnic Conflict and Violence in Sri Lanka, Report of a Mission to Sri Lanka in July-August 1981 on behalf of the International Commission of Jurists, August 1983*

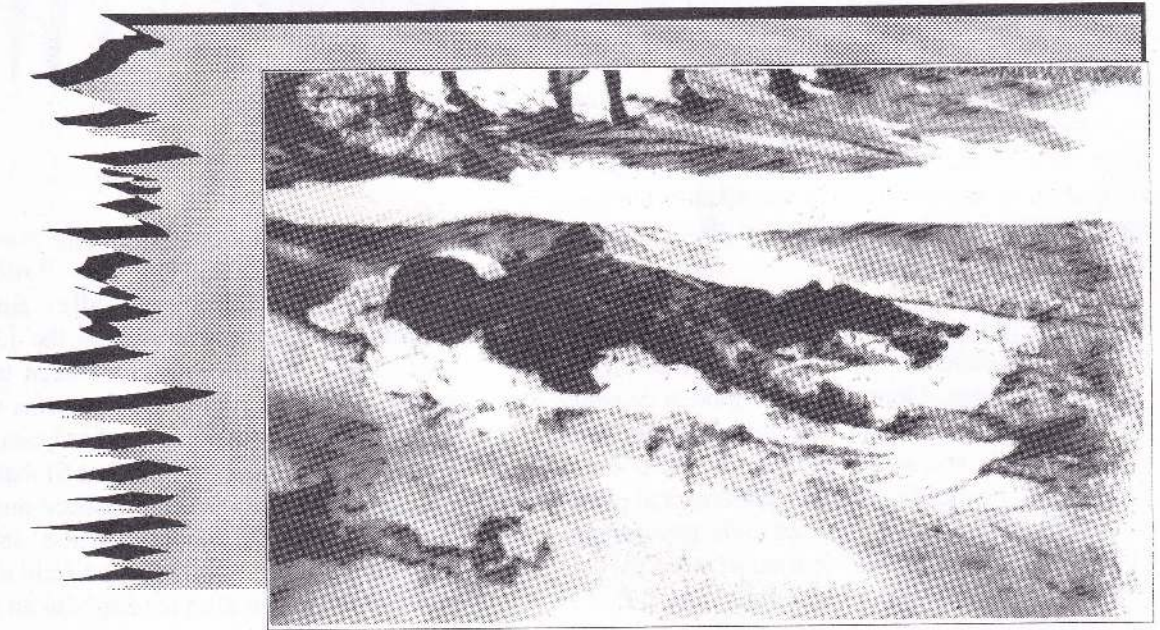


nisation policy addressing legitimate concerns of the Tamils, most notably the Bandaranaike-Chelvanayakam and the Dudley Senanayake-Chelvanayakam pacts as well as the 13th Amendment to the Constitution, have failed to be implemented.⁷⁶ Instead, radical land reforms were implemented in 1972, which nationalised estates and distributed excess land to the landless Sinhalese.⁷⁷ Since then, colonisation policies have been pursued to the detriment of the Tamil population, in particular landless peasants, which fuelled militant reactions by Tamils, not least after the Sri Lankan government started to bring in ex-convicts and armed settlers, the so-called home guards, in 1984.⁷⁸

Colonisation has gone hand in hand with violence directed against the Tamils, particularly in the course of the riots in 1956, 1958, 1977, 1981 and 1983, during which colonised areas had been the worst affected. Before 1983, this was due to the confrontational policy of massive projects and settlements that not only ignored Tamil concerns but was also aimed at thwarting any claim of the Tamils for a homeland made up of the North and the East. The latter has for this purpose been the prime target of colonisation

schemes which were often carried out by means of forceful evictions of the Tamil inhabitants of the area in question. After 1983, the additional policy of using Sinhalese settlers as communal armed forces and of using new Sinhalese settlements as buffer zones for the army against LTTE attacks has exacerbated the already existing tensions and has resulted in a cycle of violence.⁷⁹

Colonisation and continuing Militarisation since 1983, i.e. setting up of army camps, military bases, security zones and the occupation of Tamil areas, have had a devastating impact not only on the security of Tamils living in their traditional areas but above all on the conditions under which the very existence of the Tamils as a people is possible in a future Sri Lanka. □



Killed and burned

⁶⁹ T.Valluvan: Ethnic Conflict, p.9

⁷⁰ see H.P.Chattopadhyaya: Ethnic Unrest p.26 and S.D. Muni: Pangs of Proximity, p.42

⁷¹ see P.Hyndman: A study in microcosm.p.283

⁷² see W.Warnapala: Ethnic Strife, p.80

⁷³ see H.J.Whall: Right to Self-Determination, p.208

⁷⁴ see M.Vije: Colonisation, pp.15,16

⁷⁵ see D. Hellmann-Rajanayam: The Concept of a "Tamil Homeland" in Sri Lanka-its meaning and development in: South Asia, Vol.XIII, No.2, 1990, p.106

⁷⁶ see P.Hyndman: A study in microcosm, p.284

⁷⁷ see H.P. Chattopadhyaya: Ethnic Unrest, p.26

⁷⁸ see W.Warnapala: Ethnic Strife p.184

⁷⁹ see M.Vije: Colonisation, pp.8-18

Economic, social and cultural development

● Language

The discrimination against the Tamil language has been the most controversial and possibly the most momentous form of unequal treatment of Tamils in Sri Lanka. In 1956, the Official Language Act, which made Sinhala the sole official language, was passed, sparking off the first riots against peaceful Tamil protesters.⁸⁰ It was the outcome of the *Swabasha* (mother tongue) movement, which had emerged in the 1920s on a populist basis against the English-speaking elite. Initially being propagated by Sinhalese and Tamils on an equal basis, the *Swabasha* movement turned into a Sinhala-only policy as advocated by radical Buddhists and the emerging petty bourgeoisie.⁸¹

Consequently, Sinhala was made the language of administration and public employment even though the majority of Tamils could not speak Sinhala. This resulted in severe disadvantages in education, public employment and communication with government agencies in addition to the symbolic significance of Sinhala-only.⁸² The discriminatory use of English as the language of the colonialists and the elites at the expense of the majority of the population had thus been replaced by Sinhala at the expense of the Tamils.

Subsequently, several agreements between Sinhalese and Tamil politicians, viz. the Bandaranaike-

"We are completing by this (Sinhala Only) Bill an important phase in our national struggle. The restoration of the Sinhala language to the position it occupied before the occupation of this country by foreign powers, marks an important stage in the history of the development of this island."

Phillip Gunawardene, Sri Lankan Cabinet Minister,
Hansard, 14 June 1956

"The Sinhala only Bill...There is the danger of the division of the country...if those people...feel that a grave and irreparable injustice is done to them, there is a possibility of their deciding even to break away from the rest of the country."

Leslie Goonewardena, Sinhala Opposition Member
of Parliament, Hansard, 8 June 1956

Chelvanayakam Pact in 1957 and the Senanayake-Chelvanayakam Pact in 1965 providing for the reasonable use of Tamil as the language of administration in the north and east as well as of education and public-service entrance exams, were abrogated and laws of the same nature failed to be implemented in the face of violent protests from radical Sinhalese factions.⁸³ The language policy violated Section 29 (2) of the Soulbury Constitution, which prohibited the discrimination of any community in Sri Lanka, as the District Court of Colombo and indirectly the Privy Council held in the Kodiswaran case in 1969.⁸⁴ Nevertheless, the 1972 constitution, instead of addressing Tamil concerns, enshrined the 1956 Sinhala-only law and did away with the protection granted under section 29 (2) of the former Soulbury Constitution.

In the 1978 constitution, Tamil was declared to be a national language and provisions were made for its use in the administration and courts of the northern and eastern regions. In 1987, under the Thirteenth Amendment to the Constitution, Tamil was made "also" an official language. However, there have been

frequent complaints by Tamils that the government has failed to implement these provisions, e.g. government agencies still reply in many cases in Sinhala to letters written in Tamil by Tamil people.⁸⁵ The Language Commission appointed by the government to implement the language policy, particularly the use of Tamil, has proved to be ineffective.

The concessions in the language question have only been granted after frequent discrimination on the grounds of language had resulted in violent Tamil resistance. The language question, being one of the main causes and features of the ethnic conflict since independence, has ceased to be of primary importance after 1979 due to the political struggle for self-determination, and subsequent symbolic changes by the Sri Lankan government have thus amounted to too little, too late.

● Religion

The constitutions of 1972 and 1978 provided that *"the Republic of Sri Lanka shall give to Buddhism the foremost place and accordingly it shall be the duty of the state to protect and foster Buddhism (1972): the Buddha Sasana (1978)"*. The latter provision has been reiterated in the 1995/1996 devolution proposals of the People's Alliance government which have gone a step further in making it incumbent on the State to consult a Buddhist Supreme Council all matters pertaining to the protection and fostering of Buddhism. These provisions accord Bud-



dhism a dominant place in Sri Lanka although freedom of religion and equality of treatment is also provided for in the 1978 constitution.

However, in the context of Sri Lankan politics, the equation of the national interest with the protection of Buddhism has fostered a militant anti-Tamil Buddhism which has sought domination in the political and cultural sphere of society. It has thus played an important ideological role in legitimising a policy of discrimination against minorities on religious grounds.⁸⁶

Consequently, some Hindu and Christian places of worship, predominantly in the North and East, have been forcibly changed into Buddhist shrines, particularly as a means of claiming a settlement for the Sinhalese in the context of colonisation, and acquired by successive governments by way of expropriation.⁸⁷ The destruction and desecration of temples has been a frequent feature in anti-Tamil riots, resulting in the destruction of 16 and 39 places of worship in the riots of 1977 and 1983 respectively.⁸⁸

Since the beginning of the war, numerous places of worship have been destroyed, damaged and looted; destroyed by being either burned, bombed or shelled.⁸⁹ The total number of places of worship damaged or destroyed from 1983 to 1993 is 1,479.⁹⁰ One of the most recent atrocities in this regard was the bombing of a church compound at Navlay on 9 July 1995, which killed at least 65 civilians.⁹¹ Moreover, particularly after 1983, a number of religious leaders,

"The temples are at the very centre of village or community life and forms an integral part of the social infrastructure. In the present circumstances it has special significance in that it gives displaced/affected people the moral strength and courage to restart their shattered lives."

Office of the Minister of State for Hindu Religious and Cultural Affairs: Rehabilitation of Hindu Temples in the North-East Province, 1996.

priests and devotees have been killed, often inside a temple or a church, as well as arrested and tortured, on the grounds of their religion and beliefs.⁹²

● Culture

Tamil culture has been discriminated against or attacked in a variety of ways. Bound up with colonisation and Buddhism-first policy, the official history of Sri Lanka claims the right of the Sinhalese people to live and rule in the whole country. In order to legitimise colonisation, Buddhist sites have been "discovered" in the North and East while artefacts of Hindu origin have been suppressed.⁹³ Archaeology has thus been used for political ends, thereby depriving the Tamils of their right to freely discover by means of unimpeded and unbiased research their own history on the basis of archaeological findings.

"I am distressed at the ongoing oppression of the Tamil people by the government of Sri Lanka... Every culture is vital and has its own contributions to make to the world."

Archbishop Desmond Tutu, April 1996

There have been numerous incidents directly aimed at destroying or disrupting Tamil cultural life, most notably the forceful disruption of the fourth International Conference for Dravidology and Tamil Linguistics in Jaffna in 1974. Hundreds of Sinhalese policemen attacked participants without any apparent reason throwing tear gas into the assembly, resulting in the death of nine Tamils in the ensuing chaos.⁹⁴ Another example is the deliberate burning of the Jaffna library, which contained some 95,000 volumes and rare manuscripts and was the centre-piece of the cultural heritage of Tamil life, by the police on a rampage in 1981.⁹⁵ The attack had been planned and supervised by government ministers.

In terms of contemporary cultural life, the cultural exchange between Tamil Nadu in India and the Sri Lankan Tamils has been severely restricted.⁹⁶ Moreover, since 1994, several Tamil programmes in the Sri Lanka Broadcasting Corporation, which is fully controlled by the government, have been curtailed or completely banned.⁹⁷ "As a matter of fact", explained former Chairman of the State Television Network, *Rupavahini*, M Vasantharajah, "there is no independent Tamil section in the Sri Lankan *Rupavahini* (Television) Corporation. All Tamil programmes are controlled by officers in charge of the Sinhala section. Tamil programme producers are marginalised and are being deprived of facilities. I attempted to change the situation but was unsuccessful."

The various incidents were directed against the Tamil culture as such, thereby constituting cultural genocide, and have not only seriously weakened Tamil culture but also threaten its free present and future exercise.

"With several high ranking Sinhalese security officers and two cabinet ministers, Cyril Mathew and Gamini Dissanayake present in the town (Jaffna), uniformed security men and plainclothes thugs carried out some well organised acts of destruction. They burned to the ground certain chosen targets - including the Jaffna Public Library, with its 95,000 volumes and priceless manuscripts, a Hindu temple, the office and machinery of the independent Tamil daily newspaper Eelanadu... Four people were killed outright. No mention of this appeared in the national newspapers, not even the burning of the Library, the symbol of the Tamils' cultural identity..."

Nancy Murray: *The State against the Tamils in Sri Lanka - Racism and the Authoritarian State, Race & Class*, 1984.

" The Jaffna Public Libraray constructed in the ancient Dravidian architectural style was one of the biggest in South Asia and a proud possession of the Tamil people. It was burnt down by police under the direction of Sinhalese politicians on 1 June 1981, during night curfew hours under Emergency, with 97,000 books and irreplaceable rare manuscripts."

Visvanathan, Mayor of Jaffna, 1983



Destruction of Public Library

● Education

Education has played a key role in relegating Tamils in Sri Lanka's society.

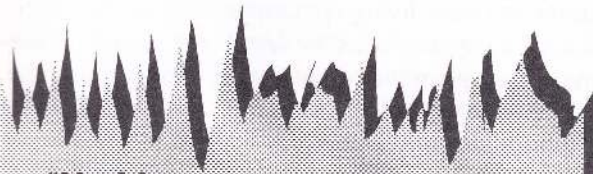
The Hill Country Tamils have been the most disadvantaged group since they were excluded from tertiary education and government scholarships on the grounds of their statelessness, and suffered from structural disadvantages, i.e. low standards and neglect in investment in the education of Hill Country Tamils. Despite recent improvements, they still have by far the worst educational record in terms of literacy rates and higher education.⁹⁸

The Sri Lankan Tamils were facing disadvantages due to the linguistic segregation, i.e. education in the mother tongue, as a result of the Sinhala-only policy, and the nationalisation of schools which led to the conversion of several previously Tamil schools into Sinhalese schools.⁹⁹

The major discrimination of Tamils in the education system has been the university admission system. Until 1970, admission was on the basis of the merit at entry examinations. As a result of lobbying by

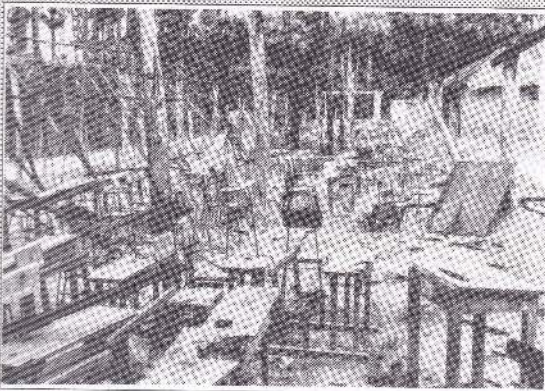
"The Government should re-examine its policies on university admissions with a view to basing admissions on merit rather than on racial grounds. Tamil and Sinhalese young people alike will then have equal rights to University education on the basis of capacity rather than on race."

Prof. Virginia A. Leary: Ethnic Conflict and Violence in Sri Lanka. Report of a Mission to Sri Lanka in July-August 1981 on behalf of the International Commission of Jurists, August 1983



"Nothing aroused deeper despair among Tamils than the feeling that they are being systematically squeezed out of higher education."

Walter Schwarz: Minority Rights Group, 1983



Destruction of schools and educational institutions

Sinhalese groups against the alleged unfair advantages enjoyed by the Tamils, which were actually due to a traditionally strong representation of the Jaffna Tamils in higher education, the government abandoned the merit system. Instead, it introduced standardisation which meant that Sinhalese students needed lower qualifying marks to gain university admission than their Tamil counterparts. Amid Tamil protests and Sinhalese demands for further changes, the government devised several schemes, among them the district quota system in 1974, which provided for the accommodation of students on a district basis. Purportedly a measure to favour the rural and underprivileged child, the scheme resulted in a dramatic fall in the percentage of Tamil students at the advantage of Sinhalese students.¹⁰⁰ Since then, standardisation has been abolished and several conciliatory gestures introduced without resulting in a reversal of the general policy, i.e. affirmative action in favour of the majority.¹⁰¹

The university admission policy between 1970 and 1974 convinced many Tamils that it was futile to expect equality of treatment within the Sinhalese majority and immensely strengthened separatist forces within the Tamil United Front.¹⁰² The outright discrimination and the consequent shutting off from employment opportunities radicalised the Tamil youth, prompting many of them to join the then rela-

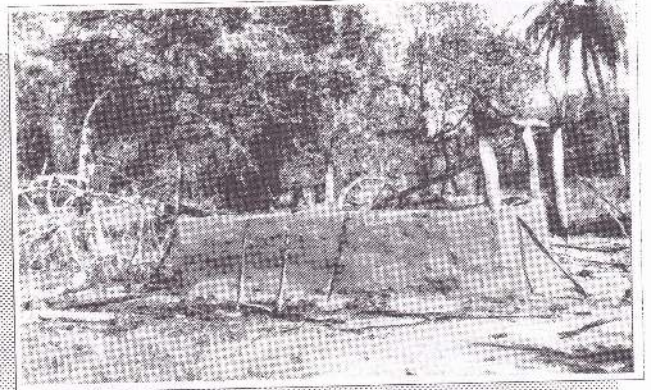
tively small group of Tamil Tigers. It thus marked a watershed in terms of equality of treatment as an essential part of internal self-determination.

Since the beginning of the war, the educational disadvantages of the Tamils have been aggravated by severely disrupted school and university services in the North and partly in the East due to the killing of teachers and students alike, the displacement of teachers and students, the destruction of school buildings and the lack of means to maintain an adequate school service.¹⁰³ The massive exodus of well educated Tamils over the years and the almost complete breakdown of the education system in the north and partly the east have seriously weakened the intellectual backbone of the Tamil people and undermined their prospects of being a viable community in Sri Lanka.

● Economic development

The economic development of the Tamils as individuals and as a community has been hampered by structural discrimination in the pre-war era and the impact of the war thereafter.

The Hill Country Tamils have been the economically



most disadvantaged group throughout Sri Lanka's history since early 19th Century. Although producing 35% of the total wealth, they appropriate less than 5% of the national income. Their lower and segregated status was rooted in colonial history and perpetuated and exacerbated by successive Sri Lankan governments which disabled them by refusing citizenship and franchise. Their statelessness, poor education and poor living conditions ensured their continuing economic backwardness and despite some improvements in the recent past, the situation of the Hill Country Tamils, in particular on the plantation estates, remains appalling.¹⁰⁴

The Sri Lankan Tamils have suffered economic discrimination in several respects. Being strongly represented in the public sector, the main provider of employment in Sri Lanka, the majority of the Tamils were from the time of independence onwards driven out of employment by means of a discriminatory recruitment policy and dismissals as a result of the failure or unwillingness of Tamil employees to comply with the Sinhala-only requirement.¹⁰⁵ By now, the Sinhalese, whose representatives claimed that these policies were at least partly justified to rectify imbalances stemming from the colonial time, have a disproportionate share of over 85% in the public sector, and several government agencies are almost entirely Sinhalese, such as the police and the army.¹⁰⁶

In the north and east, Tamils working in the agricultural sector have faced disadvantages by losing out land to incoming Sinhalese settlers under the colonisation schemes. The region has not shared the benefits of colonisation schemes and has instead, particularly in remote areas, been the subject of neglect

"...the Jaffna NGO Consortium says that Jaffna people face enormous difficulties in day-to-day life. Military operations have damaged 80% of the 176,300 houses in the peninsula. Over 17,000 houses have been completely destroyed. A number of houses and schools are occupied by the Army... People complain that a large number of trees, including coconut and palmyrah trees providing livelihood, are being cut down for military use."

British Refugee Council. Sri Lanka Monitor. July 1997

and lacking government investment in infrastructure or private sector industries, thus not attracting any foreign investment.¹⁰⁷ Internationally funded development projects have also not been used to develop underdeveloped areas in the North and East.¹⁰⁸

The 1983 riots in Colombo were deliberately targeted against Tamil economic activities and had a devastating impact on the Tamil share in the economy of the capital.¹⁰⁹ Thereafter, the ensuing war brought the targeted destruction of roads, bridges, transport equipment and means of employment, such as farms, fishing boats, factories etc. as well as of crops and animals. Entire villages have been looted and wiped out by military attacks, killing and displacing a large number of persons, the latter not being able to take up employment due to the destruction of their homes, their land and their means of living. The massive killing and exodus of particularly the younger generation has undermined the economic continuity and viability of the region.¹¹⁰

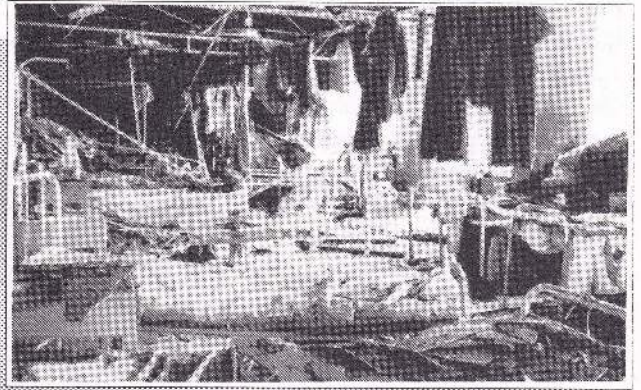
In 1991, an economic embargo was imposed by the government, banning 42 items, including medicines, fertilisers, chemicals and fuel. The latter officially applies only to the north, but the army has banned several essential items to the east as well.¹¹¹ In addition, severe restrictions on fishing and rice cultivation have been imposed on the grounds of security. Moreover, large areas are inaccessible for economic purposes due to military occupation or landmines.¹¹²

The economic blockade and the continuing warfare has resulted in the deprivation of such basic needs as food, shelter and fuel, a breakdown of the economic infrastructure and the loss of employment for large sections of the Tamil population, thereby further threatening the survival of the Tamil people in Sri Lanka.

● Health

Tamils in Sri Lanka suffer from deteriorating health conditions due to structural disadvantages and the continuing war.

The Hill Country Tamils do not share the same standard of living as other Sri Lankans. Low income, poor working conditions, unsatisfactory housing, inadequate and unhygienic sanitary conditions, lack of clean drinking water, lack of proper health care education and health services have all contributed to malnutrition and the spread of infectious diseases. After years of neglect, the health situation of the Hill



Country Tamils in the 1970s was marked by high levels of malnutrition, infant and maternal mortality rates, disease and stunting and wasting among children. The open economic policy of the UNP since 1977 and the recent privatisation of the estate management have aggravated this trend, leading to worsening malnutrition due to high food prices, thus leaving the Hill Country Tamils trapped in the cycle of poverty and neglect which lies at the heart of their continuing structural discrimination.¹¹³

The health condition of the Sri Lankan Tamils has constantly deteriorated since the beginning of the war.

"The data presented... clearly identifies the dilapidated state of the health service in the North-East Province. There has developed over the years a steady and systematic depletion of both medical and paramedical staff and a significant reduction in health care expenditure compared to the rest of Sri Lanka."

Dr C S Natchinarkman: Current Pattern of Health Care and Resource Allocation. Conference proceedings - Victims of War in Sri Lanka: A Quest for Health Consensus, 1995

It has been estimated that 35,000 Tamil civilians were killed between 1983 and 1993, while at the same time 1,224,000 Tamils have been displaced and 469,000 children have become orphans.¹¹⁴ The refugees living in refugee camps or makeshift shelter suffer from appalling health conditions which have in January and February 1997 alone resulted in the death of 150 Tamils in 16 refugee camps in the Pooneryn area of the Vanni.¹¹⁵ Tamils living in the north and east suffer from malnutrition and an increase in a number of diseases, such as malaria, leprosy, cholera, tuberculosis, mental disorders, cancer and deafness.¹¹⁶ Moreover, hospitals have been damaged as a result of bombing and shelling, lack of transport prevents emergency treatment in case of injuries, and the restricted supply of medicines and medical equipment in conjunction with a shortage in trained personnel makes adequate treatment of diseases extremely difficult, thus often resulting in the death of patients.¹¹⁷

The enormous damage done to the physical and mental health of the Tamils, particularly in the North and East, has had and continues to have a devastating impact on the Tamil community.

● Communication

Freedom of movement and freedom of expression have been considerably curtailed in the North and to a lesser degree in the East.



