

Paper presented at the two-day (July 13-15)  
International Conference on Sri Lanka on the theme of  
Reconciliation And Nation-Building, organised by  
The Department of Strategic Studies, Universiti Kebangsaan Malaysia (UKM), and  
The Malaysian Ceylonese Congress (MCC)

## **FIGHT FOR SURVIVAL – THE TAMIL PERCEPTION**

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From the time, Sri Lanka got independence, the Tamils have been systematically brutalized, marginalized from the political process and subjected to gross discrimination and persecution. Tamil youths have been subjected to widespread torture and Tamil women raped by the agents of the State. The existence of mass graves of Tamils killed by the state armed forces are now known to the world though those responsible have not been systematically brought to justice. Tamil homeland has been encroached due to aggressive state aided colonization, which threatens the survival of the Tamils as a people. The Tamil nation has been subjected to routine genocidal attacks and subjected to starvation and deprivation designed to destroy their physical survival. All these led to the perception and conviction among the Tamils, that the Sinhala establishment is bent on subjugating and destroying the Tamils as a people as they go about creating a Sinhala Buddhist country. The Tamils have to fight for their survival as a people and had to acquire their own power outside the dysfunctional power structure, which left the Tamil nation powerless. They have succeeded in this and they now have an armed force to resist Sinhala subjugation and want to negotiate a peace settlement for the good of all the people in that Island. But the Sinhala politico military establishment is intransigent and refuses a negotiated political settlement. They refuse to share power with the Tamil people who are deprived of their democratic entitlements.

On November 27, 2000 the Tamil National Leader Mr. Velupillai Pirabakaran declared in his annual Heroes Day speech that:

***“Our liberation organization is prepared to participate in negotiations to find a political solution to the ethnic conflict through peaceful means. We are not opposed to peaceful processes of resolving conflicts. Nor are we reluctant to engage in peaceful dialogue. We are seeking a negotiated settlement that would engage in peaceful dialogue. We are seeking a negotiated settlement that would be fair, just, and equitable and that would satisfy the political aspirations of the Tamil people. I explained this position very clearly when I met the Norwegian peace delegates in Wanni recently. We are not imposing any pre-conditions for peace talks. Yet we insist on the creation of a cordial atmosphere and conditions of normalcy conducive for peace negotiations. It is practically difficult for both the parties who have been involved in a savage and bloody war for the last two decades with mutual animosity and distrust to suddenly enter into a peace process, while continuing hostilities. It is precisely for this reason we propose a process of de-escalation of war leading to cessation of armed hostilities and the creation of a peaceful, cordial environment”.***

It was the hope of the Tamil people that Mr. Pirabakaran’s initiative, which would allow for both the Sinhala people and Tamil people to live in peace and dignity, would be grasped and

reciprocated by the Sinhala political-military establishment. It was their hope that it would be welcomed and actively supported by the international community. It was their hope, that through the good offices of the international community, the positions of both parties to the conflict would become better understood and that between them and a “working trust will be created”. Norway’s involvement in the negotiation process raised the expectation that at the end of the process both the Sinhala people and the Tamil people will be in a win-win situation.

Following Mr. Pirabakaran’s declaration, the LTTE matched its words with concrete actions to the process of de-escalation in order to facilitate the peace process. On the 25<sup>th</sup> of December 2000, the LTTE announced a unilateral one-month cease-fire and asked the Sri Lankan government to reciprocate and join them in the cease-fire and their search for peace. The Sinhala establishment’s response was to ridicule and dismiss the LTTE’s good will act. They launched a fresh military offensive, took some LTTE held territory including the strategic control of the Navatkuli Bridge. Sri Lankan government continued the war and the international community stood by in silence. On January 23, 2001 at the end of the month long cease-fire, the Liberation Tigers extended the cease-fire despite clear provocations and called on the international community to persuade Sri Lanka to “reciprocate favorably and resume negotiation in a cordial atmosphere of peace and normalcy ...” The response of the Sinhala establishment was to continue making war and in fact made an active attempt to increase the seize of the armed forces by urging the Sinhala youth to join the army. Again the international community stood in silence. On February 22, 2001 the LTTE once again extended their own cease-fire for the third month and appealed to the international community --particularly the United States, Britain, the European Union and India -- to persuade the Sri Lankan government to reciprocate its peace moves. Instead of responding with peace to the LTTE initiative the Sinhala establishment was hopping around the Capitals of the world, demanding a ban on LTTE while in Sri Lanka they continued to make war against the Tamils. Ignoring the LTTE’s move for negotiated peace the British government branded LTTE as a terrorist organization thus negatively contributing to the peace process. On March 22, 2001 the LTTE once again extended their unilateral cease-fire for another month, pointing out that it had not launched any offensive operations during the three month cease-fire, while losing 160 of its cadres to government’s aggression. However, LTTE while observing the self imposed cease-fire stated that they would be compelled to resume armed operations if the Sri Lankan government continued to make war and refused to reciprocate it’s initiative for peace. The Sinhala politico-military establishment’s response was to continue the war and once again the international community stood in silence.

