

Professor Sornarajah
Pierre Genest Visiting Professor, Osgoode Hall Law School, York University, Toronto

POSITION STATEMENT ON GENOCIDE IN SRI LANKA

There is a duty on every state both under customary international law as well as under the Genocide Convention to prevent the commission of genocide wherever it takes place. As in the case of apartheid, where the International Court of Justice recognized that any and every state had standing to prevent it, so too, in the case of genocide it is a duty imposed by international law to prevent genocide wherever it occurs.

It is clear that genocide and crimes against humanity have been occurring in Sri Lanka for over a course of five decades. In more recent months, it has reached a degree of intensity that common humanity requires that the world should ensure the protection of the people against whom such genocidal acts are directed. This duty is especially important in the light of the fact that the Genocide Convention requires it, the United Nations at its World Forum in 2004 declared the duty to protect civilians who are targets of racial violence and norms of universal jurisdiction facilitate the imposition of sanction against perpetrators so that the oppression could be prevented. The very fact that human lives are in jeopardy requires that urgent action be taken in times of danger to such lives.

In the context of the law that has been developed, the harrowing events involving the purposeful targeting of Tamil civilians in Sri Lanka by the armed forces of the government requires that the members of the international community, in pursuance of their duty to protect, intercede by characterizing the situation in Sri Lanka as involving genocide and crimes against humanity and taking measures such as establishing the responsibility of the Sri Lankan State through the International Court of Justice and the personal responsibility for the crime of its military and political leaders.

Every indicia of genocide is satisfied by the conduct of successive Sri Lankan governments, the oppression accentuated in intensity by the present government which has unleashed immense terror through its armed forces on a people in the name of suppression of terrorism. The chauvinism of successive Sri Lankan governments since independence targeted the Tamil people for oppression. These acts supply the objective factors necessary for the satisfaction of the crime of genocide.

These objective factors are confirmed by a series of reports of human rights bodies such as Amnesty and Human Rights Watch. A recent report of the Human Rights Watch (19 February, 2009) stated that Tamils are being "slaughtered" by the airforce's carpet bombing of areas designated as safety zones in which they can take refuge. The Report stated: "Sri Lankan forces are shelling hospitals and so-called safe zones and slaughtering the civilians there."

The early discrimination was not violent but they set the prelude of hateful propaganda that was to lead to violence directed against the Tamils as a group targeted on the basis of

their linguistic identity. The denial of citizenship to Indian Tamils, the establishment of Sinhalese as the only official language to the exclusion of Tamil, the making of Buddhism the state religion by the constitution are events that are the setting for the chauvinistic racial superiority that the Sri Lankan governments based their politics on.

In 1983, a deliberate program of killing was unleashed with the complicity of government ministers and the armed forces, leading to the targeted killings of Tamils throughout the island. Those Tamils who left the island were given refugee status, every major court in the world upholding this status and refusing their repatriation on the ground that their return would involve a threat to their lives. These decisions of the courts of the world accept that genocidal conditions were present in Sri Lanka and that the Tamils were targeted for violence only because of their race. These conditions have persisted for over decades, leading to the establishment in several countries of Tamil expatriate communities, members of which had to leave their homes because of the threat to their lives and a systematic course of oppression.

Under the present government, this oppression has continued. Tamils have disappeared and then been found dead. These disappearances are widely attributed to government forces, for which the leaders of the state must bear command responsibility. Tamil schools, temples and churches have been destroyed by bombings, often with those present in them. Tamils have been rounded up and required to leave capital cities or been transported out of these cities. More recently, these acts have increased both in their atrocity as well as in their frequency with civilian targets being routinely bombed. Hospitals and schools have been destroyed in recent days. There is more than sufficient evidence which is available in great detail as to the objective criteria necessary to satisfy the charge of genocide.

Equally, the subjective element is also easy to prove. The subjective element is usually inferred from the nature of the objective conduct. As such, the instances listed give rise to a clear inference that the subjective intention to commit genocide of the Tamils exists in the state of Sri Lanka and its leaders. But, in the case of Sri Lanka, since ethnic chauvinism has been the basis on which successive political leaders have kept themselves in power, there are several overt expressions of genocidal intention. These again is listed in the dossier that is compiled. A recent instance is the statement made in Canada by the army commander that Sri Lanka belongs to the Sinhalese and that other races may live in the island only at the tolerance of the Sinhalese. The record is replete with statements of a similar nature made by the leaders of the state.

In view of these circumstances, as the International Court of Justice declared in Bosnia v Serbia, there is a duty incumbent on every state to ensure the protection of the Tamil people. It is important that this duty be taken seriously so that such scourges on humanity are not repeated elsewhere. More importantly, it is necessary to intercede and ensure that the genocide of the Tamil people ceases immediately.