Destruction of homes and environs

"...the imposition of censorship under emergency, the denial to journalists of access to the conflict zones and the areas to which most displaced people had fled, the threats to the work of humanitarian organisations, and the lack of progress in implementing the government's media policy - all reinforce the continuing need for scrutiny of freedom of expression issues in Sri Lanka. They demonstrate the urgent need for the government to show a concrete commitment to the values it has proclaimed by proceeding with its promised reforms without delay."

Article 19, International Centre Against Censorship, March 1996.

Travelling to and from the North is extremely difficult. There is no train or freely accessible air services to Jaffna, and ferry services to India have been suspended indefinitely. Restrictions on fuel resulting from the economic blockade have brought public transport to a halt. Travelling itself is dangerous as several civilians have been killed by the army, especially when travelling by boat, or have been subjected to harassment and repeated controls at army checkpoints when trying to leave the North. Given the restrictions on free movement imposed by the LTTE, Tamil civilians have been trapped in the area of war. As foreigners are only allowed to travel to the North with special permits and can only do so with great determination, the North has been effectively cut off from the outside world.¹¹⁸

Freedom of expression has been another casualty of the war. Since 1985, telephone connections have been disconnected and

postal services have been disrupted or controlled by the postal authorities and the army. Currently there are only three telephones for a population 450,000 in Jaffna to make calls outside. Due to the ban on paper and the lack of electricity and the ban on batteries, newspapers had stopped printing and radios and televisions could not be used in the North for several years. Currently one or two newspapers are allowed to publish. But these are under control and publishers have no free hand.

The government controls a large part of the media and has repeatedly imposed media censorship. From September to December 1995 and from April to October 1996, the government subjected all news relating to the conduct of the war by the armed forces and the police to strict government censorship.¹¹⁹ Since foreign journalists require a special permit to enter the North and LTTE areas in the East and since the Tamil media have been largely inoperative due to government restrictions, there are virtually no independent national or international media that are in a position to adequately cover the events in the North and partly in the East.¹²⁰

The restrictions and controls imposed on transport, movement and information have resulted in an almost total isolation of the North and some areas of the East. It not only deprives the Tamils of their right to communication in the broadest sense but also serves as a precondition and possible cover-up of acts of warfare that violate the fundamental rights of the Tamil people.

● Violation of fundamental rights

The 1978 constitution contains a section on fundamental rights, including such rights as the prohibition of torture and inhuman and degrading treatment or punishment, freedom from arbitrary arrest, the right to a fair trial and a number of procedural rights, freedom of thought and religion, freedom of expression, peaceful assembly and freedom of movement, which are however subject to restrictions on broad grounds, as stipulated in Article 15. The fundamental rights are protected by the Supreme Court pursuant to Article 126 which allows a petition to the Supreme Court within one month of the date when the infringement of a fundamental right had allegedly taken place.

Sri Lanka has also ratified a number of treaties under international law which provide for the protec-

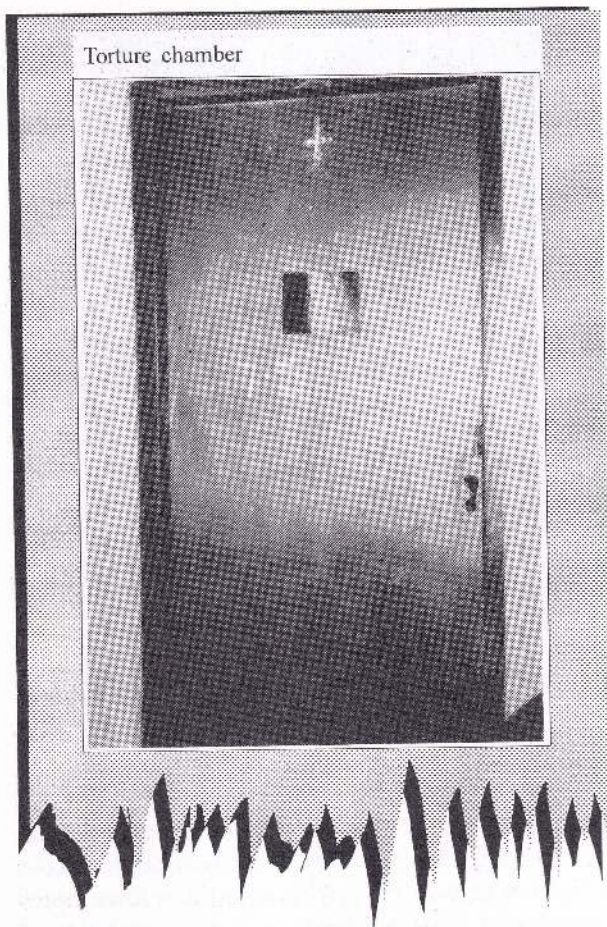
"The fact that the PTA was made permanent...indicates that the government intended to use the weapon of preventive detention permanently and not merely as a temporary measure in dealing with the minority problem."

Ethnic and communal Violence: The Independence of the Judiciary, Protection of Fundamental Rights and the Rule of Law in Sri Lanka - Fragile Freedoms? - Report of an ICJ Mission to Sri Lanka in June 1983 - Timothy J. Moore

tion of fundamental rights, in particular the International Covenant on Civil and Political Rights (ICCPR) and the Convention against Torture.

In spite of these constitutional guarantees and international obligations, a number of discriminatory laws have been passed and are largely still in force which provide the legal mechanisms for the violation of fundamental civil and political rights of the Tamil people. The laws considered below, the Prevention of Terrorism Act (PTA) and various emergency regulations (ERs), were officially proclaimed to be necessary to successfully combat terrorism. It has often been suggested that their subsequent repressive and indiscriminate use against Tamils, in particular young Tamil men, was a major cause in radicalising Tamils and turning them into "terrorists".¹²¹ Moreover, the PTA and ERs were the foundation for state terrorism¹²² and government repression against the Tamil demand for self-determination.¹²³

The most notorious of these laws is the Prevention of Terrorism Act No. 48, as amended by the Prevention of Terrorism (Amendment) Act No.10 1982, which remains in force today. The PTA was almost exclusively tailored to be used against Tamil militants. It grants the security forces broad powers to arrest and detain any person suspected of an unlawful activity. An "unlawful activity" is defined in the widest possible terms in sections 2 and 31 of the Act, and includes activities such as "the use of words and signs which cause or are intended to cause religious, racial or communal disharmony or feelings of ill-will or hostility between different communities or racial



or religious groups". This definition implies not only a total negation of the Tamils' right to self-determination and the individual's freedom of expression, but renders all kind of political activities of Tamils liable to result in arrest and preventive detention, effected by the exercise of broad discretion on the part of the security forces. Any person suspected of an unlawful activity can be detained for a period of 18 months at a time in such place and subject to such conditions as may be determined by the minister pursuant to section 9 of the Act. There is no requirement to bring the detained person before a magistrate at any time, and detention orders shall be final and shall not be called in question in any court or tribunal according to section 10. This means that detainees may be held incommunicado, without access to lawyers or relatives and without being brought before a judge.

The erosion of legal safeguards was exacerbated in 1982 when the amendment to the PTA, enacted in response to an adverse Supreme Court order, stipulated that a detainee could be kept in the custody of the army even while the trial against him was in progress.

In addition to the arrest and detention powers, the

PTA provides in section 16 that confessions made to police officers who are not below the rank of Assistant Superintendent shall be admissible in evidence and places the burden of proof regarding the inadmissibility of such confessions, in a subsequent trial, on the accused. Section 31 of the Act is retroactive, and the Act contains provisions providing for prison terms including life imprisonment for the offences stipulated in the PTA. It operates, pursuant to section 28, notwithstanding anything contained in any other written law and its provisions are to prevail in the event of any conflict or inconsistency with any other written law.¹²⁴ The PTA is an extraordinary instrument of repression that has been compared to the similar South African legislation in force at that time.¹²⁵

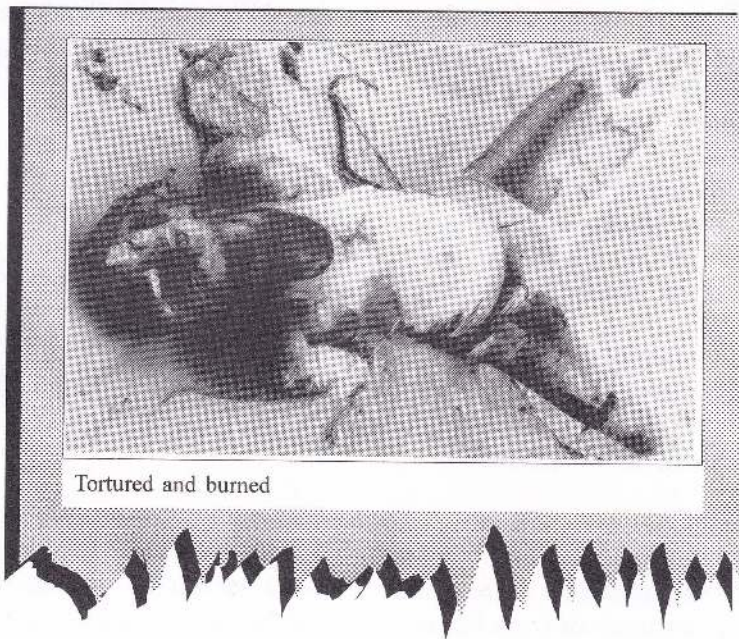
Persons targeted under the PTA are stripped of any form of legal protection as provided by the constitution, the Code of Criminal Procedure Act which contains strict legal safeguards, the Evidence Ordinance which provides that confession made in police custody is only admissible to corroborate other independent evidence, and under the rules of international law. They are subjected to the unrestrained power of the security forces to arrest and detain them incommunicado for up to 18 months as well as to torture, the use of which as a means of extorting confessions is encouraged by the provisions of the PTA.

A number of Emergency Regulations (ERs) have been made under the Public Security Ordinance. Sri Lanka has, since 1961, for most of the time been ruled under a state of emergency, in particular since 1983. The ERs passed after 1983 were directed against "terrorists" but common people suffered heavily due to violent acts of the army.¹²⁶

The ERs had mainly two thrusts, i.e. control of the territory and control over individuals. Firstly, ERs promulgated in 1984 declared certain areas in the north to be prohibited zones and others to be security zones. The ERs made permits for travel and for vehicles compulsory. Long curfews were also imposed under ERs. These ERs resulted in strict curtailment of movement and public transport, and adversely affected schooling, provision of medical care and employment opportunities.¹²⁷ The economic blockade of 1991 was also imposed according to ERs, and ERs of the nature described above were re-imposed in 1995.

Since 1979, and increasingly after 1983, ERs were adopted which gave the security forces wide powers

of supervision, search, arrest and detention, especially prolonged incommunicado detention. The most notorious ER was regulation 15 A which placed the decision as to the possession and cremation or burial disposal of bodies with a senior member of the police force and a member of the executive. This provision, being an open invitation for torture and killing free of any judicial restraint, came under severe international criticism and was repealed in 1984.¹²⁸ However, the ERs enacted in its stead also failed to provide for adequate judicial safeguards. ERs in force provide for a special procedure in cases which the security forces claim to have taken place in the course of an armed confrontation. Although the High Court in Colombo has jurisdiction to hold an inquiry, its exercise depends on a prior decision of the Inspector General of the Police who also decides about the evidence to be considered. There is thus still no independent procedure in place by which deaths in custody or at the hands of the military can be investigated, a fact which accounts for much of the impunity accorded to the security forces.¹²⁹



Tortured and burned

ERs in force, mostly regulations issued on 17 June 1993 in their revised version, give the security forces wide powers of arrest and preventive incommunicado detention for one year or longer if ordered by a magistrate who exercises discretion based on reports of the Ministry of Defence.¹³⁰ If persons are arrested on suspicion of having committed an offence under an ER, they can be held for two months in the north and east.

Since 1991, measures were introduced which were supposed to safeguard the rights of detainees under ERs. In 1993, a list of authorised places of detention maintained by several security forces was published. In June 1994, the Human Rights Task Force (HRTF) of 1991, whose task is to register detainees held under the PTA and the ERs and to monitor their welfare, was re-established. Directives issued by the President under ERs ordered the security forces to

issue arrest receipts, which was aimed at preventing disappearances. Moreover, access of detainees to their families should be afforded. According to additional ERs of 1995, detention orders by a member of the armed forces must be notified to the officer in charge of the nearest police station within 24 hours after the arrest¹³¹. The issuing of arrest receipts and the notifying of the Human Rights Task Force are however routinely ignored by the security forces.¹³² The Supreme Court pointed out in a case in December 1996 that ERs had been breached by the authorities including the Secretary of the Ministry of Defence. Although the authorities and security forces can be fined or jailed for failure to comply with the ERs, none is known to have been punished. The HRTF was scrapped in July 1997, thus increasing the possibility of disappearances.¹³³

The PTA and the various ERs have been repeatedly criticised for providing a ready context for killings and torture.¹³⁴ The Human Rights Committee, whose task is to study reports submitted by state parties under the International Covenant on Civil and Political Rights (ICCPR), and to comment on whether

the measures adopted by the state parties give effect to the rights recognised in the covenant, found that:

*“The domestic legal system of Sri Lanka contains neither all the rights set forth in the Covenant nor all the necessary safeguards to prevent their restrictions beyond the limits established by the Covenant.”*¹³⁵

The PTA and ERs violate norms and standards of international law, which Sri Lanka is obliged to adhere to as a matter of treaty and customary international law. Fundamental right petitions to the Supreme Court pursuant to Article 126 of the constitution and habeas corpus petitions to the Court of Appeal pursuant to Article 141 do not provide adequate safeguards to prevent the violation of human rights and are in many cases impossible to exercise since

potential petitioners lack access to the court because of the situation in the north and east or because it is hindered by the security forces.¹³⁶ Although the Supreme Court has awarded substantial damages in cases of torture in recent years, one of its judges complained in late 1996 that torture continued unabated.¹³⁷ Moreover, impunity for members of the security forces remains a serious problem despite some high profile cases which have however not yet resulted in consistent prosecution and punishment of the perpetrators of human rights violations.¹³⁸

It remains to be seen how effective the recently established permanent Human Rights Commission of Sri Lanka will be in fulfilling its mandate. The five-member body is empowered to monitor government human rights practices, to ensure compliance with constitutional fundamental human rights provisions, to investigate complaints of human rights abuse and to provide safeguards for persons detained under the PTA and ERs.¹³⁹ Its prospects of preventing human rights abuses appear to be limited as long as discriminatory laws are in force that violate fundamental rights granted in Sri Lanka's constitution and under international law, and as long as the security forces do not adhere to existing laws. Appointments to the Human Rights Commission have been criticised as being political in nature. None from the human rights bodies with decades of experience have been appointed as a member of the Commission.

● The process of dehumanisation

Dehumanisation, i.e. the denial of human status and individuality, may occur in a variety of ways but is usually based on an ideology that claims the superiority of one group or culture over the other and presents the other group as a threat to the justified well-being of its own group.

In the Sri Lankan context, this kind of ideology is often referred to as Sinhalese-Buddhist racism. It is said to be the racism of an elite, not of the Sinhalese people as such.¹⁴⁰ It has been suggested that the particular racism against the Tamils was a key feature in the process of "nation-building" after independence.¹⁴¹ Its function was, inter alia, to preserve the existing power of the elite by driving a wedge between Sinhalese and Tamil people in order to deflect political opposition. The political elite joined forces with various emerging sections of the Sinhalese society, in particular sections of the Buddhist clergy that were vociferous and ideologically violently anti-Tamil.¹⁴²

"if there is discrimination in this land which is not their (Tamil) land, then why try to stay here. Why not go back home (India) where there would be no discrimination. There are your kovils and Gods. There you are masters of your own fate... If the sleeping Sinhalese wake up to see the Tamils trying to establish a Tamil Eelam in Sri Lanka, then things may not be quite calm. It would be advisable for the Tamils not to disturb the sleeping Sinhala brother. Everybody knows that lions when disturbed are not peaceful."

W J M Lokubandara, M P in Sri Lanka's Parliament, July 1981.

This feature, a Sinhalese Buddhist racism, fostered by sections of the Buddhist clergy and, albeit in some cases reluctantly, supported by successive governments, has overshadowed Sri Lanka's political development. It is based on the myth that: a) the Sinhalese were the first to populate Sri Lanka and Tamils were invaders bent on destroying Sinhalese culture, b) the Sinhalese are the guardians of Buddhism which is threatened by Hindu encroachment, c) the Sinhalese are a minority in their own country because of South India which is referred to as the real homeland of the Tamil people whereas the Sinhalese have nowhere else to go to and d) the Sinhalese were seriously disadvantaged by colonial policies which unduly favoured Tamil people.¹⁴³ None of these arguments survives a critical scrutiny of its merits.¹⁴⁴ Nevertheless, they have repeatedly been brought forward in various contexts in order to justify discriminatory and repressive policies against Tamils. The main thrust of these utterances has been to present Tamil people as such as a threat to Sinhalese land, i.e. destroying the unity of the country, and culture, i.e. being Hindu and thus anti-Bud-

dhist, to deny the Tamil people's right to live in Sri Lanka by declaring India as their true homeland and to deny them equality of treatment with reference to their allegedly advantageous status.

Who are the Tamils according to this picture? Alien invaders, eager to join forces with South India to destroy the Sinhalese nation and culture, and, while living in Ceylon, being opportunistic and cooperative with the colonialists in order to obtain undeserved advantages at the expense of the Sinhalese people.¹⁴⁵ Recalling that dehumanisation is understood to be the denial of human status and individuality as well as processes by which the usual moral institutions against violence become weakened, it is apparent that Tamil people are according to this ideology not viewed as equal citizens of Sri Lanka but are portrayed as a dangerous element within it. As if it was a self-fulfilling prophecy, the Tamil Tigers have eventually come to embody this very image of the Tamils. Ironically, this was in response to policies that were implementing demands of radical Sinhalese Buddhists and politicians but only helped to confirm Sinhalese prejudices. The seeds of polarisation, of a division of Sri Lanka along ethnic lines in favour of the ma-

"Look at the Administrative Report of the General Manager of Railways... Tamils, cochins and Hambankarayas (Muslims) are employed in large numbers to the prejudice of the people of this island... sons of the soil, who contribute the largest share."

Anagarika Dharmapala, Buddhist monk, 1892

jority, have finally materialised and are crucial in understanding the underlying ideological driving force behind Sinhalese policies and their nature of being potentially genocidal. □

⁸⁰ see K. Jayawardena: Ethnic and Class Conflicts, p.98

⁸¹ see *ibid.*, pp.87-95 and K.N.O.Dharmadasa: Language, Religion and Ethnic Assertiveness, p.315

⁸² see PRIO: Towards a Multi-Ethnic Society, p.47

⁸³ see K.M de Silva: History of Sri Lanka, pp.501,514,515

⁸⁴ see S.Ponnambalam: Tamil Liberation Struggle, pp.125,126

⁸⁵ see P.Hyndman: A study in microcosm, p.283

⁸⁶ see N.Sanmugathan: Sri Lanka: The story of the holocaust, p.79 and K.N.O. Dharmadasa: Language, Religion and Ethnic Assertiveness, pp.314-316

⁸⁷ see M.Vije: Colonisation, pp.8,16

⁸⁸ see M.Vije: Oppression of Tamils, pp.61-63

⁸⁹ see T.Thavasingham: Religious and Cultural changes in Ceylon, Unpublished seminar paper, 1991, pp.9,10

⁹⁰ see Victims of War in Sri Lanka, p.xx

- ⁹¹ see Amnesty International: Wavering Commitment, p.9
- ⁹² see M.Vije: Oppression of Tamils, p.60
- ⁹³ see E.Meyer: Representations of the Past and of Space as Obstacles To Peace in Sri Lanka in:P.Schalk: Lanka 5. Uppsala, 1990 p.306, N. Sanmugathan: Sri Lanka: The story of the holocaust, p.73 and M.Vije: Colonisation, pp.7.8
- ⁹⁴ see *ibid.*,p.183
- ⁹⁵ see E.Nissan: A Bitter Harvest, p.16
- ⁹⁶ see S.Ponnambalam: Tamil Liberation Struggle, p.142
- ⁹⁷ see M Vasantharajah, Former Director General, Rupavahini Corporation
- ⁹⁸ see *ibid.*, p.25
- ⁹⁹ see K.Kanapathipillai: Education in the Eastern Region, Conference paper,Tamil Information Centre, 1991, 3-6, and H.P.Chattopadhyaya: Ethnic Unrest,p.23
- ¹⁰⁰ see S.Bastian: University Admission and the National Question in:SSA: Ethnicity and Social Change in Sri Lanka, pp.229,230
- ¹⁰¹ see K.M.de Silva: Managing Ethnic Tension, pp.306-311
- ¹⁰² C.R.de Silva: Weighltage in University Admissions: Standardisation and District Quotas in Sri Lanka 1970-1975 in: Modern Ceylon Studies, Volume 5:2, July 1974,p.166
- ¹⁰³ see U.S. Committee for Refugees: Conflict and Displacement in Sri Lanka, p.16 and Sri Lanka Monitor No.108, January 1997, p.2
- ¹⁰⁴ see P.Hyndman: A study in microcosm,p.281
- ¹⁰⁵ see T.Valluvan: Ethnic Conflict, p.12
- ¹⁰⁶ see E.Nissan: A Bitter Harvest, p.24, see W.A.Warnapala: Ethnic Strife, p.187 on the repercussions for ethnic conflict
- ¹⁰⁷ see E.Nissan: A Bitter Harvest, p.24.
- ¹⁰⁸ see *ibid.*,p.22
- ¹⁰⁹ T.Valluvan: Ethnic Conflict, p.14, L.Piyadasa: The Holocaust, pp.80-82
- ¹¹⁰ see M.Vije: Economic Blockade, pp.13,14
- ¹¹¹ E.Nissan: A Bitter Harvest, p.22
- ¹¹² see M.Vije: Economic Blockade, p.20, see also concerning Jaffna: U.S.Committee for Refugees: Conflict and Displacement in Sri Lanka, p.16
- ¹¹³ see S.Balakrishnan: Health Status among the Hill Country Tamils in: Victims of War in Sri Lanka, pp.132-134
- ¹¹⁴ see Victims of War in Sri Lanka, p.xx
- ¹¹⁵ see Sri Lanka Monitor, No.110, March 1997, p.2
- ¹¹⁶ E.Nissan: A Bitter Harvest,p.26
- ¹¹⁷ see U.S.Committee for Refugees: Conflict and Displacement in Sri Lanka, p.15
- ¹¹⁸ see M.Vije: Economic Blockade,p.11
- ¹¹⁹ Human Rights Watch: Annual Report 1997, p.184
- ¹²⁰ see Amnesty International: Wavering Commitment,p.9
- ¹²¹ see P.Sieghart: Tragedy of Errors, p.54
- ¹²² see B.Cashman, J.Laffon, Ved.P.Nanda: Human Rights Crisis, pp.356,359,366,367
- ¹²³ see L.Kuper: Prevention of Genocide, p.221
- ¹²⁴ see V.A.Lcary: Ethnic Conflict, pp.44-50
- ¹²⁵ see *ibid.*, pp.47,48
- ¹²⁶ S.S.Misra : Ethnic Conflict,p.73
- ¹²⁷ P.Hyndman: Human Rights in Sri Lanka, pp.346,347
- ¹²⁸ see *ibid.*, p.347
- ¹²⁹ Amnesty International: Wavering Commitment, p.13
- ¹³⁰ see Amnesty International: New emergency regulations, January 1994, p.6
- ¹³¹ see Amnesty International: Wavering Commitment, p.13
- ¹³² see U.S. State Department: Country Report 1996, Section 1 d
- ¹³³ *ibid.*,introduction
- ¹³⁴ see Report on the visit to Sri Lanka by three members of the Working Group on Enforced or Involuntary Disappearances, E/CN.4/1993/25/Add.1, para 139 and Amnesty International: New Emergency Legislation, pp.1,2
- ¹³⁵ Consideration of Sri Lanka's third periodic report submitted under Article 40 of the ICCPR, 27 July 1995, CCPR/C/79/Add.56, para 10
- ¹³⁶ see *ibid.*, para 17 and Amnesty International: Sri Lanka: Security measures violate human rights, July 1995, p.20
- ¹³⁷ see TIC News Bulletin, June-September 1996, p.1
- ¹³⁸ see Report of the UN Working Group on Enforced or Involuntary Disappearances, E/CN.4/ 1997/34, para. 323 and U.S. State Department: Country Report 1996, introduction
- ¹³⁹ see *ibid.*, Section 4, and Amnesty International: Sri Lanka: The Human Rigths Commission Bill, December 1995
- ¹⁴⁰ see K.Sivathamby: The Sri Lankan-Tamil Question Socio-Economic and Ideological Issues in: Bulletin of Peace Proposals, International Peace Research Institute, Oslo,Vol.18, No.4, 1987, pp.632,633 and A.J.Wilson: Break-Up of Sri Lanka, p.224
- ¹⁴¹ see PRIO: Towards a Multi-Ethnic Society, pp.39,40 and K.Jayawardena: Ethnic and Class Conflicts, pp.71-76
- ¹⁴² see U.Phadnis: Role of State in Ethnic Conflict in Sri Lanka in: P.Schalk: Lanka 5, Uppsala, 1990, p.253 and B.Cashman, J.Laffon and Ved P.Nanda: Human Rights Crisis, p.364,365
- ¹⁴³ see K.Jayawardena: Ethnic and Class Conflicts, pp.9-14
- ¹⁴⁴ see L.Piyadasa: The Holocaust, pp.73-77, A.J.Wilson: Break-Up of Sri Lanka, p.223 and S.Ponnambalam: Tamil Liberation Struggle, pp.139-142
- ¹⁴⁵ see comment by Ven.Maduluwawe Sobitha Thera, a political monk, interviewed in the Sunday Observer, 20 April 1997: " Every non-Sinhala group who now fights for its rights is an alien body and at different stages they were either invaders, traders or sly-comers." quoted in: Hot Spring, April 1997, p.2

Conclusion: genocidal process

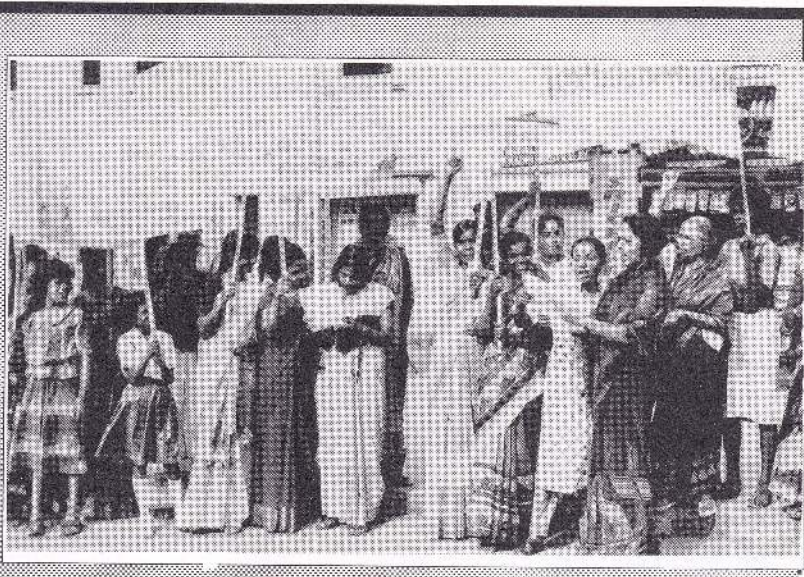
In Sri Lanka, the Sinhalese majority has, driven by the dominant section of its elites and successive governments imposed its national pattern on the Tamil minority. This has been effected through a largely synchronised policy of affirmative action for the Sinhalese majority in order to redress alleged historical imbalances, alleged undue Tamil advantages in education and employment, and to help the rural and disadvantaged Sinhalese masses. This policy has been marked by its incorporation of features of an aggressive Sinhala-only ideology that has characterised Tamils as alien invaders or dangerous elements, which threaten the life of the Sinhalese nation.