The LTTE clearly manifested its sincerity for a peaceful solution, not only through unilateral cease-fire during which time it lost many of it’s committed cadres, but also through the release of prisoners of war. However, the Sri Lankan government not only continued to make war, but also its armed forces continued to commit war crimes and crime against humanity by engaging in torture, rape of Tamil women, arbitrary killing of Tamil civilians and by shelling civilian areas. More than 10,000 civilians were displaced, Chavakachcheri and other towns in the area were completely demolished. Many civilians were injured during the LTTE declared cease-fire.

On April 24, 2001 the LTTE, noting the intransigent attitude of the Sri Lankan government and its intensification of the military attack, painfully decided not to extend its unilateral cease-fire. This was an act of self-defense. It should be noted that even at this time the LTTE affirmed it’s commitment to peace by stating that it will continue to support and cooperate with, in every

possible way, the Norwegian government in its untiring and noble effort to bring about peace through a negotiated political settlement to the National question in the island of Sri Lanka.

On April 25, 2001, the Sinhala politico-military establishment further escalated the conflict by embarking on a planned military offensive code named "Agni Kheela". The Sri Lankan government once again misread the motive and spirit of the LTTE's moral struggle. The LTTE's peace initiative was misunderstood as a sign of weakness. The result was the unfortunate combat death of more than four hundreds of Sri Lankan Army personnel and seventy-five LTTE cadres.

The Sinhala establishment's public ridicule of LTTE's self imposed cease-fire, its aggressive campaign to criminalize and ban the Tamil Liberation movement and its continuation of making war, confirm the Tamil perception that the Sinhala establishment has no inclination for a peaceful settlement and strengthen their conviction that they have to fight for their survival.

### **CREATION OF A CLIMATE CONDUCIVE TO SUCCESSFUL NEGOTIATIONS**

The LTTE maintains that a de-escalation of war leading to cessation of armed conflict is fundamental to the creation of a climate conducive to a negotiated settlement. This is simple commonsense that seems to escape Sri Lankan government thinking. The LTTE believes that genuine peace talks cannot be held under conditions of war, violence and hostility.

The IRA called for a cease-fire in 1994; political negotiations followed. The international community's insistence that a cease-fire should precede political dialogue in Macedonia, Sudan and in Palestine demonstrates that the LTTE's position is consistent with the current norms of international perspective of resolving violent conflict. When armed hostilities are put to rest diplomacy can begin.

LTTE also maintains that normalcy in Tamil homeland, that is, restoration of normal civilian life by the removal of the economic blockade and other restrictions imposed on the Tamil people will certainly contribute towards a successful negotiating process. As Marie Colvin, the London Sunday Times War Correspondent, recently observed, the Sri Lankan government imposes an embargo on commodities ranging from fuel, cement, plastic sheeting to instant noodles and vegetable oil. She noted that even sanitary towels are not allowed in. More than forty items of basic needs are officially band. A reading of the lists will show that inhumanity of the embargo and restrictions of civilian items. Essential medication including anti-Malaria drug are restricted. The Sri Lankan government's restrictions on food items meant for civilians is a blatant violation of Common Article 3 of the Geneva Convention and Article 54 of Additional Protocol I which expressly states that starvation of civilians as a method of warfare is prohibited.

As Professor Jordan Paust observed that if food is likely to be used by both the general population and enemy combatant, the destruction or denial of food in circumstances where one can reasonably foresee that the general population will suffer will necessarily involve the indiscriminated use of food as a weapon.