Consequently, the Tamils have been denied political self-determination; their traditional territory has been colonised by Sinhalese settlers under government colonisation schemes; their language and religion have been discriminated against and religious buildings have been destroyed as well as religious services disrupted and religious leaders and devotees killed; their cultural life has been severely disrupted by prohibitions and violent disturbances of cultural activities;

their right to equal education has been denied by means of discrimination based on neglect or policies favouring Sinhalese people; their employment and economic development has suffered from discrimination, shutting off from the nation's economy and a shift of the wealth to Sinhalese people; their health has deteriorated due to neglect, the economic blockade and continuing attacks on Tamil civilians; their social life has been disrupted through lacking freedom of expression and isolation from the outside world; and their fundamental rights have been denied by discriminatory laws.

This denial of self-determination and equality in treatment violates fundamental rights granted to the Tamils under the 1978 constitution of Sri Lanka as well as several of the obligations under international law, most notably Article 1 of both the ICCPR and the International Covenant on Economic, Social, and Cultural Rights, Article 27 of the ICCPR, and several articles providing for fundamental rights under both Covenants

Women protest



and under the Convention on the Elimination of All Forms of Racial Discrimination.

The joint denial of basic rights and human status has resulted in the oppression of the Tamils which has turned Sri Lanka into a society characterised by deep and pervasive cleavages between Sinhalese and Tamils. These developments have all the features of what has been called the genocidal process, thus serving as a precondition for acts of genocide in Sri Lanka. □

Acts of genocide

The evidence

At least 30,000 Tamil civilians have been killed and many more injured since 1956 by Sinhalese mobs and by members of the various security forces.¹⁴⁶ The killings have taken place in the form of massacres, arbitrary and extrajudicial killing as well as "disappearances." Since the beginning of the war, the nature and extent of the killings and acts causing harm, such as torture, rape and prolonged incommunicado detention, have changed dramatically, so that the pre-war period and the war period (1983-1997) will be examined separately.

1956-1983

- On 5 June 1956, over 150 people were estimated to have been killed in Colombo and in Gal Oya and Amparai, which were regions in the East under a new irrigation and resettlement scheme.¹⁴⁷ They were attacked by members of the Eksath Bhikkhu Peramuna (a Buddhist group) and supporters of Sinhala-only after 300 Tamils had staged a *satyagraha* (peaceful protest) against the introduction of the Sinhala-only Bill in Parliament. The violence spread throughout Colombo and the East without the Police interfering, explaining that they had been ordered not to do so.¹⁴⁸
- On 23rd May 1958, the second riot resulted in an estimated death toll of 1,000 Tamil people.¹⁴⁹ The acts of violence were committed by Sinhalese mobs and were particularly severe in Colombo, Batticaloa, Polonnaruwa, Badulla, Kurunegala, Panadura, Galle and Matara. They were sparked off by a radio announcement during heightened tension that a Sinhalese had been killed by Tamils, and attacks on members of the Tamil Federal Party who were planning to stage a *satyagraha* against the abandoning of the Bandaranaike-Chelvanayakam Pact.¹⁵⁰

The rioting, which took the form of stopping trains and buses and killing and injuring Tamil passengers, burning Tamil houses with people inside, raping of Tamil women and looting of Tamil property, went on for four days without

"On the night of May 25, one of the most heinous crimes in the history of Ceylon was carried out...The Tamil labourers in the Polonnaruwa sugar cane plantation fled when they saw the enemy approaching and hid in sugar cane bushes...The goondas wasted no time. They set the sugar cane alight and flushed out the Tamils. As they came out screaming, men, women and children were cut down with home-made swords, grass-cutting knives and katties, or pulped under heavy clubs.

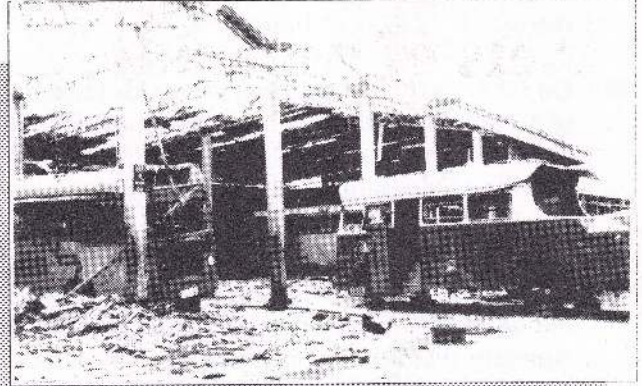
"At the Government farm at Hingurakgoda, too, the Tamils were slaughtered that night. One woman in sheer terror embraced her two children and jumped into a well. The rioters were enjoying themselves thoroughly. They ripped open the belly of a woman eight months pregnant, and left her to bleed to death.

"....A gang of goondas rushed into the Hindu temple and attempted to set fire to it. In their frenzy, they were clumsy and failed to get the fire going. But they had a more interesting idea. They pulled an officiating priest out of the kovil and burnt him to a cinder..."

Tarzie Vittachi in *Emergency '58: The Story of the Ceylon Race Riots*, London 1958

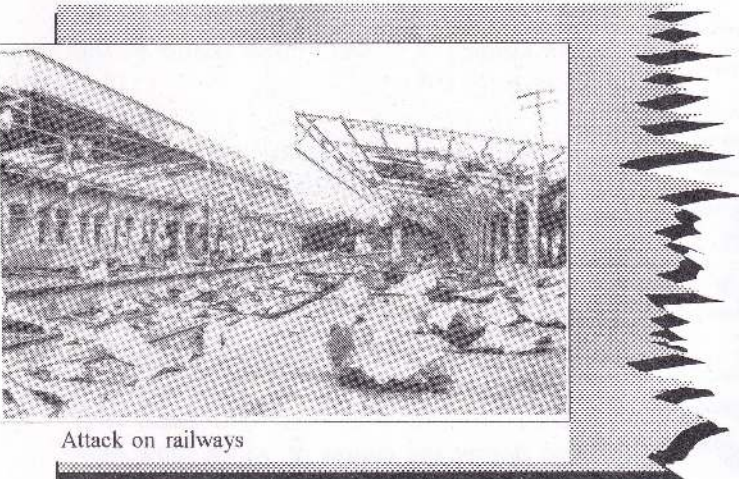
the police interfering or the then Prime Minister S.W.R.D. Bandaranaike declaring a state of emergency. On 27th May, a state of emergency was proclaimed and the army called in to restore order; a task that included arresting and detaining about 150 Tamils, including the 10 MPs of the Federal Party.¹⁵¹

- In April 1961, at least one man was killed and numerous Tamils injured when government troops dispersed a non-violent protest and fired on a crowd in Jaffna.¹⁵² These incidents occurred during a state of emergency throughout Sri Lanka, which the government of Mrs. Srimavo Bandaranaike had declared in March and April in response to a Tamil civil disobedience campaign launched by the Tamil Federal Party. This campaign was directed against the Sinhala-only policy and called upon Tamil government employees and other Tamils not to study Sinhala, not to transact any business in Sinhala and to correspond with the government only in Tamil. In February and March, thousands of Tamils staged a *satyagraha* and blocked access to the district administrative headquarters in Jaffna, Vavuniya, Trincomalee and Batticaloa. The government responded by imposing a press censorship, cutting off food supplies and communication links from Jaffna to the rest of the island and a 48-hour curfew in the Northern province on April 18. Sinhalese troops were for the first time moved to Jaffna to break up the resistance. Mrs. Bandaranaike stated in April that the Federal Party had by its actions made it abundantly clear that the real objective was to establish a separate state and that the government was in the face of continuing Tamil protest left with no other alternative but to use forces at its command to establish law and order. Consequently,



the army broke up the *satyagraha* by means of force and arrested 68 Tamils, mainly Tamil politicians, among them 15 MPs.¹⁵³

- On 10th January 1974, nine Tamils were killed at the fourth International Tamil Research Conference in Jaffna when police raided the Conference and attacked participants. (s.above). No official inquiry into the incident was conducted.¹⁵⁴
- Between 13th August 1977 and 15th September 1977, primarily during the first two weeks, hundreds of Tamils were killed in the course of riots throughout the island.¹⁵⁵ The violence occurred one month after the UNP government had taken office and amid growing demands of Tamil representatives for self-determination. (see TULF declaration in 1976). Sinhalese mobs went on the rampage, killing Tamil men, women and children, burning houses and looting property.¹⁵⁶ The Hill Country Tamils on the plantation estates were also targeted and attacked.¹⁵⁷ The Sansoni Commission which was set up on 9th November 1977 to investigate the violence, its origin and handling, found in its report that the police had in a number of cases assaulted Tamils and had been present when Sinhalese law breakers attacked Tamils without making an effort to intervene.¹⁵⁸ No action was taken against the culprits and instead, in 1982, the UNP government of Jayewardene passed the Indemnity Act No. 20: "with a view to restrict legal proceedings against Ministers, Deputy Ministers, or any person holding office in the government in any capacity, whether naval, military, police or civil, in respect of acts done during the period 1st



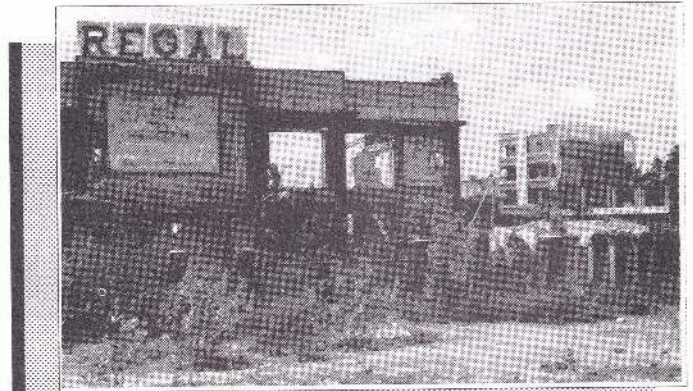
Attack on railways

August, 1977 to 31st August, 1977.”

- On 1st August 1979, the Civil Rights Movement of Sri Lanka stated that it “is gravely concerned at the allegations that several persons have died after being taken into custody by the police after the declaration of emergency in the North last month.” Allegations of the killing and torture of Tamil youth by police and armed forces during the 1979 emergency were widespread.¹⁵⁹ Amnesty International reported the systematic use of torture in the years 1980-1982 by the security forces in the north to extract information or confessions.¹⁶⁰

- From 31st May 1981 to 4th of June 1981 at least 7 Tamils were killed by the Sinhalese army and police when they went on a rampage during the violent election campaign for the District Development Councils in Jaffna.¹⁶¹ Moreover, the Tamil MP for Jaffna escaped an attempted murder when his house was burnt by the security forces. Two government ministers were in Jaffna at the period in question and one of them stated in parliament: “The atmosphere was one of terror: the police were not easily confined to the barracks, and I think many of us who were there were concerned with the situation”.¹⁶² However, although declaring a state of emergency and appointing a Commission of Inquiry to investigate the events, the government took no action to bring the perpetrators to justice.

- On 10th August 1981, violence started in the eastern province, in and around areas recently colonised by Sinhalese, and spread to other areas, in particular Negombo, Ratnapura and the plantation towns in central Sri Lanka, resulting in the killing of at least 25 Tamils.¹⁶³ The at-

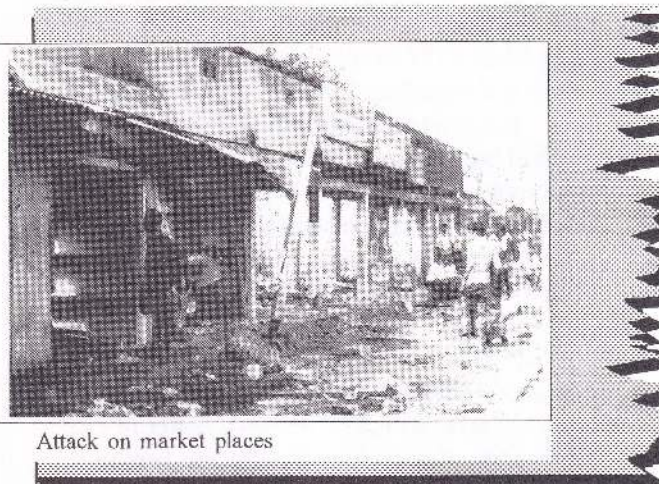


tacks, consisting in assaulting, burning, raping and looting, were carried out by organised gangs who were assisted by the security forces.¹⁶⁴ A joint statement issued by the Movement for Inter-Racial Justice and Equality (MIRJE), signed by opposition parties, trade unions and civil rights organisations, stated: “There is good reason to suspect that persons in powerful positions have been behind the instigation, organisation and planning of this campaign of violence.”¹⁶⁵ On 14th August 1981, President Jayewardene admitted that the violence in the Ratnapura area had been an organised one and later sacked the local MP of Ratnapura, a deputy minister. No further action was taken.

- On 3rd June 1983, 19 Tamils were killed in Trincomalee when Sinhalese gangs went on a rampage amid increasing tension between the army and the Tamil Tigers in the area. On the same day, the government imposed a new shoot-to-kill emergency regulation after a Jaffna magistrate had returned a verdict of homicide on the violent killings of several Tamil youths by the army in early 1981.¹⁶⁶

- On 23rd July, over 30 Tamils were killed in Jaffna and Manipay after the army shot them at random.¹⁶⁷ These killings were in retaliation for an ambush on an army truck which had killed 13 soldiers the previous day and was itself in retaliation for the rape of three Tamil girls by the army, one of whom later committed suicide.

- On 24th July, the worst ever anti-Tamil riots started during the course of which more than thousand Tamils were killed.¹⁶⁸ The rioting con-



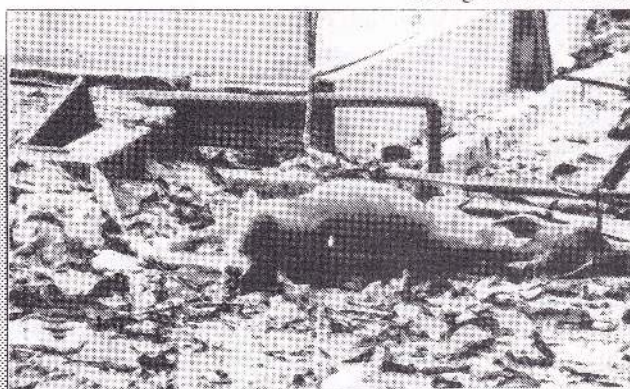
Attack on market places

tinued for several days, mainly in Colombo, and was marked by atrocities committed on anybody who was identified as a Tamil on an unprecedented scale, such as burning people alive, hacking them to death, gang-raping and killing women, burning and looting houses, shops and company premises.¹⁶⁹ All this was allegedly done in retaliation for the attack on the soldiers the previous day. These acts were perpetrated by Sinhalese gangs which were transported from outside the districts, as well as by security forces who either stood by or participated in the attacks. The attacks were systematic and directed only against Tamil people and their possessions.¹⁷⁰ Electoral lists, business registrations and ownership registrations had been checked and the thugs carried lists with them on their rampage.¹⁷¹ It is thus widely believed that government officials were involved in the planning and execution of the attacks.¹⁷² Despite repeated calls by Amnesty International, the International Commission of Jurists and by the Civil Rights Movement of Sri Lanka, neither a public, independent, impartial enquiry into the incidents, in particular concerning government involvement and participation of security forces in the killings was carried out nor the perpetrators punished under the criminal law.¹⁷³

- On 25th July, 35 Tamil political prisoners were murdered in Welikade prison, a maximum-security prison in Colombo.¹⁷⁴ They were allegedly murdered by Sinhalese prisoners only who were armed with clubs, iron rods and other weapons although eye-witnesses stated that prison warders opened the doors and took active part in the attacks.¹⁷⁵

"Since June there have been several waves of such arrests forming part of a pattern of human rights violations directed at the Tamil community, in which thousands of people appear to have been arrested solely on the basis of their ethnic origin"

Amnesty International, 27 October 1993, AI Index:ASA 37/WU 04/93



- On 27th July, another 18 Tamil political prisoners were murdered in the same prison under similar circumstances. A magisterial enquiry was conducted immediately after the massacres and returned a verdict of homicide. However, no person responsible for the killings was identified and the case was closed without any charges brought after inconclusive police inquiries.¹⁷⁶ The government rejected demands by international human rights organisations to hold independent, judicial investigations into the prison massacres.¹⁷⁷ This was a case where there is apparent suspicion that such an incident could not have taken place in a top-security prison without the complicity of government officials.

1984-1997:

This period has been marked by intense warfare between government forces and the LTTE, only interrupted by intermittent cease-fires, which has resulted in many thousands, combatants and civilians, being killed. This study does not provide a detailed account of all possible acts of genocide, but highlights some widely reported incidents of deliberate killings, torture, rape and arbitrary, prolonged and incommunicado detention of Tamil civilians by several government agencies with a view to determine whether these acts are part of a systematic government policy.

The security forces consist of the police force responsible for internal security, the army, navy and air force, and the police paramilitary Special Task Force (STF), of which the latter two primarily conduct the war against the LTTE. Various Tamil groups opposed to the LTTE, in particular the People's Liberation Organisation of Tamil Eelam (PLOTE) and

Tamil Eelam Liberation Organisation (TELO), have been armed by the government and act largely under its authority.¹⁷⁸ Sinhalese and Muslim Home Guards have been armed by the government and operate in the North and East, predominantly in areas that have been colonised.

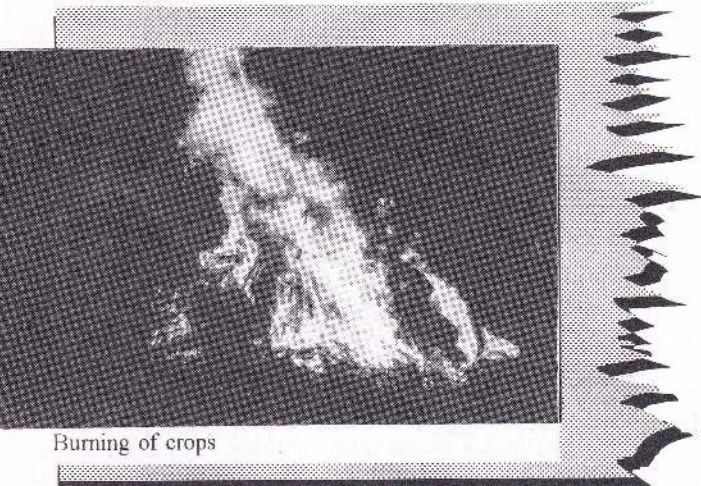
■ **1984-1987:** Thousands of Tamil civilians, in particular young males, but also women and children, were killed by various government forces during this period. The killings took the form of extrajudicial executions, arbitrary killings in form of massacres and disappearances. Amnesty International accounted for approximately 700 unresolved cases of disappearance between 1984 and 1987.¹⁷⁹ Arbitrary arrest, prolonged incommunicado detention and torture of Tamils has been systematic and widespread, in particular by the army, acting under the shield of the Prevention of Terrorism Act and various Emergency Regulations. Rape has been part of the torture practice, but also occurred in numerous cases in the course of village raids and army massacres. The violation of fundamental rights has resulted in a considerable number of displaced persons, primarily within Sri Lanka. The government has throughout this period backed atrocities committed by the security forces by means of outright denial or failure to prosecute and punish the perpetrators.

■ **1984:** More than 400 Tamil civilians were arbitrarily killed or extrajudicially executed by members of the security forces.¹⁸⁰ Throughout August, several people were killed and injured when the Sri Lankan navy was shelling coastal towns in Polikandy, Point Pedro and Valvettiturai in the Jaffna peninsula; attacks which also wiped out whole settlements and left thousands of Tamil



refugees.¹⁸¹ On 11 August, 16 Tamils were killed when six men wearing khaki trousers armed with sub-machine guns stopped a private coach on the route between Colombo and Jaffna, and called out all male passengers, lining them up and shooting them on the spot.¹⁸² On 2nd December, members of the security forces randomly killed at least 27 Tamils in the area of Cheddikulam and Chemamadu in the Vanni area in retaliation for massacres committed by Tamil Tigers on Kent and Dollar Farms. Moreover, around 100 Tamils were arrested in the nearby villages and were reported to have been killed in Iratperiyakulam Army Camp near Vavuniya. The government did not conduct an inquiry into the alleged incident and denied the charges outright.¹⁸³ Two days later, the army launched a mass attack on civilians in Mannar in the Northwest coast, killing an estimated 90 Tamils¹⁸⁴. During the whole year, 10,600 Tamils were taken into custody. Widespread torture was used by the army and the Special Task Force resulting in several deaths in custody.¹⁸⁵

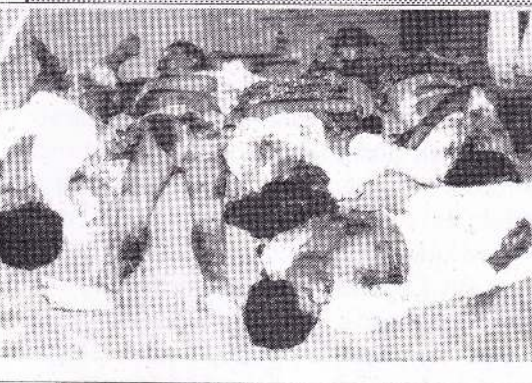
■ **1985:** Four hundred and twelve Tamil civilians were killed by security forces, according to sworn statements by individuals received by Amnesty International.¹⁸⁶ The total number of extrajudicial killings and disappearances was estimated to be over 3,000.¹⁸⁷ On 9th May, 75 Tamil civilians were shot and blown up with explosives after being herded into a building by soldiers in and around the Jaffna coastal town of Valvettiturai, apparently in retaliation for the alleged killing of an Army Major by Tamil guerrillas. On 15th May, 48 Tamil passengers on a ferry boat off the western coast of Jaffna peninsula were killed by Navy personnel, being stabbed one by one.¹⁸⁸ On 17th May, an esti-



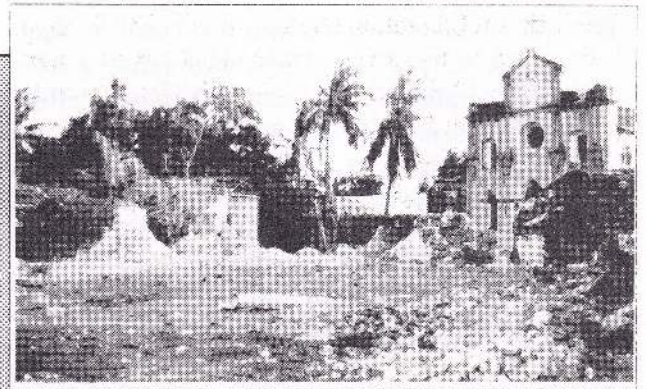
Burning of crops

mated 60 young Tamils were killed in Thambiluvil by members of the Special Task Force in reprisal for a previous Tamil guerrilla attack on Sinhalese civilians.¹⁸⁹ The government denied this incident and brought charges against the chairman of the Kalmunai Citizen's Committee, who had taken the complaint to the local police, alleging he spread false rumours. He was acquitted of all charges by the High Court of Colombo in July 1986 but government officials repeatedly denied that the incident had taken place despite contrary evidence and the lack of independent and thorough investigation.¹⁹⁰ On 31 May, 37 young Tamil men were taken into custody and shot dead after security forces went on a rampage in Thanganagar, Kiliveddy in Trincomalee in the course of which they looted and set fire to all the properties.¹⁹¹ On 16th August, an estimated 200 Tamil people were killed when the Army went on the rampage in Vavuniya, looting and shooting indiscriminately.¹⁹² On 18 September, 46 Tamil refugees were killed in an operation by the security forces in which 12 armoured vehicles, 6 tanks, 2 helicopters and gunboats took part, allegedly aimed against Tamil guerrillas.¹⁹³ Large-scale arrests resulting in 1,200 Tamils being detained at the end of the year and torture of Tamils continued to be routine.¹⁹⁴ Several cases of rape were reported, such as the rape of 4 Tamil women by the army on 5th December, and the rape and subsequent murder of two Tamil women on 25th December by Home Guards.¹⁹⁵

■ **1986:** Over 500 Tamil civilians were killed in a number of incidents by members of various security forces, including the Home Guards.¹⁹⁶ The incidents included attacks on Tamil refugees and Tamil travellers as well as several massacres.