Starvation even of enemy combatants is not only inhumane but also morally wrong.

LTTE maintains that restoration of normal civilian lives by removing the economic blockade and embargo on essential items imposed on them by the Sri Lankan government is needed at this time.

The LTTE views that it cannot engage in a meaningful negotiation from an unequal position, let alone while being labeled as a criminal organization. The lifting of the ban on LTTE is an essential feature to the creation of a climate conducive to negotiation. As is accepted in basic contract law, for a contract to be valid, the parties should be in a position of equality. If one party to a contract can be labeled as a criminal then any contract would become invalid because the law of contract renders a contract invalid if it is reached with an illegal entity. Similarly according to sociologist and political scientists, perceived power symmetry is the condition "... most propitious for mutually satisfying negotiations and efficient attainment of optimal results". Thus, from the point of view of the negotiating process the de-proscription of the LTTE as a terrorist organization is essential for the negotiations to be meaningful and successful.

Moreover, from the Tamils' point of view the stigmatization and the criminalization of their authentic and legitimate representative is an attack on the Tamil people's honor and dignity. While the strategy of the Sri Lankan government is to drive a wedge between the LTTE and the Tamil civilian populations and then to claim that LTTE has no support, the ground level reality are to the contrary. The continuing and overwhelming popular support it enjoys demonstrate the LTTE's widespread acceptance by the Tamil people. The recent 'Pongu Tamil' uprising in the occupied Tamil area demonstrates it. Further, today almost all other political parties such as TULF, ACTC and TELO, and the Trade Unions, have publicly and explicitly acknowledged the LTTE's leadership and have joined in the call for de-proscription.

As observed by Mohamamed Bedisquij, a former Judge of the International Court of Justice, in the context of Algerian revolution, that the liberation movements do not derive their power from the arms they carry but from the active support of the people.

The proscription of the LTTE and branding it as a terrorist organization is a cynical tactic of a defensive regime unwilling to share power to the point of war. The LTTE was proscribed not in accordance with due process of law but on the basis of Emergency regulations and recently under the Prevention of Terrorism Act [PTA]. The International commission of Jurist has characterized the PTA as an ugly law. It is a law that is a disgrace to civilized norms in its concept and practice. More than 18,000 persons, mostly Tamils, were arrested under the draconian Emergency Regulations and the Prevention of Terrorism Act (PTA) last year. It is well accepted that the PTA has been selectively used to persecute the Tamils in Sri Lanka.

The proscription of LTTE also imposes criminal sanctions on civilians in violation of human rights law and due process. It is indeed ironic that a liberation movement fighting for the dignity of its people is proscribed and characterized as a terrorist organization by such an ugly law. It is wrong and counter productive to ban the LTTE not only from the perspective of negotiating process and the search for peace but in a sense is a blow aimed to the dignity of Tamil people. It is contrary to legal and moral norms.

### **THE BAN ON LTTE SHOULD BE LIFTED BECAUSE LTTE'S USE OF FORCE AS A MEASURE OF SELF PRESERVATION IS LEGAL UNDER THE INTERNATIONAL LAW CONCEPT OF SELF PRESERVATION.**

The Genocide Convention recognized the concept of self-preservation. The concept of self-preservation is implicit in human rights covenants that protect the national identity of groups.

Thus, when a group is subject to genocide attack or if its national identity is threatened, the threatened entity has a right to use force to preserve itself.

Mass graves and massacres in Tamil homeland, indiscriminate bombing and shelling of Tamil areas, food embargo and the colonization of Tamil homelands trigger the right to use force to preserve themselves as a People (please see Appendix I – Mass Graves; Appendix II – Colonization of Tamil Homeland).

### **THE BAN ON LTTE SHOULD BE LIFTED BECAUSE LTTE’S USE OF FORCE AS A MEASURE OF SELF DEFENSE IS LEGAL UNDER INTERNATIONAL LAW**

The Human Rights Reports of the United States, Amnesty International, Human Rights Watch and other Human Rights organizations detail the arbitrary arrests, detention, rape, torture and extra-judicial killings of Tamil civilians by the Sri Lankan Armed forces. Successive Sri Lankan governments are admitted to the atrocities against the Tamils by the previous regimes.