Massacre of families



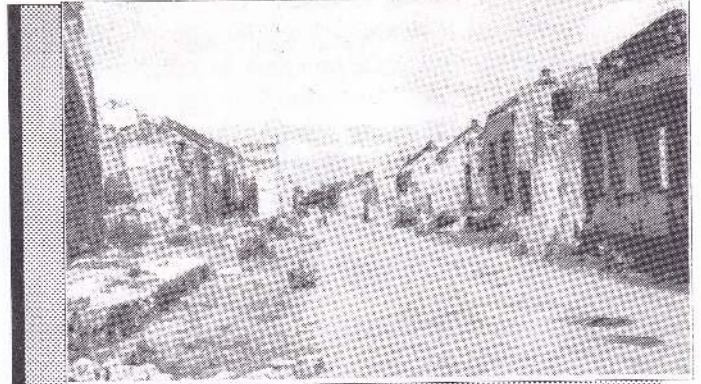
On 19th January, 24 Tamil civilians were shot during a search operation by members of the Special Task Force in Iruthayapuram. Twelve Tamil civilians were shot dead and several others injured as soldiers indiscriminately fired at an estimated 75 passengers waiting to board a train at the Kilinochchi railway station in North Sri Lanka. On 19th February, 60 Tamil farm workers were deliberately shot by members of the police, the army and the Home Guards who subsequently looted premises in a nearby village in the eastern Amparai District. The government claimed that all the dead were terrorists and a Committee of Inquiry conducted an unpublished investigation.

On 20 March, 16 Tamil villagers were killed when troops carried out a cordon and search operation at Nedunkerny in the course of which they burnt houses looted shops and shot at people indiscriminately.¹⁹⁷ On 17th May, 28 young men were taken into custody and there was evidence, though denied by the government, that the Special Task Force shot and killed them.¹⁹⁸ On 13 July, 50 Tamil civilians and on 16 July, 44 Tamil refugees were killed as the army and security forces respectively shot them during operations.¹⁹⁹ In October and November, several military operations against Tamil civilians were carried out. On 11 November, at least 20 people were killed and a further 21 had gone missing when security forces went on a rampage in a village in the Eastern Batticaloa District, during the course of which three Tamil women were raped and killed.²⁰⁰ More than 2,500 Tamils were held in detention and reports of torture were widespread.²⁰¹

■ On *January 28, 1987*, over 150 Tamil civilians were killed at Kokkaddichcholai during a military operation by members of the Special Task Force who attacked with helicopter gunships and armoured cars.²⁰² Charges of systematic killing of young male Tamils by the security forces were also made in connection with the offensive in Vadamaratchi in the Jaffna Peninsula in May and June 1987, which also resulted in massive human suffering and a refugee crisis.²⁰³

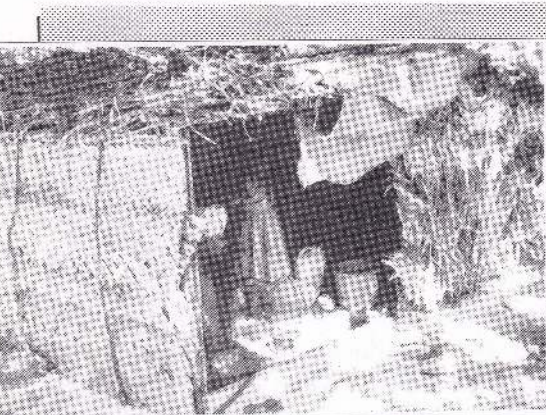
■ *1987-1990*: The Indian Peace Keeping Force (IPKF) took control of the North and East under the Indo-Sri Lanka agreement, lasting from August 1987 until March 1990. The IPKF and the LTTE were held responsible for serious human rights violations in this period although some cases of disappearances in army custody in the Northeast were also reported.²⁰⁴ During these years, the security forces were engaged in putting down the Sinhalese-based Janatha Vimukthi Peramuna (People's Liberation Front) insurgency, resulting in an estimated 20-60,000 Sinhalese killed or disappeared in the south between 1987 and 1990.²⁰⁵

■ *1990-1994*: Several thousand Tamils, predominantly civilians, were killed after the resumption of the conflict in the north and east in June 1990. Huge numbers of disappearances, exceeding 10,000 cases, were reported and evidenced by burned and mutilated bodies dumped in rivers or lakes or disposed of otherwise. Extrajudicial executions and arbitrary killings as well as deaths resulting from systematic torture occurred on a large scale and formed an integral part of the anti-insurgency operations of the security forces. A large number of Tamils, particularly young males, were arbitrarily arrested, held in



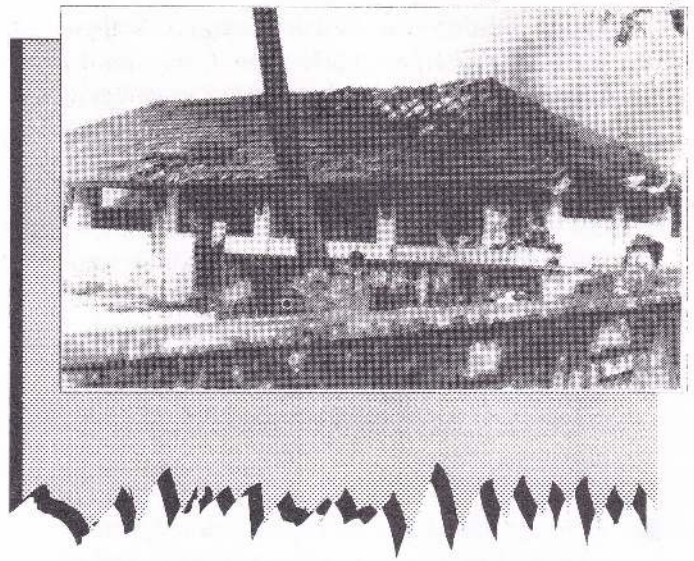
prolonged incommunicado detention and subjected to torture. Numerous cases of rape were reported, among them gang rape by groups of soldiers. The constant deterioration of the situation in terms of personal safety, compounded by the hardship caused by the economic blockade imposed in 1991, resulted in great numbers of displaced persons, fleeing within the region or abroad. Although two independent Commissions of Inquiry, one investigating an army massacre of June 1991 and the other investigating disappearances after the date of its creation, were established, no prosecutions resulting in convictions concerning these or other cases were carried out.

■ *1990*: More than 5,000 Tamil people were estimated to have been killed or to have disappeared in the second half of the year. Victims of extrajudicial executions have reportedly been shot, bayoneted, stabbed, hacked or beaten to death and even burnt alive.²⁰⁶ The killings occurred by attacks on the ground as well as from the air. In June alone, hundreds of civilians were shot or stabbed to death by army or police personnel in several incidents, particularly in the Batticaloa district, and 165 civilians were killed in the second half of June as a result of indiscriminate air bombardment and shelling on residential and non-military targets, such as refugee camps, hospitals and schools.²⁰⁷ On 9 October, 12 civilians were killed at the Jaffna market when helicopters fired at them.²⁰⁸ Disappearances occurred on a massive scale. On 2 August 1990, 150 men were taken from the Pottuvil refugee camp, only 30 of whom were subsequently released. Although the police and the Special Task



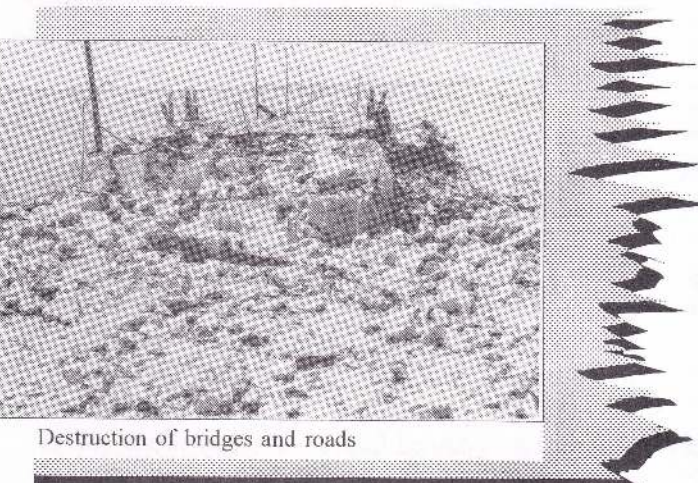
Makeshift shelters for displaced people

Force denied the detention, a local person saw smoke rising from the police station, fuelling the suspicion that the prisoners might have been killed and burned. In another incident, 158 Tamils were taken into custody by security forces from the Vantharumoolai refugee camp in the Batticaloa district on 5 September, and since disappeared. Despite contrary evidence, the Ministry of Defence stated on 17 October that only 31 persons had been arrested and released within 24 hours.²⁰⁹ Torture was reportedly widespread and over a thousand Tamils were held under the PTA and ERs throughout the year.²¹⁰



■ *1991:* More than a thousand Tamils were killed throughout the year. By September 1991, several hundred cases of disappearances and extrajudicial executions had already been reported²¹¹ and the UN Working Group on Enforced or Involuntary Disappearances reported that over 1,000 cases of disappearances occurred in 1991. It also attributed a series of killings to death squads, which given the circumstances, could only have operated with the acquiescence of the government forces.²¹² Between 13 January and 4 April, at least 30 civilians were killed in Jaffna district as a result of bombing raids by the Sri Lankan Air Force.²¹³ On 30 March, police officers went on the rampage in Iruthayapuram, burning shops and hacking to death 11 Tamil farmers.²¹⁴ On the night of 12 June, more than 185 people were killed by members of the army near Kokkaddichchola in a deliberate retaliatory attack during which Tamil villagers were massacred and houses were set on fire.²¹⁵ Tamils were systematically tortured and dozens of people reportedly died as a result.²¹⁶ 1,080 Tamil detainees were held in the Northeast at the end of the year.²¹⁷

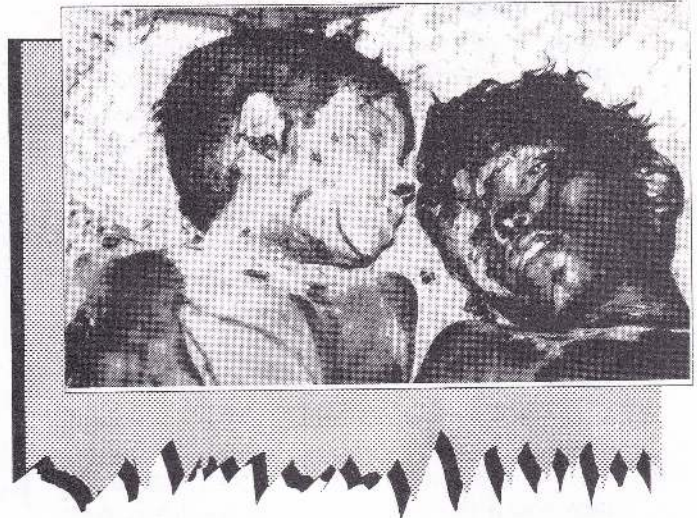
■ *1992:* Hundreds of Tamil civilians were killed in several attacks by the army, security forces, members of TELO and Muslim Home Guards. A family of 8 Tamil villagers were killed by a group of army personnel accompanied by members of TELO on 14 April in their home at Mandur, Batticaloa.²¹⁸ Thirty nine Tamils were killed in a massacre committed by the army in April in Mailanthanai.²¹⁹ Eighty Tamil civilians were shot and hacked to death by Muslim Home Guards and other security force personnel on 29 April in Karapola, Polonnaruwa District.²²⁰ On 31 May, 6 Tamil refugees were killed and over 125 injured, when the Sri Lankan air force mounted an attack on the Sri Durga Devi Temple in Tellippalai, Jaffna employing bomber aircraft and throwing grenades from a helicopter and barrel bombs from an airplane.²²¹ In October, 10 Tamil civilians were extrajudicially executed by soldiers at Vellaveli, Batticaloa District. Scores of disappearances in military custody were reported, in particular in the Batticaloa District. Over a thousand Tamils were being held under ERs or the PTA and routinely subjected to torture by members of all government security forces.²²² Moreover, hundreds of Tamils were periodically arrested and screened for connections with the LTTE, resulting in the staggering figure of 13,414 arrests in Colombo alone.²²³



Destruction of bridges and roads

■ *1993:* Over 100 Tamil civilians were killed by the security forces throughout the year.²²⁴ Scores of civilians were killed, some apparently victims of extrajudicial executions, as they attempted to cross the Kilali lagoon from the Jaffna peninsula to the mainland.²²⁵ In some cases, navy per-

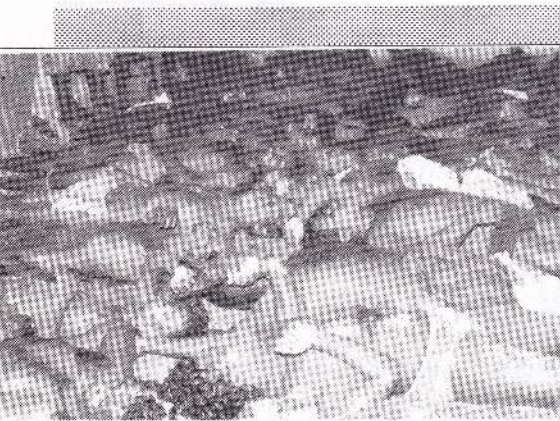
sonnel boarded boats and deliberately killed civilian passengers who offered no resistance. In February, 16 Tamils disappeared after being arrested by the army at Vannathi Aru, Batticaloa District. On 13th November, 10 civilians died and about 30 were injured when two Air Force jets bombed St James' church in the centre of Jaffna town.²²⁶ In Colombo, 22,950 Tamils were arrested under the ERs and PTA during the year.²²⁷ Over 2,000 Tamils were being detained under the ERs and the PTA, 464 of whom had been held for 32 months without trial. Torture continued to be reported, particularly in the Northeast.²²⁸



■ **1994:** At least 10 Tamil civilians were killed by security forces in the Jaffna peninsula and at least 10 disappeared in the east. An estimated 700 detainees were being held under Emergency Regulations or the PTA at the end of the year after several thousands had been released throughout the second half of the year. There were several cases of torture of Tamils, although on a smaller scale than in previous years.²²⁹ The Sri Lanka Monitor has reported 60 killings by shooting, bombing and shelling, 125 injuries, destruction of 136 houses and shops and a rape.

■ **1995-1997:** Several thousand Tamil civilians were killed since the resumption of the war in May 1995. Despite the stated commitment to human rights of the new government under President Chandrika Bandaranaike Kumaratunga, the pattern of warfare by means of extrajudicial killings, massacres and disappearances emerged again. Tamils have been deliberately killed by government forces and groups operating with its consent. In the year 1996 alone, around 650 Tamils disappeared. There was a dramatic in-

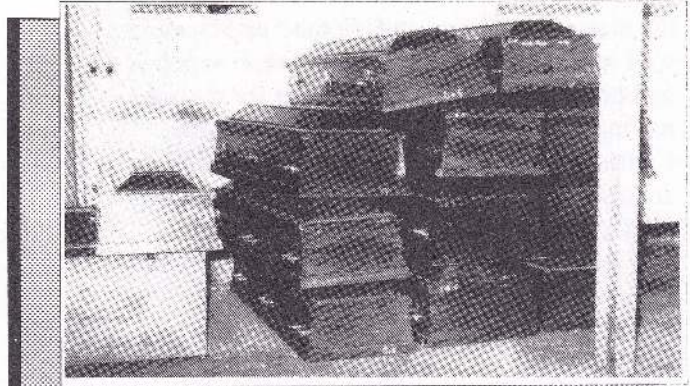
crease in the use of torture and numerous cases of rape by the security forces were documented by Amnesty International. Scores of Tamils, in some instances at least 1,000 people, have been arbitrarily arrested and detained, in some cases for several years, under the Prevention of Terrorism Act and Emergency Regulations. The capture of Jaffna by the army, the launching of an intensified war campaign, and the re-imposition of the economic blockade resulted in starvation, an increase in diseases and massive displacement, estimates of the numbers of displaced Tamil persons being as high as 825,000. Despite several government measures to prevent human rights violations by security forces, the temporarily imposed censorship on events in the North and East, the remaining in force of the Prevention of Terrorism Act and Emergency Regulations, the lack of adherence of members of the security forces to national and international human rights standards, and the apparent lack of government control over sections of the army, security forces and other groups continue to provide a ready context for grave violations of the fundamental rights of the Tamil people.



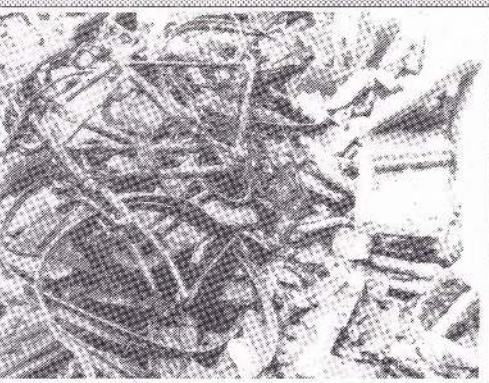
Mass killings

■ **1995:** In December, the army captured Jaffna town. Due to press censorship, it is not known how many people died in the course of that military operation which had started in July. There were increasingly large numbers of allegations of extrajudicial and arbitrary executions, resulting from incidents involving aerial bombardment by the Sri Lankan Air Force, naval strafing and shelling from military bases and indiscriminate firing by armed forces personnel which continued to cause numerous civilian casualties, in-

cluding the bombing of a church at Navaly on 9th July, which killed 65 civilians and injured more than 150.²³⁰ An estimated 40 Tamil civilians were extrajudicially executed in the east. Fifty-five Tamils disappeared after being arrested by members of the security forces.²³¹ The bodies of at least 31 people abducted in Colombo were found in lakes and rivers in the vicinity. An official investigation of the killings found that the victims had been held prisoners, tortured and then killed by strangulation or drowning. Twenty-two policemen arrested in connection with the murders were later granted bail and returned to active service.²³² The case was taken off the court roll in March 1997 encouraging impunity. Six hundred Tamils were being detained at the end of the year, many of whom were subjected to torture.²³³ Several cases of rape were reported throughout the year, among them the gang-rape of three women by soldiers in the Batticaloa district in January and the rape of Lakshmi Pillai at her home in Trincomalee by two army informants in front of her two sons.²³⁴ Moreover, Tamils complained about search operations and arrests in Colombo and in the Hill Country as well as about repeated harassment and incidents of robbery by police officers.²³⁵



1996: Due to censorship of news relating to military or police operations, and lack of access to the north and east, the exact number of persons who were killed throughout the year is impossible to ascertain. On 11th February, in the largest deliberate attack on civilians by the army in Kumarapuram, 24 Tamils, including 13 women, one of whom was also raped, and seven children, were killed and 25 wounded. A military court found 14 soldiers guilty of the killings who were subsequently charged by the Attorney General with murder and attempted murder. By the end of the year, they had not come to trial before the High Court.²³⁶ In a statement on 11 April 1997, Amnesty International said that 648 people were reported to have disappeared in northern Sri Lanka and remarked that the fact that such high number of disappearances can occur in one year despite government's claim that it is addressing the problem, is outrageous. In December alone, more than 15 dead bodies of persons who had been previously arrested by the army were found, among them the corpses of three school girls still wearing their uniforms floating in the sea.²³⁷ At the end of the year 1,500 Tamils were being held in detention under the ERs and PTA. In November, a Supreme Court judge stated publicly that torture continued unabated in police stations in spite of a number of judicial pronouncements against its use. It was used by members of all security forces and included methods such as electric shocks, beatings all over the body, especially the soles and genitals, often with plastic pipes, iron rods and truncheons, suspension by the wrists or feet in contorted positions, burning, near drowning, mainly by submersion in polluted water, placing of insecticide, chilli powder, or gasoline-soaked bags over the head, and forced positions, resulting in broken bones and other serious injuries.²³⁸ On 7th September, Krishanthi Kumarasamy disappeared in Jaffna. Her body was later found in a shallow grave, together with the bodies of her mother, brother and a neighbour who had been searching for her. She had been gang-raped by nine soldiers before being killed after she had been detained at a checkpoint. The accused soldiers were brought before



estruction of public property

the magistrate's court in Colombo and charged with rape and murder. In November, five police and army personnel were arrested for the rape and murder of Rajini Velayuthapillai in Jaffna.²³⁹ Continuing harassment of women, including abduction and rape, at army checkpoints, in particular in the Jaffna district, were reported.²⁴⁰ One hundred and fifty cases of rape committed by soldiers have been documented in 1996 alone.²⁴¹

■ **1997:** In the first half of the year, extrajudicial executions, arbitrary killings and disappearances continued to occur on a large scale. At least 16 Tamil civilians were killed by army or navy personnel in various incidents in the Jaffna peninsula between January and May.²⁴² In March

alone, 10 Tamils were killed in the army-controlled towns of Vavuniya and Batticaloa by death squads.²⁴³ Tamil Congress leader Kumar Ponnambalam stated before the UN Human Rights Commission in March that there was total disregard of the principles relating to arrest and detention in Sri Lanka, that Tamils were tortured and confessions manufactured, and that there has been a startling increase in gang-rape, involuntary disappearances in the Northeast and in Colombo and in cases of extrajudicial executions. Moreover, 1,700 Tamil youth were held in detention in March.²⁴⁴ Gang rape has been committed in several cases, the worst of which resulted in the death of Amparai resident Murugesapillai Koncswari who was allegedly killed by a grenade inserted into her vagina.²⁴⁵ □

¹⁴⁶ According to Sri Lankan government estimates, 50,000 people have been killed in the course of the war since 1983, of whom over 26,000 were Tamil civilians, Sri Lankan Daily News cited in Hot Spring, April 1997, p.13; according to Victims of War in Sri Lanka, p.zz. 45, 000 Tamil civilians were killed or disappeared in the years 1983-1993

¹⁴⁷ see T.Vittachi: Emergency'58, p.20

¹⁴⁸ *ibid.*, p.104

¹⁴⁹ International Alert: Emergency, 1986, p.23

¹⁵⁰ S.Ponnambalam: Tamil Liberation Struggle, p.113

¹⁵¹ see T.Vittachi: Emergency'58, pp.55,75,76,90

¹⁵² S.Sivanayagam: Sri Lanka: 40-Year Chronology, p.27

¹⁵³ see *ibid.*, pp.22-28 and S.Ponnambalam: Tamil Liberation Struggle, pp.121,122

¹⁵⁴ E.M.Thornton and R.Niththyananthan: Island of Terror, p.29

¹⁵⁵ see *ibid.*, p.32

¹⁵⁶ see S.Ponnambalam: Tamil Liberation Struggle, pp.194,195, see also crime figures in the Annual Report of the Inspector General of Police for the year 1977 in: International Alert: Sri Lanka, p.24

¹⁵⁷ see H.P.Chattopadhyaya: Ethnic Unrest, p.60

¹⁵⁸ see E.M.Thornton and R.Niththyananthan: Island of Terror, p.33

¹⁵⁹ see V.A.Leary: Ethnic Conflict, p.31.

¹⁶⁰ see Amnesty International: Report of an AI Mission to Sri Lanka, 1982, p.28

¹⁶¹ *ibid.* p.11 and M.Vije: Oppression of Tamils, p.78.

¹⁶² Minister Gamini Dissanayake, quoted in: S. Ponnambalam: Tamil Liberation Struggle, p.207

¹⁶³ Brian Eads in: The Observer, 20 September 1981 quoted in S.Ponnambalam: Tamil Liberation Struggle, p.210 . see also V.A. Leary: Ethnic Conflict, p.21

¹⁶⁴ see S.Ponnambalam: Tamil Liberation Struggle, p.210

¹⁶⁵ *ibid.*, p.209, see also international, in particular Indian's, response to events in: V.A. Leary: Ethnic Conflict pp.1-25

¹⁶⁶ *ibid.*, p.224

¹⁶⁷ Amnesty International: Annual Report 1984, p.258

¹⁶⁸ see S.J.Tambiah: Ethnic Fratricide, p.22.

¹⁶⁹ see E.M.Thornton and R.Niththyananthan : Island of Terror, pp.63-77

¹⁷⁰ P.Hyndman: Human Rights in Sri Lanka, p.338

¹⁷¹ S.J.Tambiah: Ethnic Fratricide, p.21

¹⁷² see L.Piyadasa: The Holocaust, p.84, and W.A.Warnapala: Ethnic Strife, p.166

¹⁷³ see P.Hyndman: Human Rights in Sri Lanka, pp.339,340

¹⁷⁴ see M.Vije: Oppression of Tamils, p.79

¹⁷⁵ see E.M.Thornton and R.Niththyananthan: Island of Terror pp 65,66

¹⁷⁶ see P.Hyndman: Human Rights in Sri Lanka, p.339

¹⁷⁷ see Amnesty International: Annual Report 1984, p.259

¹⁷⁸ US State Department: Country Report 1996, introduction

¹⁷⁹ see Amnesty International: Annual Report 1995, p.268

¹⁸⁰ see P.Rajanayagam: Human Rights Violations, pp.8-18

¹⁸¹ see *ibid.*, pp.10,11

¹⁸² *ibid.*, pp.13

¹⁸³ Asia Watch: Cycles of Violence, p.112-115

¹⁸⁴ Amnesty International: Annual Report 1985, p.243

¹⁸⁵ see *ibid.*

- 186 see Amnesty International: Sri Lanka: Some Recent Reports of Extrajudicial Killings, 1986, p.3
- 187 see P. Rajanayagam: Human Rights Violations, p.31
- 188 see Amnesty International: Annual Report 1985, p.258
- 189 Asia Watch: Cycles of Violence, p.116
- 190 *ibid.* pp.117-119
- 191 see P.Rajanayagam: Human Rights Violations, p.24
- 192 *ibid.*, pp.24,25
- 193 *ibid.*, p.25
- 194 see Amnesty International: Annual Report 1986, pp.257,259
- 195 see P.Rajanayagam: Human Rights Violations pp.24-27
- 196 see *ibid.* pp.31,46
- 197 *ibid.* pp.32-36
- 198 see Amnesty International: Annual Report 1987, p.266
- 199 see P.Rajanayagam: Human Rights Violations, pp.41,42
- 200 *ibid.* pp.43,44
- 201 see Amnesty International: Annual Report 1987, p.268
- 202 Amnesty International: Annual Report 1988, p.182
- 203 see P. Rajanayagam: Human Rights Violations, p.34
- 204 see Amnesty International: Sri Lanka: Extrajudicial Executions, Disappearances and Torture, 1987-1990, September 1990
- 205 see E.Nissan: A Bitter Harvest, p.29
- 206 see Amnesty International: The Northeast, p.17
- 207 see Report by Mr.S.Amos Wako, Special Rapporteur on Summary or Arbitrary Executions, E/CN.4/1991/36, para.471,472
- 208 *ibid.* p.9
- 209 see *ibid.*, pp.23,24
- 210 see Amnesty International: Annual Report 1991, p.211
- 211 see Amnesty International: The Northeast, p.17
- 212 see Report on the Visit to Sri Lanka by three members of the Working Group on Enforced or Involuntary Disappearances, E/CN.4/1993/25/Add.1, pp.38,39
- 213 see Report by Mr.S.Amos Wako, Special Rapporteur on Summary or Arbitrary Executions, E/CN.4/1992/30, para. 500
- 214 Tim McGirk: Civil strife makes Sri Lanka a tropical hell in: The Independent, Monday 8 April 1991
- 215 see *supra* 213, para.498
- 216 see *ibid.*, para 497 and Amnesty International: Annual Report 1992, pp.239,240
- 217 see *ibid.*
- 218 Report by Mr.Bacre Waly Ndiaye, Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, E/CN.4/1993/46, para.538
- 219 Amnesty International: Annual Report 1993, p.266
- 220 see Amnesty International: Deliberate killings of Muslim and Tamil villagers in Polonnaruwa, June 1992, pp.3-6
- 221 see Report by Mr.Angelo Vidal d'Almeida Ribeiro, Special Rapporteur on the Elimination of Religious Intolerance, E/CN.4/1993/62, para.54
- 222 see Amnesty International: Annual Report 1993, pp.266,267
- 223 see Amnesty International: Balancing human rights & security: abuse of arrest & detention powers in Colombo, February 1994, p.6
- 224 see Amnesty International: Summary of concerns, p.4
- 225 see Report by Mr.Bacre Waly Ndiaye, Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, E/CN.4/1994/7, para.552
- 226 Amnesty International: Summary of concerns, p.4
- 227 Amnesty International: Balancing human rights & security, p.6
- 228 see *ibid.*, pp.3,4
- 229 see Amnesty International: Annual Report 1995, pp.268,269
- 230 see Report by Mr.Bacre Waly Ndiaye, Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, E/CN.4/1996/4, para.436,437
- 231 see Amnesty International: Annual Report 1996, p.281
- 232 see *ibid.* and TIC News Bulletin; June-September 1996, p.3
- 233 see Amnesty International: Annual Report 1996, p.280
- 234 see Amnesty International: Wavering Commitment, p.20
- 235 see Sri Lanka Monitor, No.95, December 1995, p.4
- 236 see U.S. State Department: Country Report 1996, Section 1 a
- 237 see W. Keller: Zur Lage der Menschenrechte in: Suedasien Buecro Nr.2/1997, p.13
- 238 U.S. State Department: Country Report 1996, 1 c. see also: Widespread Torture by Security Forces in: TIC News Bulletin June-September 1996, pp.2,3, The Refugee Council: Protection Denied, p.18
- 239 see U.S. State Department: Country Report 1996, Section 1 a, U.S.Committee for Refugees: Conflict and Displacement in Sri Lanka, p.12
- 240 see *ibid.*, p.13
- 241 see Letter, dated May 6, 1997, by Dr.Sri M. Sri-Jayantha, General Secretary of Ilankai Tamil Sangam USA Inc. to the Editor of the New York Times reprinted in: Hot Spring, April 1997, p.38
- 242 see University Teachers for Human Rights: Jaffna: A Vision Skewed, Special Report, No.9, 7 June 1997, pp.12-21
- 243 Sri Lanka Monitor, No.110, March 1997, p.3
- 244 see *ibid.*, p.4
- 245 Sri Lanka Monitor, No.112, May 1997, p.3

Iruthayapuram Massacre - 19 January 1986

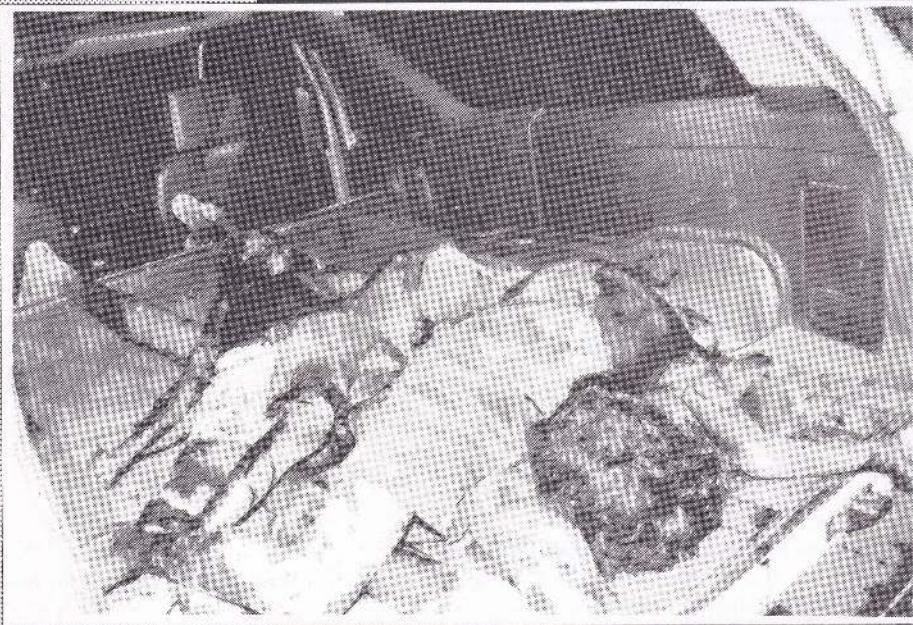
Eye witness Report

On the night of 19 January 1986 the people of Iruthayapuram in Batticaloa slept peacefully not knowing that terror would ride with dawn into the village. At around 5 am Sri Lankan security forces marched into the village firing their guns. Young men were dragged out of their beds and herded into the frontyard of the village church amidst the wailing of women and children.

The Church of the Most Sacred Heart of Jesus was precious to the villagers. It was built by their endeavour after the old church was destroyed in the cyclone of 1978 and had been consecrated only ten months earlier. Not even in their dreams would they have imagined that the sacred precinct would become a torture and murder chamber.

The men were tied in pairs and forced to lie face down. The parish priest Rev Fr Dekoning, a member of the Burgher community, was locked in his mission house with a sentry at the door to prevent him coming out. The soldiers surrounded the victims and began brutally beating and kicking them. Some of them were picked up by the legs and dashed on others. The heart rending cries for mercy of the women and children witnessing the torture failed to touch the souls of the assailants.

While the savagery in the church continued, gruesome events were taking place in the vicinity. Innocent people were dragged and shot dead in cold blood. The door of the church was forced open and the victims of torture were ordered in. With broken limbs and bleeding profusely they staggered into the church. Inside, the soldiers saw Catechist Sahayanathan and sacristan George Anton and Gnanadas who were in charge of preparations for holy mass on Sunday morning. They were ordered to run and mowed down with guns.



At 2 pm two dozen trucks were brought into the church compound and those arrested and tortured were ordered to get into the vehicles. A man whose both legs were broken was dragged outside and shot dead. The trucks moved on. The following day members of the local Citizen Committee met the security force Coordinating Officer to request the release of those arrested and the bodies. The bodies had been kept in open trucks at the Special Task Force camp at Kallady. The only concern of the Coordinating Officer was that no one had come to identify the bodies.

The Sri Lankan national newspaper Daily News reported on 20 January 1986 that two policemen and 13 terrorists died in a gun battle at Iruthayapuram in Batticaloa District. □

Source: Eye Witness, Vol. 1 No 1 February 1986 - Tamil Information Centre

The Charges

● The acts

The examined evidence has revealed numerous acts that fall within the definition of genocide in Article II of the Genocide Convention. Killings, whether arbitrary, indiscriminate, extrajudicial, in the form of disappearances or as a result of torture and rape are acts covered by Article II (a): "*Killing members of the group.*"

Assaults causing injuries, torture, rape, serious harassment and arrest and detention practices under the PTA and ERs, in particular prolonged incommunicado detention, fall within Article II (b): "*Causing serious bodily or mental harm to members of the group.*"

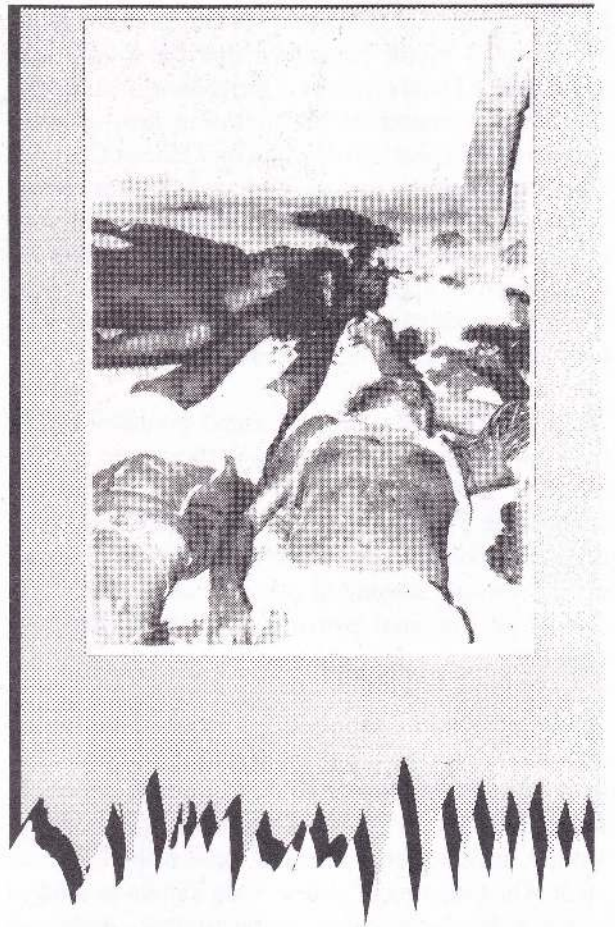
The intensified warfare and the economic blockade, having resulted in numerous casualties among the Tamil people through malnutrition and spread of infectious diseases as well as their massive displacement, fall arguably under Article II (a) and definitely under II (b) and might amount to Article II (c): "*Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part.*"

The persons identified as being responsible for these acts have been Sinhalese citizens, members of the army, the Special Task Force, the police, the Home Guards and Tamil groups working under control of the government. Before investigating the role of the successive governments, the "*intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such*" as required by Article II has to be established.

● Intent

The subjective particular intent is extremely difficult to prove. Thus, a thorough judicial investigation would be required to establish such an intent in individual cases. However, in the light of a possible pattern of systematic acts of genocide, intent might be inferred from sufficient evidence, as evidenced on a prima facie basis by a number of sources.

The acts committed during the anti-Tamil riots in the period of 1956 to 1983 were aimed at the Tamils as such, be it for their protests against Sinhala-only or their fight for separatism. The Tamils were targeted



as members of a national or ethnical group, not as members of a political group. Such a distinction between Tamils as a people and Tamils as members of a political group would be futile in this context since the denial of self-determination resulted in a politicisation of the Tamils as a group. The attacks on Tamils during the riots were deliberate and aimed at killing or wounding Tamils as members of a national or ethnic group. The subjective intent to destroy the Tamil group at least in part can be inferred from the manner of the execution of the acts, i.e. the indiscriminate killing and wounding of Tamils for being Tamils.

Since the emergence of the LTTE, in particular after the passing of the PTA in 1979 and the beginning of the war in 1983, the nature of the acts committed against the Tamils has changed. They have become part of counter-insurgency operations and warfare of the security forces against the LTTE.

For these reasons, it might be argued, as successive governments in Sri Lanka have done, that the killing and wounding of Tamils is intended to destroy the

LTTE as a political group and not the Tamils as such. Moreover, it might be argued that the killing and wounding of Tamil civilians in the context of an armed conflict is a matter of humanitarian law, namely, observing the rules laid down in the Geneva Conventions for the protection of civilians, and not one of genocide. However, the International Court of Justice found in a recent judgement that the Genocide Convention is applicable in cases where the court would be impelled to take account of events that may have occurred in the context of a civil war.²⁴⁶

The acts committed against Tamil civilians would thus amount to genocide only if they were not directed against the LTTE as a political group but against the Tamils as such. If the latter was being done intentionally, the killing and harming of Tamil civilians would amount to genocide as well as violation of international humanitarian law by the government.

A large number of Tamils killed and wounded in the last 14 years were unarmed women, men and children. Massacres committed by the security forces in retaliation for LTTE massacres and the rape of Tamil women have not been directed against the LTTE as such. The targeting of young male Tamils as alleged terrorists has been reported to be arbitrary, sweeping and indiscriminate. On the ground, the distinction between being a member of the LTTE and being a Tamil appears frequently not to have been made by the security forces. The de-facto equation of Tamil civilians with LTTE supporters means that they have been targeted most and foremost for being Tamils.

Furthermore, the LTTE itself is not strictly speaking a political party but a national liberation movement. The so-called communal violence in such an ethnic conflict is based primarily on the membership to an ethnic group, not membership to a political party. The killings and wounding of Tamils has therefore repeatedly been directed against the Tamils as such. Although some of these acts do not appear to have been committed in a concerted and planned way, the frequent occurrence of massacres, death and torture in custody, and the bombing of civilians appear not only to have been an inherent feature of the methods of warfare but also to have been applied in a systematic fashion. They have been committed with the intention to seriously weaken and destroy Tamils as a group, at least in part, in order to stifle political aspirations of the Tamil people based on the right to self-determination. This intent can be inferred from the deliberate targeting of Tamil civilians by the se-

curity forces against the background of the ethnic nature of the conflict.

This conclusion might be contested on the ground that it would make it impossible for the government to combat terrorism, in particular taking into account that the LTTE fighters often use a civil disguise to attack the security forces. The LTTE itself is reported to have committed massacres against Sinhalese settlers.

The objection is more difficult to disentangle. A state has the right to fight terrorism but not disproportionately. The majority of acts of genocide have been indiscriminate, i.e. they were not directed against the LTTE as such but aimed at undermining its strength at the expense of Tamil civilians. Moreover, it is questionable whether the concept of terrorism is a meaningful category in an ethnic conflict that is so radicalised that belonging to one group is a sufficient factor for being considered an enemy. Moreover, the labelling of the LTTE, which is claiming to assert the Tamil right to self-determination by force, as terrorists in order to legitimate the military force employed by the government against Tamil civilians is in itself highly questionable, especially in the light of previous unsuccessful attempts by the Tamil people to assert their political self-determination by peaceful means.

Against this background, the means of warfare ordered by the government and employed by the security forces are neither restricted to fighting "terrorism" nor proportionate for doing so. This possible objection to interpreting the acts described above as constituting genocide thus appears unconvincing in the light of contrary evidence.

The persons responsible for acts of genocide committed against Tamil civilians, be it through committing the act or complicity in it, in particular in the form of command responsibility, incur individual criminal responsibility and are punishable according to Article IV of the Genocide Convention. This applies to all members of the security forces guilty of having committed such acts, regardless of their rank and position within the forces. □

● Government responsibility

Successive governments have been repeatedly accused by Tamil groups of having instigated or condoned acts of genocide. In order to establish criminal responsibility, members of the government in question must have either committed Article III (e) *Complicity in genocide* or (c) *Direct and public incitement to commit genocide*.

Given the lack of official documents and the fact that government members do usually not commit acts of genocide themselves, complicity in genocide by members of a government is extremely difficult to prove. The Special Rapporteur proposed to add to the end of Article II of the Convention words such as: *"In any of the above conduct a conscious act or acts of advertent omission may be as culpable as an act of commission."*²⁴⁷ This is of particular importance in situations where a government is in a position to stop acts of genocide but fails to do so. However, as for the time being, the conduct listed in Article II and III of the Convention consists exclusively of the commission of certain acts.²⁴⁸ The active complicity in acts of genocide by members of the government can therefore only be inferred on the grounds of strong circumstantial evidence.

During the 1956 riots, members of the police reportedly said that they were ordered not to interfere. In 1958, it took the then Prime Minister Mr. Bandaranaike four days to proclaim an emergency as a means to stop the rioting despite prior urgent calls from the Indian High Commissioner to act immediately. The 1956 order and the 1958 failure to act were acts of advertent omission but fall short of disclosing any active government complicity in the riots.

The military occupation of the Tamil areas in 1961 was primarily aimed at repressing Tamil protests. There is no hard evidence of concerted assaults on Tamils as part of the operation but Mrs Bandaranaike stated that suffering of innocent people was not unlikely in consequence of restoring law and order.²⁴⁹ However, given that the troops were dispatched to break up the protest of Tamils because they were demanding their right to self-determination, acts of violence committed during the operation and sanctioned by the government were genocidal and have to be attributed to the government.

The strong opposition by the then Prime Minister

"... We have decided to colonise four districts including Mannar with Sinhalese people by destroying forests. A majority of Sinhalese will be settled there."

Gamini Dissanayake: Minister of Land and Mahaweli Development, 5 September 1983



Mrs. Bandaranaike to the 4th International Tamil Conference is not conclusive enough to demonstrate complicity in the subsequent attacks.

During the 1977 riots, Sinhalese police and army participated in the riot. This fact alone is however not sufficient to establish government complicity in the acts. On July 14, 1979, Jayewardene, the UNP president from 1977 until 1988, issued the following order to the Sri Lankan army: *"It will be your duty to eliminate in accordance with the law of the land the menace of terrorism in all its forms on the island, and more especially from the Jaffna district. I will place at your disposal all resources of the state. I earnestly request all law-abiding citizens to give their co-operation to you. This task has to be performed by you and completed before the 31st December, 1979."*²⁵⁰ This authorisation, in conjunction with the PTA and the ERs, commissioned the police and army to destroy suspected Tigers by all means even though they were only a small band of fighters in 1979. Besides being grossly disproportionate, it was thus an instigation to extrajudicial killings and torture. Given the indiscriminate nature of the fight against the Tamil Tigers, i.e. being directed against all young Tamils, this order amounted to a complicity in subsequent acts of genocide committed by the security forces.

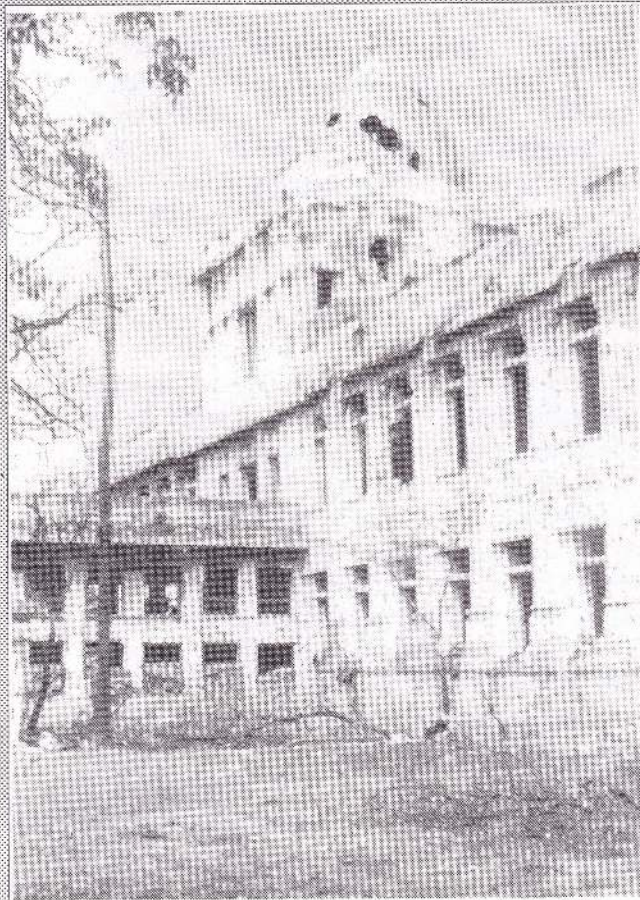
During the police and army rampage in May/June 1981, Cyril Mathew and Gamini Dissanayake, two government ministers, were personally present in Jaffna directing affairs. Dissanayake stated that he was shocked by what he saw, that the police were out of control, and that he would take responsibility for what happened.²⁵¹ This indicates that the police and army acted on their own account. However, the manner of targeting the public library, the office of

the Tamil newspaper Eelanadu, and the office of the TULF as objects of destruction point in the opposite direction. Since Gamini Dissanayake and Cyril Mathew were known as radical anti-Tamil Sinhalese politicians, many observers believed them to be responsible for the incident.²⁵² Thus, there is a lot of circumstantial evidence but a lack of a conclusive proof to support such a suspicion.

In August 1981, organised gangs perpetrated most of the acts of genocide. In Ratnapura, the acts of violence were instigated by the local MP, a deputy minister, who was later sacked by Jayewardene. Observers held members of the ruling UNP, among them intimates of the President, responsible for having stimulated and organised the violence.²⁵³ There was direct evidence in the case of Ratnapura and strong circumstantial evidence, given the systematic and organised manner of attacking specific groups of Tamils, that members of the government were accomplices in the acts of genocide.

The 1983 riot was predominantly executed by organised gangs that had official lists to identify Tamil citizens and Tamil property. The gangs were known as "goon squads" and primarily recruited from the trade union wing of the UNP. In some incidents, eye-witnesses identified members of the UNP, among them a deputy minister, as leading the squads; in other cases squads loyal to government ministers, i.e. Prime Minister Premadasa, Transport Minister M H Mohamed and Industries Minister Cyril Mathew.²⁵⁴ The riots went on for days with the active participation of the security forces. President Jayewardene, making the first public announcement only three days after the beginning of the violence, blamed the violence exclusively on Tamil demands for a separate state which had outraged the Sinhalese people. Simultaneously, he announced the Sixth Amendment to the Constitution, which effectively banned any real Tamil opposition from parliament. Several commentators believed that the riots were engineered to provide the rationale for this measure.²⁵⁵ There is thus overwhelming evidence of government instigation and complicity in the riots although the personal responsibility of individual members of the government would require a more thorough judicial investigation.