According to legal scholars “[t]he right to self-defense. Has its origin directly and chiefly in the fact that nature commits to each his own protection”. Self-defense is the result of man’s inherent attribute to preserve him.

The right to self-defense is also recognized in the Genocide Convention.

The Peoples right to use force as a self defense measure was recognized by the United Nations in General Assembly Resolution 2928 and 3103. The International Court of Justice has also given judicial imprimatur to the use of force by people as a self-defense measure. In a case involving Namibia the International Court of Justice pronounced that “[I]n law, the legitimacy of the peoples’ struggle cannot be in any doubt, for it follows from the right to self defense, inherent in human nature...”

The Tamil people were compelled to use force to protect the Tamil people against subjugation and annihilation and to prevent irreparable harm resulting from the unavailability of alternative means of protection. Given the International structure and the pervasive racism in the polity of Sri Lanka the Tamil people have no international or internal forum to seek protection. Thus, the need for the use of force is a measure of self-defense.

### **THE BAN AGAINST THE LTTE SHOULD BE LIFTED BECAUSE THE LTTE’S USE OF FORCE AS A MEASURE OF SELF HELP IS ALSO LEGAL UNDER INTERNATIONAL LAW**

The Sri Lankan government’s aggression and persecution of the Tamils have trampled upon the Tamils’ right to physical security, their right to live free from torture, their right to food, and their right to preserve their national identity.

Misdeeds of the agents of the Sri Lankan government are well documented and that they are carried out with impunity is an observation noted in the US State Department Report. Given the lack of any centralized machinery to redress the Tamil’s grievances, the Tamils are forced to employ the use of force to remedy the situation and enforce their rights.

### **LTTE’S USE OF FORCE AS A MEANS FOR THE REALIZATION OF THE TAMIL’S RIGHT TO SELF DETERMINATION IS LEGAL UNDER INTERNATIONAL LAW.**

It is said in some quarters that the right to self-determination is applicable only in the colonial context. It is true that the General Assembly Resolution 1514 entitled “U.N. Declaration Of The Granting Of Independence To Colonial Countries And Peoples” was passed in the colonial context. However, the 1970 Declaration on Friendly Relations recognized the right to self-determination of all people, colonial as well as non-colonial, and the 1970 declaration has become customary international law. Moreover, the UN fifty-year anniversary document, which was not a product of a colonial context, reaffirmed the right to self-determination.

The recent Canadian Supreme Court Decision on Quebec also affirms the right to self-determination. In the course of its opinion the Canadian Supreme Court explicitly stated that:

*It is clear that “a people” may include only a portion of the population of an existing state. The right to self-determination has developed largely as a human right, and is generally used in documents that simultaneously contain references to “nation” and “state”. The juxtaposition of these terms is indicative that the reference to “people” does not necessarily mean the entirety of a state’s population. To restrict the definition of the term to the population of the existing states would render the granting of a right to self determination largely duplicative, given the parallel emphasis within the majority of the source documents on the need to protect the territorial integrity of existing states, and would frustrate its remedial purpose.*

The Court also unequivocally stated that the right to external self-determination is applicable even outside the colonial context. This Canadian Supreme Court’s opinion was rendered not in the 60’s or 70’s but in 1997.

The 1970 Declaration on friendly relations does not prohibit the use of force or secession by a national liberation movement to achieve self-determination. The Declaration states that the “effective application” of the right of self-determination is of paramount importance for the promotion of friendly relations between nations. Resolutions passed following the 1970 Declaration, such as Resolution 2649 in 1970 and Resolution 2787 in 1971, affirmed the legitimacy of the struggle by colonial people for self-determination.

The most important resolution regarding legitimate uses of force is the General Assembly Resolution on the Definition of Aggression. This Resolution represents a global consensus on the use of force. Act 7 of the Definition of Aggression encompasses peoples who derive their right to self-determination from principles of international law in accordance with the Declaration on Friendly Relations. The Declaration on Friendly Relations acknowledges the right to the self-determination of non-colonial people. The legislative history, purposes, and actual practice of some states may warrant the conclusion that the LTTE falls within the purview of Article 7 of the Resolution on the Definition of Aggression.