Since 1983, successive governments have pursued a policy of war against the LTTE. Given the nature of



Attack on administrative buildings (Jaffna Municipal Council)

this war, it is difficult not only to distinguish between acts of combating terrorism that are legitimate under international law and acts that amount to genocide but also to determine whether such a distinction is the basis of the policy of the government in question. The enactment of the PTA and several ERs, the repeated indemnity granted to security forces concerning allegations of arbitrary killings, disappearances, torture and rape and the imposition of the economic embargo in 1991, indicate that the governments of Mr. Jayewardene and of Mr. R. Premadasa from 1988-1994 have encouraged acts of genocide, e.g. on 18 June 1990 when the Minister of State for Defence, R

Wijeratne, announced to parliament that “*from now on it is all-out war*”.²⁵⁶

The systematic pattern of the acts described above suggests that they were employed as a government policy. This policy was effectively targeted against the Tamil people as such, even though its motive might have been to eliminate the LTTE. However, the motive for the acts of genocide is irrelevant under the Genocide Convention. Thus, the largely indiscriminate targeting of the Tamils as a people indicates that the destruction of the Tamils as a group was accepted as the outcome of such a policy. There is therefore sufficient evidence of intent to implicate members of the government.

Concerning Article 2 (c) of the Genocide Convention, the element of deliberate calculation to bring about the physical destruction of the Tamils would be difficult to establish, given that the economic blockade and the imposition of security zones is officially used as a military strategy to bring about pressure on the LTTE and to cut off its supplies, even though the physical destruction of Tamils in the form of deaths resulting from malnutrition and diseases is an inevitable result of the deprivation of food and medicine.

Concerning personal criminal responsibility for specific acts of genocide, a more detailed investigation into the actual complicity of government officials, especially in the form of specific orders, would be required.

The same considerations apply to the government of Chandrika Bandaranaike Kumaratunga. Although she has publicly proclaimed her commitment to human rights and thus discouraged acts of genocide, she and members of the government might incur criminal responsibility for the death of Tamil civilians caused by the economic blockade and acts of genocide committed by members of the security forces, in particular in the course of the war which has been launched by her government.

Article III c. of the Genocide Convention is very narrow in its scope. There have been few cases of a direct incitement to commit genocide. The majority of statements concerning propaganda for genocide have been different in nature. They have prepared the ground for genocide by claiming Sinhalese exclusivity or superiority or have been derogatory statements about the Tamils as a race, in particular denying their right to live in Sri Lanka. There have been a number of provocative and abusive statements, in-

“There is very clear evidence now emanating that violence directed against the Tamil minority is indiscriminate and makes no distinction between those engaged in conflict and innocent civilians”

D S Dhillon, Indian Delegation, 42nd Session of the Commission on Human Rights, 1986

cluding the falsification of historical truths, that have been made by Sinhalese people and Sinhalese politicians. A notorious example is the book “Sinhala People-Awake, Arise and Safeguard Buddhism” which Cyril Mathew, the then minister of industries, wrote in 1981. The book contained anti-Tamil speeches by Jayewardene and others dating from the 1950s, and the author called for a holy war in the cause of Buddhism.²⁵⁷ Jayewardene, speaking to a British reporter in the midst of ethnic tensions in July 1983, said: “*I am not worried about the opinion of the Jaffna people now....Now we can't think of them. Not about their lives or of their opinion about us...the more you put pressure in the North (Tamil areas) the happier Sinhala people will be here....really, if I starve the Tamils out, the Sinhala people will be happy.*”²⁵⁸ Two months later, in the wake of the 1983 anti-Tamil riots and Indian protests, Minister Gamini Dissanayake said the following at the UNP headquarters in Colombo: “*They are bringing an army from India. It will take fourteen hours to come from India. In fourteen minutes, the blood of every Tamil in the country can be sacrificed to the land by us.*”²⁵⁹

On 24th July 1981, D.M.Jayarathne, MP for Kundasale, in a debate concerning the events in Jaffna stated, referring to the then parliamentary Opposition and TULF leader A Amirthalingam: “*What should we do to this so-called leader of the Tamils? If I were given power, I would tie him to the nearest concrete post in this building and horsewhip him till I raise him to the wits. Thereafter let anybody do anything he likes - throw him to the Beire (a lake) or to the sea, because he will be so mutilated that I do not think there will be life in him.*” A similar statement was made by G.V.Punchinilame, MP for Ratnapura, who recommended that members of the

TULF should be punished by tearing their bodies apart.²⁶⁰ In the same year, in relation to the August riots, Jayewardene stated on the 4th of September: "I regret that some members of my party made speeches in parliament and outside that encouraged violence and murders, rapes and arson that have been committed".²⁶¹

President Chandrika Kumaratunga said in March 1996 that "the Sinhalese people are becoming impatient and an all-out-war against the LTTE is inevitable which may endanger the Tamils in the south." In August 1997, President Chandrika said, after declaring that she was aware of illegal arrests and arrests for ransom, that 'harassment of Tamils in southern areas could be ended only on achieving peace', thus encouraging impunity among security forces.

These speeches fall within Article III c which means that the named persons incur criminal responsibility under the Genocide Convention. They are examples, relating to the 1981 riots, which, although not exhaustive, give an indication of the nature of the public and direct incitement for genocide that has been made in Sri Lanka.

Numerous acts of genocide have been committed in Sri Lanka that went unpunished. They were committed by Sinhalese civilians, members of the security forces and members of successive governments. Likewise, there were cases of public and direct incitement to genocide by MPs and others that went unpunished. At the time of writing, acts of genocide continue to be committed in the course of the war in the north and east. □

²⁴⁶ see Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia-Herzegovina v. Yugoslavia), Preliminary Objections, Judgment, International Court of Justice, July 11, 1996, para.43

²⁴⁷ UN Special Rapporteur 1985, p.20

²⁴⁸ *ibid.*

²⁴⁹ see S.Sivanayagam: Sri Lanka: 40-Year Chronology, p.27

²⁵⁰ quoted in: S.Sivanayagam: Sri Lanka: 10 Years of Jayewardene Rule, TIRU, Madras, 1987 and N.Jayawickrama: Right of Self-Determination, p.10

²⁵¹ see E.M.Thornton and R.Niththyananthan: Island of Terror, p.35

²⁵² see *ibid.* and: Tamil Refugees say Gamini's misdeeds caught up with him in: TIC, News Bulletin, Nos.38&39, September/October 1994, p.10

²⁵³ see Brian Eads in: Observer, 20 September 1981 quoted in S.Ponnambalam: Tamil Liberation Struggle, p.210

²⁵⁴ see E.M.Thornton and R.Niththyananthan: Island of Terror, pp.79,82

²⁵⁵ see *ibid.*, p.80

²⁵⁶ quoted in: Amnesty International: The Northeast, p.7

²⁵⁷ see S.Ponnambalam: Tamil Liberation Struggle, p.211

²⁵⁸ Interview with Ian Ward of Daily Telegraph, July 11, 1983 quoted in: Hot Spring, April 1997, p.37

²⁵⁹ quoted in: Tamil Refugees say Gamini's misdeeds caught up with him in: TIC, News Bulletin, Nos.38&39, September/October 1994, p.11

²⁶⁰ see E.M.Thornton and R.Niththyananthan: Island of Terror, p.38

²⁶¹ quoted in: S.Ponnambalam: Tamil Liberation Struggle, p.211

Enforcement of the Genocide Convention

The existing enforcement mechanisms

The enforcement mechanisms under the Genocide Convention are predominantly geared towards punishment rather than prevention of acts of genocide. Of the four existing mechanisms, the two covering both prevention and punishment will be considered first.

1. *Article VIII: Any Contracting Party may call upon the competent organs of the United Nations to take such action under the Charter of the United Nations as they consider appropriate for the prevention and suppression of acts of genocide or any of the other acts enumerated in Article III.*

This provision has been called a needless repetition of what could in any case be derived from the Charter, and furthermore, these UN organs can intervene only within the limits of their power.²⁶² Nevertheless, the provision highlights the possible role of the UN in the enforcement of the Genocide Convention. Accordingly, the UN Security Council might determine, pursuant to Article 39 of the Charter, that acts of genocide constitute a threat to the peace or a breach of peace²⁶³ and decide what enforcement measures to take in accordance with Article 40 or Article 41 of

the Charter.²⁶⁴ Moreover, should the parties to a conflict agree to such a measure, peace-keeping troops might be sent by the Secretary General to the country in question to prevent further acts of genocide taking place. These mechanisms were employed in the Yugoslav conflict and may have to some degree prevented further acts of genocide being committed.

The UN has also a number of bodies operating in the field of human rights. In 1994, a new organ, the UN High Commissioner for Human Rights, was established. The UN High Commissioner for Human Rights has the rank of an Under-Secretary-General and is vested with the principal responsibility for the UN's human rights activities. His/Her mandate is, inter alia, the protection and promotion of human rights and the establishment of a dialogue with Governments with a view to ensuring respect for human rights. This involves reacting to cases of serious human rights violations and prevention of human rights violations, the fight against racial discrimination and the fight against particularly heinous human rights violations such as torture and enforced disappearances.²⁶⁵

In February 1997, the first High Commissioner, Mr. Jose Ayala-Lasso, who had undertaken a number of diplomatic missions and had initiated various field missions during his period of office, resigned his post.²⁶⁶ His work has been criticised for being too diplomatic, i.e. failing to confront gross human rights violators by not issuing clear statements on the human rights records of the governments he was meeting.²⁶⁷ Mary Robinson has been appointed as his successor and it remains to be seen in what manner she will fulfil her role, which will to a large degree depend on the outcome of the cur-



Destruction by indiscriminate shelling

rent restructuring of the UN and the organisational and financial support of other UN organs, particularly the Security Council.

The Commission on Human Rights, which consists of representatives of member states, also plays an important role in monitoring human rights and possibly preventing genocide by documenting violations of human rights and establishing a dialogue with the government concerned.

An important mechanism in this respect is the so-called 1503 procedure.²⁶⁸ The Sub-Commission on the Prevention of Discrimination and Protection of Minorities, a body of experts acting in an individual capacity which was set up by the Commission on Human Rights, examines “communications, together with replies of governments, if any, which appear to reveal a consistent pattern of gross violations of human rights.” The procedure is confidential, and aims at exerting discreet political pressure on the government concerned to stop further violations of human rights. Should the Sub-Commission decide to consider a communication and pass it on to the Commission, the latter might decide to reject it, pass it on to the Economic and Social Council (ECOSOC) or keep it under review. When a communication reaches ECOSOC, which rarely happens, the proceedings become public, otherwise they remain confidential although the Commission announces which countries had been the subject of consideration.²⁶⁹

The Resolution 1235 procedure,²⁷⁰ which is public, can be initiated by member states or by the Sub-Commission on the Prevention of Discrimination and the Protection of the Minorities to “examine information relevant to gross violations of human rights and fundamental freedoms.” If the Commission decides to make a thorough study of a particular situation, considering “questions of the violations of human rights and fundamental freedoms, including policies of racial discrimination and segregation”, it may appoint a Working Group or a Special Rapporteur to study and report. It may also adopt a resolution condemning a situation and notify the government concerned. In all cases it will report, through the council, to the General Assembly.²⁷¹

A number of special Working Groups and Special Rapporteurs have been established by the Commission on Human Rights. Their function is to receive information on the subject matter from all available sources and request the government concerned to take action to prevent further human rights violations.

Regarding the prevention of genocide, the Working Group on Enforced and Involuntary Disappearances, the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions and the Special Rapporteur on Torture are of particular relevance.²⁷²

2. *Article IX: Disputes between the Contracting Parties relating to the interpretation, application or fulfilment of the present Convention, including those relating to the responsibility of a State for genocide or for any of the other acts enumerated in Article III, shall be submitted to the International Court of Justice at the request of any parties to the dispute.*

The International Court of Justice (ICJ) has, pursuant to Article 36 of its Statute, jurisdiction only if a State party to the dispute recognises its jurisdiction. Article IX provides for such a recognition which prompted several contracting parties to enter reservations against its applicability in disputes where they would be involved. This means in practice that this recourse of action is not open against a number of contracting states. The major shortcoming of the provision does however lie elsewhere. According to Article 34, 1 of its statute, only States may be parties to disputes before the ICJ. Thus, individuals or non-state entities, e.g. representatives of a group subject to genocidal attacks, are barred from seizing the court. Effectively, the court can only be seized by way of an inter-state complaint; a procedure states are generally reluctant to employ because of its diplomatic repercussions. Moreover, states are more likely to call upon the UN first, before initiating such proceedings before the ICJ.

In spite of these limiting factors, the ICJ was for the first time called upon to decide a case concerning the application of the Genocide Convention in a rather exceptional case which was made possible by the break-up of a state that was a party to the Convention. Bosnia and Herzegovina requested the court to indicate provisional measures to stop the alleged genocide committed by Yugoslavia (Serbia and Montenegro). The Court issued two orders on 8 April 1993 and on 13 September 1993 in which it ordered that Yugoslavia should take all measures within its power to prevent commission of the crime of genocide, in particular by ensuring that its armed forces do not commit acts of genocide.²⁷³ The Court held that it was not called upon to establish the existence of breaches of the Genocide Convention, but that both parties to the dispute were under a clear obligation to do all in their power to prevent the commission of acts of genocide where there is a grave risk of them

being committed.²⁷⁴

On 20 March 1993, Bosnia filed an application before the ICJ alleging violations of the Genocide Convention by the Government of the Federal Republic of Yugoslavia. It asked the ICJ to declare that Yugoslavia had violated the Genocide Convention, order Yugoslavia to cease the acts constituting such violations and declare that Yugoslavia had incurred international responsibility for which it must make appropriate reparation. On 11 July 1996, the ICJ rejected the preliminary objections raised by Yugoslavia, i.e. the lack of an international dispute, the lack of authority of the President of Bosnia at the time of filing the application and the lack of jurisdiction of the ICJ, and held that the application was admissible.

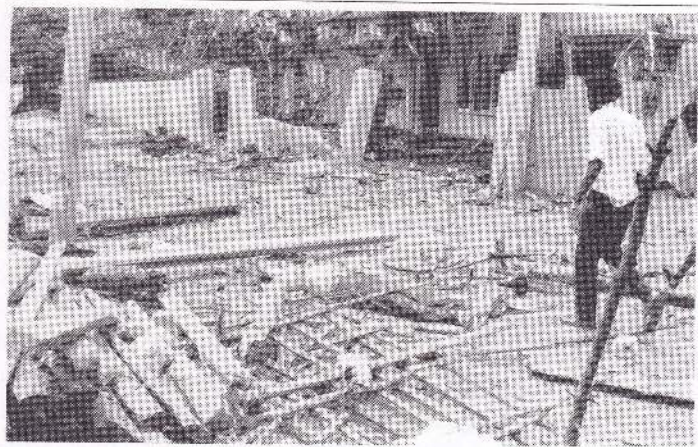
Although the case concerned the admissibility and not the merits, which will be decided upon in the near future, there were some important findings in the judgement. Firstly, concerning the existence of an "international dispute" falling within the provisions of Article IX of the Genocide Convention, the ICJ found that pursuant to Article I, the Genocide Convention is applicable without reference to the circumstances linked to the domestic or international nature of the conflict, provided that the criminal acts referred to in Articles II and III have been perpetrated. Secondly, the ICJ held that the application was not inadmissible on the sole ground that, to decide the dispute, it would be impelled to take account of events that may have occurred in the context of a civil war. Thirdly, the ICJ found that Article IX does not exclude any form of state responsibility. This applies equally to the responsibility of a state for acts of its organs which are referred to in Article IV.²⁷⁵

Remarkable as these decisions may be, it needs to be kept in mind that the Court lacks any enforcement mechanisms. Ultimately, it would have to be upon the Security Council to enforce the judgement pursuant to Article 94.2 of the UN Charter if the party in question fails to comply with the decision of the ICJ. A decision by the ICJ has nevertheless strong persuasive force, since the Court is the principal judicial organ of the UN. Thus, it might prompt other states or bodies of the UN to take appropriate action to prevent further acts of genocide.

3. *Article VI, first part: Persons charged with genocide or any of the other acts enumerated in Article III shall be tried by a competent tribunal of the State in the territory of which the act was committed.*

The first draft of the Convention incorporated the principle of universal enforcement, permitting a State whose authorities had arrested those charged with the crime, to exercise jurisdiction, regardless of the nationality of the accused or the place where the offence was committed.²⁷⁶ The final text of the Genocide Convention eliminated this provision. Observers viewed this step as favouring state sovereignty over the need to punish the perpetrators of atrocious crimes.²⁷⁷ It is evident that the scope for punishment is much narrower if it is confined to the jurisdiction of the countries in which acts of genocide have been committed. Firstly, there will most likely be no trials as long as the regime committing genocide is in power. Secondly, even if the perpetrators of genocide are ousted and a new government takes over, the remaining power of the perpetrators and the need for national reconciliation often militate against a trial, as has been, for example, partly the case in Cambodia.

However, taking into account the rule of exhaustion of local remedies, the exercise of state sovereignty carries with it an obligation for a state that is party to the Genocide Convention to prevent and punish acts of genocide. Although this obligation is not enforceable, a failure to comply with it would send a strong signal that a government is not willing or not able to enforce the Genocide Convention itself, thus possibly creating conditions that would justify outside intervention in the face of continuing acts of genocide.



Air-raid victims

4. Article VI, second part: Persons charged with genocide or any of the acts enumerated in Article III shall be tried by such international penal tribunal as may have jurisdiction with respect to those Contracting Parties which shall have accepted jurisdiction.

This provision was drafted under the impression of the Nuremberg and Tokyo War Crimes Tribunals which led many participants in the international system to believe that the establishment of a permanent international criminal court was imminent. However, for reasons of state sovereignty in the highly polarised cold war era, the envisaged international criminal court failed to materialise. The establishment of an international criminal court gained new momentum after the break-up of the Soviet-Union and subsequent events in Yugoslavia and Rwanda. Both of these ethnic conflicts, which had clear features of genocide, triggered the establishments of International Criminal Tribunals.²⁷⁸ The Tribunal for Yugoslavia was established in May 1993 and on 13 February 1994, it issued the first ever genocide indictment against Z.Meakic, chief commandant of the Omarska death camp in Bosnia. On 7 May 1997, the tribunal delivered its first judgement convicting D.Tadic of persecution, i.e. murder with a discriminating intent, and beatings in prison camps, but not of genocide.²⁷⁹ The Tribunal for Rwanda was established on 8/11/1994 but has not yet rendered any final judgement. The Tribunals were set up on an ad-hoc basis and were confined to the countries in question. Their existence depended on the political willingness of the UN Security Council to support and implement its establishment. The establishment of these tribunals was welcomed by many international human rights lawyers who nevertheless lamented their contingent

nature. For this reason, the call for a permanent International Criminal Court gained fresh impetus.

On 29 November 1996, the Sixth Committee of the UN General Assembly adopted resolution A/C.6/51/L.10 on the establishment of a permanent International Criminal Court by consensus renewing the mandate of the Preparatory Committee initially established in 1995, and setting the date of the conference of plenipotentiaries for 1998. The draft Statute of the Court includes jurisdiction for genocide; aggression; serious violations of the laws and customs applicable in armed conflict; crimes against humanity; and various treaty crimes.²⁸⁰

Given the broad support that the establishment of the International Criminal Court appears to enjoy among states, it appears very likely that it will be established in the near future. It will allow perpetrators of genocide to be prosecuted. Despite these powers, practical problems regarding co-operation and apprehension of perpetrators are bound to occur. However, these obstacles are inherent in the international system and could only be overcome by the establishment of an international police force with adequate powers and the necessary political support to enforce international arrest warrants.

Nevertheless, it is widely held that the establishment of the International Criminal Court would send a powerful signal to all perpetrators of international crimes that the international community will not tolerate their activities any longer. Moreover, an indictment of a government would lead to mounting pressure on the international community, in particular the UN, to take appropriate measures to stop the indicted government or the indicted individuals committing further international crimes.



Protest against economic blockade

The enforcement mechanisms of the Genocide Convention are inefficient since a mechanism specifically tailored to prevent and punish genocide is lacking and since the existing mechanisms fall short of achieving the purported objective of the Convention. This applies in particular to the lack of universal jurisdiction and the so far non-existent International Criminal Court whose foreseeable establishment appears to point to a fundamental change in the enforcement structure of the Genocide Con-

vention. This is due to the new impetus given to genocide and the broader category of crimes against humanity in the light of events in Yugoslavia and Rwanda. They have prompted a revival of the Genocide Convention which has been a dead letter for years. However, given the current provisions of the Genocide Convention, the remnants of past shortcomings in its drafting still have the force of law.

Thus, previous criticisms of it, in particular that it was interlocked with an undue priority given to state sovereignty and that it amounted to a registration of protest against past misdeeds of individual or collective savagery rather than to an effective instrument for their prevention or repression, remain valid and need to be addressed by the international community if it seriously intends to combat genocide. □

²⁶² see A.Cassese: Human Rights, p.77

²⁶³ see L.Kuper: Prevention of Genocide, p.104, who argues that gross violations of human rights should be considered as constituting a threat to peace according to Article 39 of UN-Charter.

²⁶⁴ Such measures may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations as well as demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations.

²⁶⁵ see UN: The UN and Human Rights, 1945-1995, 1995

²⁶⁶ see Amnesty International: Agenda for a new United Nations High Commissioner for Human Rights, April 1997, pp.2-7

²⁶⁷ see *ibid.*, p.3

²⁶⁸ Resolution 1503 of the Economic and Social Council, 29/5/1970

²⁶⁹ see A.H.Robertson and J.G.Merrills: Human Rights, pp.74-78, and UN: UN Action, pp.23,24,312-314

²⁷⁰ Resolution 1235 of the Economic and Social Council, 6/6/1967

²⁷¹ see A.H.Robertson and J.G.Merrills: Human Rights, pp.78,79

²⁷² see *ibid.* pp 84-87, and UN: UN Action, pp.21,22,72,73,94,95

²⁷³ see ICJ Rep. 1993, order of 8/4/1993 at para 52 A and B and reaffirmed in second order of 13/9/1993, at para 61

²⁷⁴ see ICJ Rep. 1993, order of 8/4/1993 at para 45

²⁷⁵ see J.H.Bello: International Decisions: Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia-Herzegovina v. Yugoslavia), Preliminary Objections, Judgement, International Court of Justice, July 11, 1996 in: The American Journal of International Law, Vol.91, 1997, pp.121-126

²⁷⁶ UN Special Rapporteur 1985.: pp.27, 56

²⁷⁷ see A.Cassese: Human Rights, p.77

²⁷⁸ see S.Grant: Dispensing International Justice: The Yugoslav and Rwandan Criminal Tribunal in: Interights Bulletin, Volume 9, No.2, 1995, pp.61-65

²⁷⁹ see Christopher Bellamy: Bosnian Serb found guilty of war crimes in: Independent, May 8 1997

²⁸⁰ see UN Doc. A/49/335, 1 September 1994

The UN record of preventing and punishing genocide

There have been innumerable cases of atrocities committed since the foundation of the UN that have been called genocide, even if they did not fall within the purview of the definition of genocide in the Convention. Among them are, inter alia, the massacre of hundreds of Balubas by the Congolese national army in 1960²⁸¹, the extermination of the Hutu by the Tutsi in Burundi in 1965 and 1972²⁸², massacres committed by the Pakistani army in 1971 against the people who were to become Bangladesh²⁸³, the killings of Ache Indians in 1970-1974 with the complicity of the government authorities of Paraguay²⁸⁴, atrocities committed by Idi Amin's regime in Uganda against political and ethnic opponents in the period of 1971-1978²⁸⁵, the extermination of approximately two million people for ideological reasons by the Khmer Rouge in Cambodia between 1975 and 1978²⁸⁶, the massacre of Palestinians perpetrated in Lebanon with complicitous inaction by the Israeli armed forces²⁸⁷, the Anfal campaign of bombarding and killing thousands of Iraqi Kurds by means of chemical warfare committed by Saddam Hussain's forces in 1988²⁸⁸, and the recent cases of mass murder committed in Yugoslavia mainly by Serbian forces against Bosnian Muslims²⁸⁹ and in Rwanda by the Hutus on the Tutsis²⁹⁰, not to forget the continuing oppression taking place in East Timor²⁹¹, Tibet²⁹², southern Sudan²⁹³ and Turkish Kurdistan²⁹⁴ as exercised by the Indonesian, Chinese, Sudanese and Turkish governments respectively.

"There can be no derogations from the duty to uphold the right to life in any circumstances, even "in time of public emergency which threatens the life of the nation."

Article 4 of the International Covenant on Civil and Political Rights (ICCPR), to which the Government of Sri Lanka acceded in 1980.