Similarly Article 1(4) of the 1977 Additional Protocol I states: “nothing in this definition... could in any way prejudice the right to self-determination, freedom and independence as derived from the Charter of Peoples forcibly deprived of that right... particularly peoples under colonial and racist regimes or other forms of alien domination nor the right of the people to struggle”.

Article 1(4) of the 1977 Additional Protocol I characterizes rightful international armed conflicts as situations “in which peoples are fighting against colonial domination and alien

occupation and against racial regimes in the exercise of their right of self-determination, as enshrined in the Charter of the United Nations and the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among states in accordance with the Charter of the United Nations.” It is also pointed out that the Australian delegate, a co-sponsor of the version of Article 1(4) which referred to self-determination, argued at the plenary session that it was possible to interpret the three categories of colonial domination, alien occupation and racist regimes as being an illustrative enumeration rather than an exhaustive one. The current armed conflict in the island of Sri Lanka constitutes an international armed conflict under Article 1(4) of the 1977 Additional Protocol I. Accordingly, the use of force by the LTTE is a legitimate means to realize their right and self-determination in the absence of any meaningful peaceful means.

The Canadian Supreme Court observed in Balta v. M.C.I, F.C.T.D. Imm – 2459 – 94 (Jan 27, 1995), that to characterize an organization as an illegal organization, that organization’s sole aim is to perpetuate illegal activities.

It was admitted by the Sri Lankan government and others who visited the LTTE controlled area of the north and east that LTTE administered the civil administration including civilian security, judiciary and unarmed police force with an appropriate command and responsibility structure. Such an administration ensured the people carried on with their economic, religious and cultural life with freedom and participatory democracy.

### **THE DUPLICITY OF THE SINHALA ESTABLISHMENT**

It is said in diplomatic corridors around the world that the mainstream Sinhala political establishment is amenable to a negotiated settlement. However, the word of the Sri Lankan government, which has been believed in many Capitals of the world, has not been matched by deeds. There is clearly no political will to negotiate. Many believe that this is an indication of the hawks in the religious sector and military sector holding the government hostage. If that were the case, the hawks repress the doves. If this is really so, then it is rational to expect that when opportunities which would make the doves, immune to blame and retribution from the hawks were present, then the so called doves, that is the main stream Sinhala political establishment will seize it. However, that is not the case. It was an opportunity for the Sri Lankan government to declare a cease-fire during the Sinhala Tamil New Year alleging the sacredness of the New Year and then extend it. It was an opportunity that when the Emergency regulations lapsed, the Sri Lankan government would let the proscription lapse and placate the hawks that the de-proscription was not as a response to the LTTE’s requests, but as a result of the lapse of the Emergency Regulation. It was hoped that at least the Sri Lankan government would temporarily suspend the proscription during the negotiation with the possibility of re-instituting the ban if the talks fail. But the Sri Lankan government dismissed all those opportunities.

Instead the Sri Lankan government’s escalation of the militaristic approach seems to indicate that it is determined to wreck the negotiating process.

### **THE ROLE OF THE INTERNATIONAL COMMUNITY AT THIS JUNCTURE**

Thus far, what has the international community done to assist the peace process? From the Tamil perspective, the international community has supported the Sri Lankan government by providing urgent military support, when the LTTE was in strong position and has down played the human rights violations of Sri Lankan government against Tamil civilians.

The question before the international community now is what can it do to get the negotiating process moving forward?

As said earlier, perceived power symmetry is essential for successful negotiation. For example, in the South African context, as pointed out by experts on negotiations, the African National Congress and the National Party were closely matched in power. There is today an asymmetry of power between the Sri Lankan government and the LTTE in terms of the resources available to the two parties. Despite this, the LTTE through its commitment and sacrifices has reduced the asymmetry of power to some extent. Yet it still exists and must be addressed.

As observed by conflict resolution experts, the party with more power, in terms of resources, tends to behave exploitatively and does not reciprocate concessions made by the other party. That is the current situation in Sri Lanka. In such a situation it is the obligation of the international community to level the 'table'. This can be done through the lending of power to the compliant party and/or the use of heavier tactics on the intransigent party.