The acts of genocide against the Tamils in Sri Lanka²⁹⁵ need to be recalled in order to complete this non-exhaustive enumeration of cases of genocide. Given this account of outrageous crimes that have caused inconceivable suffering and have cost millions of lives, it should be expected that the prevention and punishment of crimes of genocide would be one of the priorities of UN activities.

Until recently, the reverse has been the case and UN activities on genocide have repeatedly been called a failure.²⁹⁶ A brief account of UN responses to genocide will confirm this verdict.

In 1960, the UN Security Council decided that troops had to abstain from intervening in Congo despite urgent calls by the then General-Secretary Dag Hammerskjold.²⁹⁷ In 1971, neither the UN General Assembly nor the Security Council took any decisive action to prevent the genocide of Bangladeshis by Pakistani troops. The Sub-Commission on Prevention of Discrimination and Protection of Minorities also failed to act despite requests by international human rights organisations to do so.²⁹⁸ The cases of Burundi, the Apache Indians in Paraguay, Uganda and Cambodia were dealt with in a similar fashion of no decisive action being taken.²⁹⁹

The immediate post cold-war era witnessed two horrendous ethnic conflicts that led the UN to take stronger action. In addition, the case of the Kurds in Iraq has triggered innovative ways of preventing genocide.

In Yugoslavia, the Security Council was actively engaged in bringing about a peaceful settlement of the dispute. Despite its efforts and the dispatch of peacekeeping troops which at least partly prevented further war atrocities taking place, the UN ultimately failed to halt the war and to prevent acts of genocide. The UN

engagement has thus been rightly criticised as being inadequate which is due to a strategy of restricting the extent of the conflict instead of radically stopping the war in the first place or contributing to a long-term solution. The same assessment has been made with regard to UN action in Rwanda. Both strategies were marked by favouring humanitarian relief when the damage had already been done, over swift political action to devise ways to prevent a simmering ethnic conflict from escalating into genocide.³⁰⁰ Nevertheless, both events triggered the establishment of international criminal tribunals which is a positive step if punishment is regarded to be a means of justice and deterrence for future crimes.

In Iraq, the attack on Iraqi Kurds by Iraqi troops in the aftermath of the Gulf-war prompted the allied forces to set up a safe haven, i.e. a demarcated, protected territory for the Kurdish population in 1991. In addition, a no-fly zone was imposed which prohibited Iraqi aircraft from operating in the northern, Kurdish region of Iraq. Due to the conflicting political interests in the region, in particular concerning Turkey and Iran, and renewed involvement of Iraqi ground troops in fights between Kurdish factions,

the situation in Iraqi Kurdistan remains explosive. Nevertheless, the innovative measures provided at least temporary protection to the population and enabled the Kurds to exercise some form of self-government in the region.³⁰¹

There appears to be some scope for more effective UN action in future cases of genocide by utilising and further developing the methods employed in the cases described above. However, the end of the cold war has not meant that decision-making within the UN is based on objective criteria. Political interests and considerations are still predominant factors on the basis of which the most influential participants within the UN, especially the Security Council, derive their decisions. Therefore, even in clear cases of a looming genocide or a genocide already occurring, what kind of action is taken will depend very much on the political position of the country in question in relation to the major actors in the international arena. In general terms, the UN still appears to favour a reactive, i.e. providing humanitarian relief during and after a conflict, over a proactive, i.e. intervening, possibly forcibly, at an early stage of a conflict, strategy in dealing with situations of genocide. □

²⁸¹ see A.Cassese: Human Rights, p.79

²⁸² see L.Kuper: International Action against Genocide, p.10 and R.Lemarchand: Rwanda and Burundi, Praeger, New York, 1970

²⁸³ see *ibid.*, p.6 and K.Chaudhuri: Genocide in Bangladesh, Orient Longman, Bombay, 1972

²⁸⁴ see *ibid.*, p.9 and R.Arens, ed.: Genocide in Paraguay, Temple University Press, Philadelphia, 1976

²⁸⁵ see *ibid.*, p.10 and International Commission of Jurists: Uganda and Human Rights, Geneva, 1977

²⁸⁶ see B.Kierman: The Cambodian Genocide in: G.J.Andreopoulos: Genocide, pp.191-228

²⁸⁷ see A.Cassese: Human Rights, p.84

²⁸⁸ see M.V.Bruinessen: Genocide in Kurdistan? in: G.J.Andreopoulos: Genocide, pp.141-170

²⁸⁹ see Ian Traynor: Judgement day for Hague court in: Guardian, 7 May 1997, p.11

²⁹⁰ see T.Sellstrom: The International Response to Conflict and Genocide: Lessons from the Rwanda Experience, Copenhagen, 1996

²⁹¹ see F.Chalk&K.Jonassohn: History and Sociology of genocide, p.12 and J.Dunn: East Timor: A case of cultural genocide in: G.J.Andreopoulos: Genocide, pp.171-190

²⁹² see H.Josephin, K.J.Harvey, J.Denise and M.E.Landorgan: Independence for Tibet: an international law analysis in: China Law Reporter 1994, pp.21-72

²⁹³ see Human Rights Watch/Africa: Behind the red line: political repression in Sudan, New York, 1996

²⁹⁴ see recent case law of the European Court on Human Rights, finding Turkey in breach of several Convention articles, in particular concerning its policy of destroying Kurdish villages, killing Kurdish civilians, and its torture practices.

²⁹⁵ see L.Kuper: International Action against Genocide, p.15 . A.Cassese: Human Rights, p.80 and I.W.Charny: Towards a Generic Definition of Genocide in: G.J.Andreopoulos: Genocide, p.64

²⁹⁶ see L.Kuper: International Action against Genocide, p.11

²⁹⁷ A.Cassese: Human Rights, pp.81-83

²⁹⁸ see L.Kuper: International Action against Genocide, p.10

²⁹⁹ see *ibid.* pp.10,11

³⁰⁰ see T.Findley: Armed conflict prevention, management and resolution in: SIPRI Yearbook 1995, pp.37-82, see also: J.Karhilo: Case study on peacekeeping: Rwanda in: SIPRI 1995, pp.100-116 and M.Zucconi: The former Yugoslavia: Lessons of war and diplomacy in: SIPRI 1995, pp.211-229

³⁰¹ see H.Cook: The Safe Haven in Northern Iraq, Human Rights Centre, Essex, KHRP, London, 1995

UN record on Sri Lanka

None of the UN organs has directly intervened in Sri Lanka to prevent acts of genocide. Nor has any international tribunal been established to try those responsible for acts of genocide in Sri Lanka. Although events in Sri Lanka fall within the category of internal conflicts with an international dimension, no initiatives of either the UN Security Council or the UN Secretary-General have been made to send peace-keeping troops to Sri Lanka. UN officials and member states have repeatedly stated that they are unable to intervene as long as both parties are not committed to peace.³⁰² Thus, the stalemate regarding the peace talks and the objection of the government to any form of third-party involvement appears to prevent any UN peace missions to Sri Lanka, besides possible political motives of UN member states not to intervene in Sri Lanka.

However, events in Sri Lanka have been scrutinised in terms of human rights violations prior to and during the war. In 1983, the Sub-Commission on Prevention of Discrimination and Protection of Minorities adopted a resolution on Sri Lanka concerning the communal violence against the Tamil-speaking people in which it called for information from Sri Lanka and recommended that the Commission examine the situation.³⁰³

In 1987, the UN Commission on Human Rights called upon all parties to the conflict to respect the universally accepted rules of humanitarian law, to renounce the use of force and violence and to pursue a negotiated political solution.

Throughout the 1980s, the UN Working Group on Enforced or Involuntary Disappearances, the UN Special Rapporteur on Torture and the UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions raised cases of disappearances (936 cases of reported disappearances at the end of 1989), torture and deaths in custody as well as cases of possible extrajudicial executions.³⁰⁴

In the 1990s, the UN Special Rapporteur on Torture³⁰⁵ and the UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions³⁰⁶ have continuously reported cases concerning Sri Lanka and raised them with the government. There have also been reports of the Working Group on Arbitrary

"United Nations Secretary General Boutros Boutros Ghali has appealed to both sides and to the international community for immediate assistance for over 250,000 civilians displaced in Jaffna to avert a major humanitarian crisis."

Sri Lanka Monitor, October 1995

Detention³⁰⁷, of the Special Rapporteur on the Elimination of Religious Intolerance³⁰⁸, and on Internally Displaced.³⁰⁹

The UN Working Group on Enforced and Involuntary Disappearances visited Sri Lanka in 1991 and 1992.³¹⁰ In its reports, it expressed concern over the large number of disappearances and recommended that the ERs and the PTA be brought into line with accepted international standards regarding due process and the treatment of prisoners. In 1996, the Group stated that since its establishment in 1980, 11,513 cases of disappearances alleged to have occurred in Sri Lanka were reported to it, the second highest total number for any individual country.³¹¹ The Group expressed its concern at the continuing high level of newly reported cases of disappearances in Sri Lanka and the large number of unresolved cases of past disappearances.³¹² In 1995, the Working Group commented on the increase in new cases as follows: "*Notwithstanding the cooperation which the working group has received from the government, it is alarmed at reports according to which the previous pattern of systematic disappearances seems to be re-emerging*".³¹³

The Human Rights Committee has so far examined three periodic reports of Sri Lanka submitted pursuant to Article 40 of the International Covenant on Civil and Political Rights. The third periodic report was examined on 24 and 25 July 1995.³¹⁴ In its general comments, the Committee stated that the report was not satisfactory, in particular lacking detailed information and being submitted too late. The Committee then considered the ERs and the PTA. Several aspects of these laws were criticised by members of the Committee which concluded: "*The Committee considers that the domestic legal system of Sri Lanka contains neither all the rights set forth in the Covenant nor all the necessary safeguards to prevent*

their restrictions beyond the limits established by the Covenant."

This statement applied in particular to Article 9 of the ICCPR, which stipulates the right to liberty and security of person, prohibits arbitrary arrest and detention and provides for judicial safeguards, and Article 10 which requires that all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person. The third part of the review concerned government measures relating to the implementation of the rights granted in the ICCPR. The Committee recommended that the State party consider acceding to the Optional Protocol; that due consideration be given to the provisions of the Covenant in the present efforts to reform the Constitution, in particular regarding derogations; that the death penalty may only be imposed for the most serious crimes and be ultimately abolished; that the Convention against Torture Act be amended to bring it in conformity with Article 7 (prohibition of torture) of the Covenant. It also expressed concern regarding the effectiveness of the habeas corpus remedy in respect of those arrested under the PTA as well as regarding the multiplication of bodies to promote and protect human rights and the narrow mandate of Commissions investigating past human rights violations and the non-conformity of the basic principle of fairness in their appointment. Moreover, several members of the Committee expressed their concerns at the ineffectiveness of the fundamental rights petition and the impunity enjoyed by the security forces.

At the 53rd session of the UN Commission on Human Rights on 9 April 1997, a record number of 53 Non Governmental Organisations (NGOs) called for the ending of the Sri Lanka-Tamil Eelam war and

the withdrawal of Sri Lanka's occupying forces from the Tamil homeland. The NGOs have consultative status with the UN Economic and Social Council and included organisations such as the International Commission of Jurists, the World Council of Churches, the International Human Rights Law Group and the International League for the Rights and Liberation of Peoples. Their joint statement, indicating the growing concern at the genocidal situation prevailing in Sri Lanka, expressed grave concern at the violation of humanitarian law and human rights in Sri Lanka. It stated that "*the civilian Tamil population continues to be a target of military operations*", that "*there are more than 825,000 displaced Tamil civilians living under appalling conditions which include acute shortages of water, food and medicine*", and that "*disappearances, extra judicial killings, rape, torture, arbitrary arrest and indefinite detention in the context of war continue*." Moreover, it was "imperative that the Tamil People choose their own political and national status." The statement also called for a political solution, "which recognises the right of the Tamil people to determine their political status."³¹⁵

The United Nations High Commissioner for Refugees has also become involved in Sri Lanka through the provision of humanitarian aid for refugees. However, its repatriation programmes and its position papers released in 1995 and 1996, which declare Sri Lanka to be a safe country for Tamil refugees, have come under fierce criticism.³¹⁶

The UN Secretary-General also intervened at the height of the refugee crisis following the capture of Jaffna by the Sri Lankan army. However, his plea to employ the UN to help Tamil refugees received a hostile response from the government.³¹⁷ □

³⁰² see H.J.Whall: Right to Self-Determination, p.311

³⁰³ see L.Kuper: Prevention of Genocide, p.222

³⁰⁴ see UN: UN Actions, p.343 concerning UN actions regarding Sri Lanka in the 1980s

³⁰⁵ see E/CN.4/1996/35 & Add.1

³⁰⁶ see E/CN.4/1996/4

³⁰⁷ see E/CN.4/1997/Add.1 Dec No.1/1996

³⁰⁸ see E/CN.4/1993/62 & Corr.1 and E/CN.4/1995/91 & Add.1

³⁰⁹ see E/CN.4/1994/44/Add.1 and E/CN.4/1995/50

³¹⁰ see E/CN.4/1992/18/Add.1 of 8/1/1992 and E/CN.4/1993/25/Add.1

³¹¹ E/CN.4/1997/34, para.318

³¹² *ibid.* para. 323 and 327

³¹³ E/CN.4/1996/38, para 397

³¹⁴ see UN CCPR/C/79/Add.56, see also discussion of report in: Amnesty International: Sri Lanka Under scrutiny by the Human Rights Committee, December 1995

³¹⁵ see Geneva: "Withdraw occupying forces from Tamil homeland" Geneva: Call by record number of 53 NGOs in: Hot Spring, April 1997, p.6

³¹⁶ see Refugee Council: Protection Denied, pp.8,9

³¹⁷ see Vasantha-Rajah: Tamil Exodus and Beyond, L.Samarasinghe, London, 1996,p.21

Sri Lanka's record of enforcing the Genocide Convention

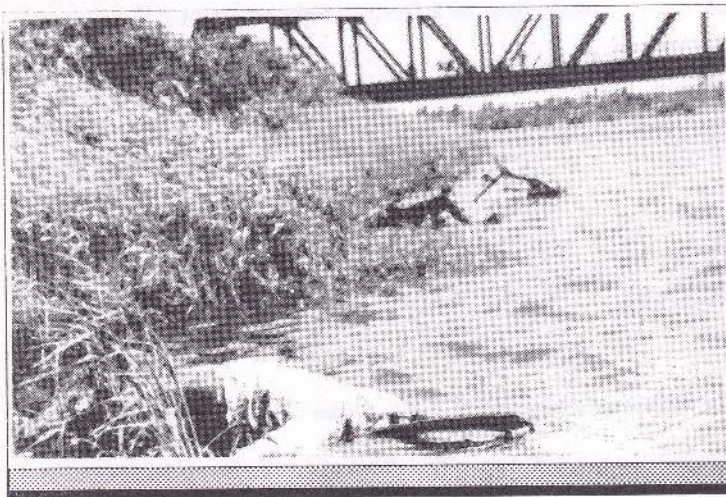
There are no known cases in which an accused has been charged with acts of genocide in Sri Lanka.

Successive governments have failed to conduct independent inquiries and to take action against those responsible in relation to the race riots.³¹⁸ The 1956 and 1958 riots, army attacks during the 1961 military occupation, although being the subject of an official inquiry, and the 1974 attack on the Tamil Conference were treated as some kind of natural disaster without setting the criminal machinery in motion in spite of police non-interference or active participation in these acts. In 1977, the report of the Sansoni commission was not followed up by adequate prosecution of the culprits who were instead granted indemnity. No action is reported to have been taken to bring to justice the perpetrators of murder, assault, rape and looting during the 1981 riots. The 1983 riots and prison massacres were either investigated by means of inconclusive police inquiries or went completely unpunished. In 1988, the Indemnity (Amendment) Act was passed which gave immunity from

prosecution to all members of the security forces from 1/8/1977-16/12/1988, provided that their orders were carried out in "good faith" and in the "public interest."

Being operative between 1990 and 1995, a presidential commission of inquiry into the illegal removal of persons that occurred after 11 January 1991 recommended at the end of 1995 the prosecution of those responsible in approximately 100 cases of disappearances, which are currently under investigation.³¹⁹

An inquiry into the killings of Tamil civilians by the army in Kokkaddichcholai in June 1991 found that the deaths had resulted from deliberate retaliatory action. Of 20 military personnel tried by a military tribunal, none was found guilty of murder. The only action taken was the dismissal of the lieutenant in charge who was convicted of failing to control his troops and disposing of bodies illegally at the site of the massacre³²⁰. Several other cases of extrajudicial executions, disappearances, murder, rape and torture were either not tried at all or failed to reach any conclusion.³²¹



Floating dead bodies

In July 1994, Amnesty International published a document *Sri Lanka: When will justice be done?* which highlighted 18 cases of extrajudicial execution and disappearance that occurred in Sri Lanka since 1983. It found that, although in the majority of cases some form of investigation or prosecution had taken place, the outcome had been far from satisfactory. Moreover, some of the investigations seemed to have been set up in

order to silence public outcry at the time without any real determination to bring those responsible to justice.³²²

In 1994, three commissions were established by the new government whose mandate was to investigate disappearances that had occurred since 1 January 1988. Although they had not yet heard evidence in a large number of complaints, the Commission was directed to terminate in December 1996. The Commissions have submitted their reports but the government has not announced measures to punish a large number of security force personnel found guilty. The investigations have been criticised for not including more than 680 cases of disappearances reported prior to 1 January 1988.³²³

Throughout 1995 and 1996, several prosecutions of perpetrators of murder and rape were initiated. However, in relation to the extra-judicial executions in Colombo in 1995 and at Kumarapuram and Kanniya in 1996, the accused were released on bail after they had been charged, and did reportedly return to army service in the northeast.³²⁴ In March 1997, the Colombo Bolgoda death squad case against the 22 members of the Special Task Force was taken off the court roll because the accused and the Attorney General failed to appear for two hearings.³²⁵ The Magistrate called the absence of the Attorney General's Department an obstruction of justice; a fact that was also

criticised by human rights agencies as encouraging impunity.³²⁶

The case concerning the massacre at Kumarapuram is currently awaiting a decision on indictment. However, key witnesses expressed fears for their safety since at least one high-ranking officer involved in the incident has not been arrested and continues to be in charge of an army camp in the area.³²⁷

Despite the stated commitment of the new government to bring the perpetrators to justice and despite a few inquiries and prosecutions, impunity for members of the security forces remains a serious problem.³²⁸

Despite several Supreme Court rulings on the continuing occurrence of torture and on the breach of ERs by officials including the Defence Secretary in December 1996, thus far no action has been taken.³²⁹

The continuing impunity for acts of a genocidal nature in the form of lacking prosecution into past crimes, various indemnity laws and apparent shortcomings in the prosecution of members of the security forces for crimes committed since 1988, does not only amount to a failure of Sri Lanka to enforce the Genocide Convention but also fails to prevent the future commission of those acts by not holding the perpetrators responsible.

³¹⁸ see above: Acts of genocide: The evidence

³¹⁹ see Amnesty International: Wavering Commitment, p.30

³²⁰ see Amnesty International: Annual Report 1993, p.266

³²¹ see Amnesty International: Summary of concerns, p.6

³²² see Amnesty International: Time for truth and justice, April 1995, pp.20-23

³²³ see Amnesty International: Wavering Commitment, p.30, see also on lack of progress in prosecuting army officers implicated in cases of disappearances: Report of the Working Group on Enforced or Involuntary Disappearances, E/CN.4/1997/34, para. 323

³²⁴ see Amnesty International: Wavering Commitment, p.29

³²⁵ see Sri Lanka Monitor, No.111, April 1997, p.3

³²⁶ see Sri Lanka Monitor, No.110, March 1997, p.4

³²⁷ Amnesty International: Wavering Commitment, p.29

³²⁸ see US State Department: Country Report 1996, introduction

³²⁹ see Sri Lanka Monitor, No.111, April 1997, p.3

A Note on Secret Disposal of Bodies

Emergency Regulation 15A introduced in June 1983, authorised the security forces to dispose of dead bodies in secret without inquest proceedings or post-mortem. Following international condemnation, Regulation 15A was replaced by Regulations 55B to 55G in June 1985. Under these regulations the Assistant Superintendent of Police (ASP), in case of death in custody, was required to proceed to the scene and after enquiry report to the Magistrate. The Regulations did not lay down the time limit for such enquiry, whereas under the Criminal Procedure Code of the period, the enquiring officer must proceed immediately to the scene and send his report forthwith to the Magistrate.

Further, the Magistrate had no power under the Regulations to initiate an enquiry and could act only if the matter was referred by the Inspector General of Police (IGP) or his deputy. Furthermore, the jurisdiction of the High Court could be invoked only on an application by the IGP. Amnesty International expressed concern that legal safeguards provided by ordinary inquest proceedings were substantially weakened and that the police still had the power to dispose dead bodies without an inquest "in the interests of national security".

In November 1988, Regulation 55FF was introduced, once again allowing the police to bury or cremate dead bodies without inquest. Amnesty International declared that the Regulation facilitated arbitrary killings and cover-up of killings and gave the impression that the government condoned such killings.

The Emergency Regulations were amended in February 1990. Amnesty International said at the time that Emergency Regulations regarding post-mortems and inquests remained unsatisfactory despite withdrawal of Regulation 55FF. Although the other Regulations (55B-F) did not permit immediate disposal of bodies without post-mortem, as did 55F, the Regulations remained inadequate to ensure full effective investigations into extra-judicial executions.

Amnesty International said in July 1994 that even when the Regulations relating to secret disposal of bodies were not in force, other Regulations provided special secret inquest procedure which could be used to cover-up extra-judicial killings in custody. The impunity granted by the Regulations cannot easily be overcome. Physical evidence had been destroyed within the framework of the Regulations and the mere existence of the Regulations was a signal to the security forces of the political will to grant impunity to those committing human rights violations. Amnesty International said further in July 1994 that the current Emergency Regulations remained wholly inadequate for the full and impartial investigation of deaths caused by security forces and could still be used to cover-up illegal killings.

The new Emergency Regulations introduced after the present People's Alliance came to power in August 1994, retains provisions (Regulations 44 and 45) for the disposal of dead bodies without an inquest. In the case of Letchumikanthan Thamayanthan, who was shot dead by the Army at Thirukadalur in Trincomalee District on 18 August 1997, the police invoked the provisions and handed over the body to the relatives without an inquest. □

Humanitarian Intervention

The possibility of humanitarian intervention has repeatedly been referred to as being the most effective means of preventing the commission of genocide outside the UN.³³⁰ Humanitarian intervention has classically been defined as the reliance upon force for the justifiable purpose of protecting the inhabitants of another state from treatment which is so arbitrary and persistently abusive as to exceed the limits of the authority within which the sovereign is presumed to act within reason and justice.³³¹ According to this definition, humanitarian intervention would be justified in cases of genocide.

However, humanitarian intervention constitutes use of force and conflicts with the principle of non-intervention and possibly with Article 2 (4) of the UN Charter. It is therefore controversial whether humanitarian intervention is lawful under international law, and if so, under what conditions.³³² Given the commitment to human rights laid down in the preamble, Article 1 (3), 55 (c) and 56 of the UN-Charter, there is a strong case for the use of humanitarian intervention in cases of genocide. In order to prevent abuse of the use of force, humanitarian intervention is regarded to be lawful only if there is the commission of large-scale atrocities in the country of intervention, if the intervention is based on an overriding humanitarian motive, if it takes place giving consideration to a preference for joint action, if it is proportional to the objective sought to be achieved and if all available remedies have been exhausted.³³³

Examples of humanitarian intervention in genocidal situations are the employment of troops by India in the case of East Pakistan 1971 and by Vietnam in Cambodia in 1978. They have been received as a matter of fact but were overshadowed by specific historical constellations and political motives. Thus, they cannot be said to constitute precedents for future cases of humanitarian intervention. Nevertheless, they achieved the objective of halting acts of genocide and might for this reason provide valuable lessons for possible preventative measures in future.

"... genocide continues to be an odious scourge on mankind... there are also at the present time many immediate issues related to genocide which call for the most urgent action...(such as) the communal massacres in Sri Lanka... some of these genocidal massacres arise out of struggles for greater autonomy, and might be regulated by recognition of the right of self-determination... there is a great need for delegations of member states with a strong commitment to human rights, and non governmental organisations with consultative status, to continue their efforts to recall the UN to its responsibilities for international protection against genocide and consistent violations of human rights. These efforts would include attempts to develop norms for humanitarian intervention, for the exercise of the right to self-determination..."

Prof. Leo Kuper: Minority Rights Group Report: International Action Against Genocide, 1982

However, the main international body to employ force remains the UN which should by all possible means be seized with initiating collective action, e.g. through peace-keeping forces, instead of employing the controversial means of humanitarian intervention. □

³³⁰ see B.Harff: Genocide and Human Rights, pp.24.25 and N.Rodley (ed): To Loose The Bands Of Wickedness: International Intervention in Defence of Human Rights, Brassey's, London, 1992

³³¹ Stowell in 1921 quoted in B.Harff: Intervention in Genocidal Situations, p.147

³³² see *ibid.* and J.A.R.Nafziger: Self-Determination and Humanitarian Intervention in a Community of Power in: Denver Journal of International Law and Policy, Vol.20:1, Fall 1991, pp.21-26

³³³ see M.J.Bayzler: Reexamining the Doctrine of Humanitarian Intervention in the Light of the Atrocities in Kampuchea and Ethiopia in: Stanford Journal of International Law, Summer 1987, pp.598-607

The Indian intervention in Sri Lanka

In June 1987, Indian vessels and air force entered Sri Lankan territory to deliver relief supplies to the beleaguered Tamil civilians living in the Jaffna peninsula. India, which includes the state of Tamil Nadu with 60 million Tamil speakers in the south and has pursued a policy of being the main regional power in South Asia, took this step after it had withdrawn its good offices in February 1987. This was the outcome of unsuccessful peace talks, such as the 1985 Thimpu Talks under Indian sponsorship, and the deterioration of the humanitarian situation in the northeast in the beginning of 1987 due to a massive military offensive of the Sri Lankan army.³³⁴

In the light of a massive influx of Sri Lankan Tamil refugees into Tamil Nadu and strong domestic pressure, India decided to intervene to end the military actions in the northeast. Sri Lanka strongly objected to the violation of its territory but agreed reluctantly to peace talks when international actors, such as the US, voiced no opposition against the Indian intervention since it was of a humanitarian nature.³³⁵

In July 1987, the Indo-Sri Lanka accord was signed without the participation of the LTTE which opposed the agreement. The Accord provided for the presence of Indian Peace Keeping Forces in the North-east which were to exercise security functions, disarm the Tamil militant groups and monitor elections to the newly formed provincial councils.³³⁶ The IPKF withdrew in March 1990, having failed to achieve any of the purported objectives. For the three years of its stay, it had been drawn into the conflict as it engaged in fighting with the hostile LTTE. Moreover, serious human rights violations were committed by the IPKF. The Accord also sparked the insurgency of the Janatha Vimukthi Peramuna (JVP), a nationalist marxist movement, in the south which resulted in more than 20,000 casualties.³³⁷

With hindsight, India's intervention has been a two edged sword that failed to provide a long-term prevention of acts of genocide taking place. Although it helped to prevent large-scale killings of Tamil civil-

ians by means of stopping the army's military offensive, it was not able to substantially improve the situation in the long-run for a number of reasons. The manner of its intervention offended the Sri Lankan government, the Indo-Sri Lanka accord failed to respond to Tamil demands and its pro-government orientation aroused the hostilities of the LTTE, the manner of the Indian occupation sparked the opposition of Tamil civilians, and the fact of its intervention fuelled Sinhalese fears of Indian dominance in Sri Lankan affairs. Although humanitarian in nature, the intervention failed to win the necessary support of the political participants in Sri Lanka. Regardless of the legality of the intervention, it demonstrated the limits of such an action in the context of opposition in the intervening country which was in India's case deeply bound up with the history and previous political relations between the two countries. Against this background, it proved impossible to confine the intervention to a humanitarian role. Realising that any lasting protection of the Tamils needed a political solution, India became involved in political considerations, using its military strength as a leverage. The need of any humanitarian intervention to solve the causes of the conflict is its major dilemma since the intervening state is bound to be drawn into the conflict or has to withdraw without having achieved its aim.

The Indian intervention demonstrates the limits of a unilateral humanitarian intervention by a regional power. Multilateral actors, be it on a regional or an international basis, appear politically to be in a better position to intervene by virtue of their international mandate.

Nevertheless, India continues to play an important role in the Sri Lankan conflict. Tamil Nadu has been and still is, at the time of writing, directly affected by the massive refugee influx which began in 1995. There is thus an immediate impact on India which makes it aware of the humanitarian suffering caused by the war. Moreover, although it has proscribed the LTTE and appears reluctant to directly intervene in Sri Lanka, India is still believed to be a key third party in any attempt to mediate between the warring factions in Sri Lanka due to its influence in the region.³³⁸ □

³³⁴ see S.D.Muni: Pangs of Proximity, p.90

³³⁵ see *ibid.* p.97

³³⁶ see S.D.Muni: Pangs of Proximity, pp.104,105

³³⁷ see E.Nissan: A Bitter Harvest, pp.17,18

³³⁸ see Sri Lanka Monitor, No.111, April 1977, p.1

Possible alternative enforcement mechanisms under International Law, especially concerning the prevention of genocide.

Enforcement mechanisms concern not only the punishment for the crime but most of all the prevention of it. The UN Special Rapporteur on Genocide proposed a variety of measures which should be adopted to prevent genocide.³³⁹ He first of all stressed the priority problem of preventing great loss of life. This should be achieved by means of international short-term and long-term action which would need to relate to different stages in the evolution of a genocidal process:

- *anticipation of its happening*: which should be based on a data bank of continuously updated information as well as on further research into the causation of genocide, in particular psychopathic dehumanisation, and the development of public awareness of violations of human rights.

- *early warning*: which would be based on indicators implying evidence of an impending genocidal conflict, such as mounting repression, increasing polarisation, mass famine and exoduses of refugees. If such a warning is received, the following steps should be taken: *investigation of allegations; activating different organs of the UN; making representations to national governments and to interregional organizations for active involvement; asking for the support of the international press in providing information; asking racial, communal and religious leaders to intercede; arranging the immediate involvement of suitable mediators and finally the possibility of sanctions by means of economic boycott and selective exclusion from participation in interna-*

tional activities and events.

- *an international body to deal with genocide*: which should be established under the Genocide Convention as a new, impartial body of the highest calibre. Its task would be to investigate questions of fact concerning allegations of genocide and, in cases where there are strong and reliable indications that genocide was taking place, it should be empowered to invite the State party concerned to submit its observation with regard to the allegations of genocide and designate one or more of its members to make a confidential inquiry and to report to the committee urgently.

- *an international human rights tribunal or court*: as well as instituting universal jurisdiction as recommended in the previous study on genocide.³⁴⁰ It should be noted that the institution of universal jurisdiction over cases of genocide is already lawful for any individual country as a matter of customary international law and has been urged to be included as a matter of treaty obligation under the Genocide Convention.³⁴¹

The proposals of the Special Rapporteur would certainly help in preventing further cases of genocide, but have, except for the foreseeable establishment of the International Criminal Court, not been put into practice so far. It is one of the leading among several calls to seriously tackle the scourge of genocide to which the international community has so far failed to respond adequately by taking appropriate action. □

³³⁹ see UN Special Rapporteur 1985, pp.41-45

³⁴⁰ see UN Special Rapporteur 1978

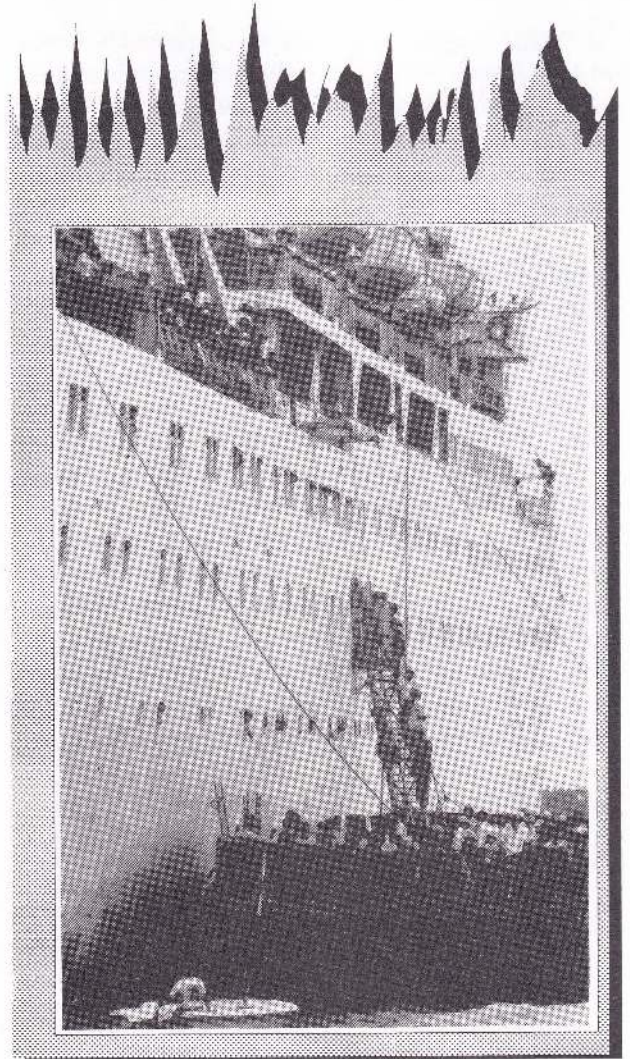
³⁴¹ see M.C.Bassiouni: Crimes against humanity in international criminal law, M.Nijhoff Publishers, Dordrecht, Boston, London, 1992, p.274 and L.R.Beres: Reason and Realpolitik in: I.W.Charny: Toward the understanding and prevention of genocide, p.314

Preventing future genocide: recommended strategies

In Sri Lanka, all the early indicators of a looming or already occurring genocide that have been identified by L.Kuper³⁴² and the Special Rapporteur are to some degree present: *mounting repression against an ethnic group, increasing polarisation, summary executions, small-scale massacres, exodus of refugees and violations of human rights*. According to the Special Rapporteur, such a situation warrants the collection of updated data and the triggering of early warning mechanisms. The following recommended strategies will be modelled after the proposed strategies of the Special Rapporteur and will in particular focus on legal mechanisms available to prevent acts of genocide. Where appropriate, additional political measures will be recommended which inevitably concern the continuing war.

Strategies denote the existing international mechanisms and available political avenues that might be utilised by various actors with a view to prevent genocide. In the Sri Lankan context, the latter strategies are predominantly focused on the peace process. There are numerous state and non-state actors that are currently trying to play a mediating or facilitating role in the advancement of peace. However, as long as there is little prospect of a ceasefire or lasting peace in the near future, which appears to be the case regarding the current phase of the war, other means that are not directly aimed at conflict resolution should be employed. The principal actors in doing so are NGOs and individuals who should set the international mechanisms in motion or exert political pressure. Ultimately, international bodies and individual states, especially Sri Lanka herself, have to take appropriate action in order to prevent future genocide in Sri Lanka. Their role will be scrutinised on the basis of their obligations under international law to prevent genocide.

The following actions should be considered to prevent future genocide in Sri Lanka:



Tamil Refugees

³⁴² see L.Kuper: Prevention of Genocide, p.20

UN High Commissioner for Human Rights

The UN High Commissioner for Human Rights is the new focal point of the UN's human rights activities. One of his main tasks is the reaction to cases of serious human rights violations and prevention of human rights violations. Concerning Sri Lanka, the High Commissioner should be called upon to conduct a fact finding mission to Sri Lanka in order to investigate the allegations of gross human rights violations. He should also be called upon to conduct an indepth study about the causes of the conflict in Sri Lanka with a view to prevent further human rights violations. This would in particular concern allegations of racial discrimination, which fall within the mandate of the High Commissioner, as well as the question of the denial of Tamil self-determination as a major source of the genocidal conflict. On the basis of his findings concerning gross violations of human rights in Sri Lanka, including acts of genocide, the High Commissioner should be called upon to establish a dialogue with the government with a view to ensuring respect for human rights and, should such a dialogue not result in an improvement of the human rights situation, to activate the UN machinery with a view to exert political pressure on Sri Lanka, possibly under threat of sanctions. □

UN Commission on Human Rights

The sessions of the UN Commission on Human Rights are an important forum where the international community can be alerted of the situation in Sri Lanka. Under one of its agenda items, the Commission considers "*Question of the violation of human rights and fundamental freedoms in any part of the world*". This item enables NGOs that have consultative status with ECOSOC to issue statements concerning the situation in a particular country. On 9 April 1997, 53 NGOs used this mechanism to issue a joint statement on the continuing occupation of the Tamil homeland by Sri Lankan forces. This statement specified a number of features of the current military operations which have in this study been identified as possibly constituting acts of genocide. Such a statement might result in the adoption of a resolution by the Commission in which it expresses its viewpoint on the situation. The 53 NGOs urged the Commission to adopt such a resolution "*calling upon the government of Sri Lanka to cease all military operations against the Tamil civilian population, to withdraw the occupying forces from the Tamil homeland, to lift the blockade in the North-East, and to allow humanitarian aid.*"

The Commission might also look into the situation in Sri Lanka under the 1235 procedure. This procedure has the advantage of being public and country specific. Should the Commission so decide, a thorough study of the violation of human rights and fundamental freedoms in Sri Lanka might be conducted by an appointed Working Group or Special Rapporteur. This procedure may finally result in a resolution condemning the situation in Sri Lanka and a report to the General Assembly. The utilisation of the latter options by the Commission depends almost entirely on political considerations. Given that the procedure cannot be initiated by individuals and NGOs, it would be necessary for NGOs that have consultative status with the Economic and Social Council to intervene with a view to urge the Sub-Commission or a member state to initiate the 1235 procedure. □

The 1503 procedure:

The examination of communications which reveal a consistent pattern of gross violation of human rights in Sri Lanka, although being confidential, would enable the Sub-Commission on the Prevention of Discrimination and Protection of Minorities and the Commission on Human Rights to exert political pressure on Sri Lanka. Should the Sub-Commission refer the situation to the attention of the Commission on Human Rights, the latter can determine pursuant to Article 6 of Resolution 1503:

- a) *whether it requires a thorough study by the Commission and a report and recommendation thereon to the Council;*
- b) *whether it may be a subject of an investigation by an ad hoc committee to be appointed by the Commission which shall be undertaken only with the express consent of the State concerned and shall be conducted in constant co-operation with that State and under conditions determined by agreement with it.*

The possible investigation into allegations of human rights violations on a large-scale, including genocide, might result in the activation of other UN bodies, such as the Economic or Social Council or the General Assembly. It has certainly the potential of bring-

ing the case of Sri Lanka back onto the UN agenda. In order to be most effective, a communication, which should be sent to the UN Secretary General in care of the Human Rights Centre, Geneva, should specify the allegation of genocide. However, given the huge number of communications, the overriding political considerations prevailing in the UN Human Rights Commission, the confidentiality and slowness of the procedure in cases in which it is initiated, and the possible unwillingness of the UN Human Rights Commission to act effectively, its prospect of resulting in swift and adequate UN action might be limited.³⁴³

A communication alleging acts of genocide should clearly identify the author, should be objective in its content and should be as clear and specific as possible regarding allegations of violations of fundamental rights. Moreover, domestic remedies need to have been exhausted in relation to the acts complained about unless such a requirement was futile, i.e. because of the existence of impunity for members of the security forces and evidence that successful prosecutions are not forthcoming. Thus, utilising the 1503 procedure in order to prevent genocide in Sri Lanka would require a thorough, quasi-judicial communication according to the relevant procedures. □

³⁴³ see on the strategic use of the 1503 procedure: Amnesty International: Summary of Selected International Procedures and Bodies Dealing With Human Rights Matters, August 1989, pp.13-15

The international community

The international community acts through international bodies, regional bodies and individual states. It plays an important role in the prevention and occurrence of genocide. It can not only, by way of public opinion, condemn or justify acts of genocide or initiate action through the UN or regional bodies, but also contribute to the perpetration of acts of genocide by either facilitating or not adequately preventing them. The latter point concerns the arms trade and public foreign aid to Sri Lanka.

Since the 1980s, the condition of adherence to international human rights standards by the receiving government for the issuing of arms export licences, the granting of foreign aid and the support in multilateral lending institutions has been identified as a leverage which might provide the means of preventing human rights violations.

Since the government of Chandrika Bandaranaike Kumaratunge came into power, there has been a change in attitude towards Sri Lanka by a number of states and the international media which prompted several countries, among them the UK, to lift their ban on arms trade with Sri Lanka and pledge an increase in foreign public aid to Sri Lanka. The version of the government concerning the resumption of fighting in 1995, i.e. that only the LTTE is to blame and that the security forces are fighting a legitimate war against terrorism, has been by and large accepted. The commitment of the new government to human rights was apparently underscored by a

"The crimes committed by the Sri Lankan State against the Tamil minority - against its physical security, citizenship rights, and political representation- are of growing gravity for the international community. Other countries across the world, which have had to shelter the thousands of Tamil refugees who have fled and are still fleeing the island, must increasingly bear the cost of the denial of the fundamental political rights of the Tamils of Sri Lanka... Report after report by impartial bodies - by Amnesty International, by the International Commission of Jurists, by parliamentary delegates from the west, by journalists and scholars - have set out clearly the scale of the growing degeneration of the political and physical well being of the Tamil minority in Sri Lanka...everyone who possesses an elementary sense of justice has no moral choice but to acquaint himself fully with the plight of the Tamil people. It is an international issue of growing importance. Their cause represents the very essence of the cause of human rights and justice; and to deny it, debases and reduces us all."

David Selbourne, Ruskin College, Oxford

number of measures to curb human rights violations. Although this account of the events is partly true, it ignores the brutality of the warfare which is to a large degree directed against Tamil civilians and has been covered up by media censorship; the reported ineffectiveness of the measures adopted to improve the human rights situation; and the causes of the conflict which go beyond a fight between a legitimate government and a "terrorist" group. In the light of the continuing atrocities committed by both warring factions in Sri Lanka, any resumption or maintenance of the arms trade or unconditional granting of foreign aid would only help to sustain a situation in which acts of genocide are likely to occur.

The Sri Lankan Army has an arsenal of internationally manufactured weapons at its disposal with China being the main supplier. However, arms have also been supplied by the US, the UK, Russia, the Ukraine, Pakistan, the Czech Republic, Argentina, Italy and France.³⁴⁴ Sri Lanka has also received military training from a number of states, especially the US and the UK and has also been supplied with torture weapons.³⁴⁵

The continuing and renewed trade in arms, military services and torture weapons (hereinafter referred to as arms trade) to Sri Lanka contributes to the perpetuation of the conflict, thereby providing the means for the commission of acts of genocide in the future course of the war. This kind of trade also fails to offer any meaningful solution to the continuing conflict as the concerned governments fail to use the arms trade as a leverage to demand compliance with international human rights standards. Permitting arms trade to Sri Lanka does accordingly amount to a breach of Article 1 for states that are parties to the Genocide Convention.

Public foreign aid, predominantly by Japan, international donors and Western European states, is reported to have been channelled for military purposes in Sri Lanka.³⁴⁶ It has thus been used by the government to sustain its war effort. Regardless of the legality of the war as such, the granting of foreign aid to Sri Lanka without any conditions attached to it concerning the treatment of the Tamil people and the observance of human rights fails to make a contribution to prevent genocide, thus arguably violating Article 1 of the Genocide Convention.

Given this background, NGOs should develop a coordinated policy which covers as many countries as possible. The policy of each country in relation to

the arms trade and granting of foreign aid to Sri Lanka should be identified and scrutinised. A government allowing the arms trade or granting foreign aid to Sri Lanka should be provided with the available information on acts of genocide taking place with a view to question the compatibility of such a policy with the obligations that the state concerned has under the Genocide Convention or customary international law. On the basis of such an approach, the government should be urged to review its policy in order to stop the export of arms to Sri Lanka and grant foreign aid only under the condition that gross violations of human rights cease forthwith.

A similar strategy should be followed in relation to international donors, i.e. the International Monetary Fund and the World Bank, as well as regional trade organisations. An example is the European Community that has repeatedly stated its commitment to prevent human rights violations.³⁴⁷ In a cooperation agreement between the EC and Sri Lanka on 16 May 1995, the respect for human rights was made an essential element of the agreement by the EC, although the EC did not include the so-called Baltic clause which reserves the right to suspend the agreement in whole or in part with immediate effect if a serious breach of its essential provision occurs. However, the EC clauses demonstrate that states and regional bodies have mechanisms at hand with which they can bring pressure on Sri Lanka to observe human rights or face disadvantages. Again, the EC provides a good example of what these disadvantages might consist. It lists the following measures that may be taken in response to serious human rights violations or serious interruptions of democratic process: *alteration of the contents of cooperation programmes or the channels used; reduction of cultural, scientific and technical cooperation programmes; suspension of high-level bilateral contacts; postponement of new projects; refusal to follow up partner's initiatives; trade embargoes; suspension of arms sales, suspension of military cooperation; suspension of cooperation.*

Individual governments and regional bodies, such as the EC, should be urged to assess the human rights situation in Sri Lanka, in particular regarding acts of genocide, with a view to determine whether the seriousness of the violations merit the imposition of any of the above listed measures or other measures to exert diplomatic pressure.

Another option that should be proposed to the entities mentioned above is to tie the granting of aid and

the sale of arms to the ratification of the Optional Protocol of the ICCPR. This would enable an international body to monitor the human rights practices of Sri Lanka. A decision to grant aid or sell arms to Sri Lanka could then be based on the findings of the Human Rights Committee concerning the occurrence of human rights violations. The comments of the Human Rights Committee and the reports of the

Working Group on Disappearances, the Special Rapporteur on Torture and the Special Rapporteur on Arbitrary and Summary Executions should also be taken into account in reaching such a decision.

Moreover, suitable international bodies or individual countries, should be urged to become involved as a third-party mediator to the conflict.³⁴⁸

³⁴⁴ see SIPRI: Yearbook 1993, p.481, 514 and Yearbook 1995, p.428

³⁴⁵ see for the UK: Amnesty International: Made in Britain: How the UK makes Torture and Death its Business, February 1997, pp.172,73

³⁴⁶ see H.J.Whall: Self-Determination, pp.330,331

³⁴⁷ see European Parliament: Annual report on human rights throughout the world in 1995-1996 and the Union's human rights policy, Committee on Foreign Affairs, Security and Defence Policy, Rapporteur: Mrs. Catherine Lalumiere, 28 November 1996, DOC/EN/RR/314/314706

³⁴⁸ see on the ongoing subject of peace talks: Sri Lanka Monitor, No.111, April 1997

Recommendations

Sri Lanka:

Based on the findings of this study, the Tamil Information Centre (TIC) urges the government of Sri Lanka to comply with its obligations under the Genocide Convention, in particular Article I, V, and VI. This obligation concerns measures to be taken by Sri Lanka to prevent and punish genocide. The TIC calls upon the Sri Lankan government,

- to tackle the causes of genocide, i.e. the denial of the right to self-determination, economic, social and cultural discrimination and dehumanisation with a view to address Tamil demands legitimised by their right to self-determination, particularly concerning a substantial devolution of power, the end of colonisation, the removal of discriminatory laws as well as the end of discriminatory practices in the field of language, religion, culture, education and economic development, the lifting of the economic blockade and various Emergency Regulations which adversely affect health and freedom of communication of the Tamil population, the repeal of all laws violating fundamental rights and the combating of all forms of racism in Sri Lanka;
- to seek a peaceful solution to the current conflict on the basis of the Tamil people's right to self-determination which, as the 53 NGOs stated before the UN Commission on Human Rights in April 1997, requires the cessation of all military operations against the Tamil civilian population and the withdrawal of the occupying forces from the Tamil homeland;
- to adopt measures to prevent arbitrary killings, extrajudicial executions, disappearances, torture, rape and arbitrary arrest and detention. These measures should be implemented along the lines of the recommendations of the Human Rights Committee and Amnesty International, particularly by repealing the PTA and the ERs and by improving judicial remedies available to Tamils targeted by security forces. Furthermore, the economic blockade, media and press censorship as well as curtailment of movement should be done away with since these measures contribute to the perpetration of acts of genocide;
- to comply with its obligations under Article I and VI of the Genocide Convention to charge the perpetrators of acts of genocide and try them before the competent domestic courts. This requires the prosecution of anybody suspected of having committed acts of genocide. This does not only apply to recent cases but to any acts of genocide committed in the past in Sri Lanka. It would also involve the repeal of the existing indemnity acts and the removal of existing obstacles to prosecution, be they of a legal, political or practical nature. □

"For decades, younger generation of Tamils had watched a succession of Sinhalese-dominated governments conspire to undermine Tamil cultural heritage, linguistic rights, traditional homelands, and educational and employment opportunities...all in the name of Sinhala nationalism and majority rule. They had watched their own leadership suffer defeat upon humiliating defeat in Parliament in a futile effort to secure at least equal rights or limited autonomy.

"The only way to keep the Sinhalese lion (Sinha) at bay, they decided, was to become tigers and forcibly wrest from Sri Lanka a separate nation, Eelam, where Tamils would enjoy the majority or die."

US Committee for Refugees, 1991



Tamil Information Centre
Thamil House
720 Romford Road
London E12 6BT, (UK)
Telephone: + 44 (0) 181 514 6390
Fax: + 44 (0) 181 514 0164
E-Mail: 101560.3704@COMPUSERVE.COM

TAMIL INFORMATION CENTRE

The Tamil Information Centre was established in 1981 to provide information concerning all aspects of Tamil life and culture. The TIC also facilitates and encourages participation of people involved with human rights and humanitarian issues in Sri Lanka and provides facilities for the general public to be in touch with developments affecting the Tamil people of Sri Lanka and new emerging issues. It promotes public understanding of human rights issues through information and educational programmes. The Centre's Documentation Unit is a major resource for researchers, practitioners and the media. The TIC is committed to human rights and community development and dedicated to the cause of understanding and cooperation between the different communities in Sri Lanka.