In the present Sri Lankan context, the international community's pressure is required in order for diplomacy to work. The international community's leverage in Sri Lanka can take the forms of conferring international legitimacy to Thimpu principles, diplomatic recognition of the LTTE, collective disapproval of the Sri Lankan government's continuation of war, arms embargo against the Sri Lankan government, sanctions, expulsions of the Sri Lankan government from international organization, etc. Lord Carrington's threat of diplomatic recognition during the 1979 Lancaster talks, the threat of expulsion of Rwanda and Nigeria from the Commonwealth are some illustration of the international leverage.

The effectiveness of international pressure has been demonstrated recently with the international community's threat of withholding aid to the former Yugoslavia until it handed over of Mr. Milosevic to the international war crimes tribunal.

Unfortunately, up to today the Sri Lankan government's ability to purchase arms and receive aid for her ailing economy from the international community encourages the Sri Lankan government's intransigence towards the peace process.

It is incumbent upon the international community to use its good offices to help, push forward the peace process. It should be noted that the international community itself has humanitarian, economic and strategic stakes in the current conflict. The refugee influx in foreign countries, the disruption of free trade and the increase in arms in the region constitute a threat to prosperity, peace and stability.

### **WHAT ROLE SHOULD THE INTERNATIONAL COMMUNITY PLAY IF THE SINHALA ESTABLISHMENT IS UNABLE OR UNWILLING TO REACH A NEGOTIATED SETTLEMENT?**

The Sinhala establishment's unwillingness to negotiate raises a grave concern about whether it can ever reach a negotiated settlement with the Tamils. In such a situation, the question before the international community is, what action should it take?

In this context the observation of the Commission of Inquiry appointed by the League of Nations with respect to the Aaland island dispute is instructive. According to the Commission of Inquiry "... the separation of a minority from the state of which it forms a part ... can be



considered only as an exceptional solution, a last resort when the state lacks either the will or the power to enact and apply just and effective guarantees”.

The international community's insistence that the territorial integrity of Sri Lanka should be protected is neither legally nor morally defensible but it also a negative contributing factor to the peace process.

It should be observed that according to Article 18 of the Draft Declaration on Rights and Duties of States, the International Law Commission limited the non recognition of territorial acquisition through illegal force only to territories acquired by another state, thereby refraining from outlawing secession. Also the United Nation's sponsored study indicates the right to secession unquestionably exists. Thus, the principle of territorial integrity pertains exclusively to relations between states and does not affect the population within a state. Clearly the right to self-determination and principle of territorial integrity belongs to different domains of international law and therefore not mutually contradictory.

For moral perspective, it has been suggested that widespread repression of people justifies secession. As the US Declaration of Independence States:

***“... Prudence, indeed, will dictate that Governments long established should not be changed for light and transient Causes; and accordingly all Experience hath shewn, that Mankind are more disposed to suffer, while Evils are sufferable, than to right themselves by abolishing the Forms to which they are accustomed. But when a long train of Abuses and Usurpations, pursuing invariably the same Object evinces a Design to reduce them under absolute Despotism, it is their Right, it is their Duty, to throw off such Government, and to provide new guards for their future Security.”***

This moral precept has also been translated into the norms of international relations. The European Union's qualified support for the former Yugoslavia's territorial integrity, and the former foreign secretary of the UK's observation that it is no longer legal to keep a state together by shooting its citizens, are points of reference.

From the conflict resolution perspective, if the external borders of the Sri Lankan polity is threatened by the international community, this would be minimize the domestic political consideration and thereby move the Sinhala establishment toward the table. Ambiguity is an essential feature of diplomacy.

In view of all the diplomatic, moral, and legal considerations touched on here the international community's dogmatic insistence that the territorial integrity of Sri Lanka is sacrosanct is as intransigent as the Sri Lankan government's refusal to negotiate. It gives higher values to man made borders than the lives and survival of the Tamil people themselves.

## CONCLUSION

We appeal to the international community to actively support the Norwegian Peace process in order to bring about peace and negotiated political settlement to the Tamil national question. We appeal to the international community's sense of decency and fairness to use its good offices to ensure the survival of the Tamil people and to enable them to realize their right to self-determination. We appeal to the conscience of the international community to prevail upon the Sri Lankan government to take measures to alleviate sufferings of the Tamil people.