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Session 8: Re-envisioning Sri Lanka – Lessons learned & Challenges and Opportunities

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Re-Envisioning Sri Lanka

It is now in well into the fourth year of a pause in armed conflict in Sri Lanka prompted first by a unilateral cease-fire called by the Liberation Tigers of Tamil Eelam (LTTE) on December 24, 2001 and then a cease-fire agreement signed by the Government of Sri Lanka (GOSL) and the LTTE on February 22, 2002.

Shortly after signing the cease-fire agreement, the LTTE and the GOSL held several rounds of discussions mediated by the Government of Norway, culminating on March 18-21, 2003 in Japan. After the Japan meeting, there was a suspension of any further direct discussions for some time. The Government of Norway and the other States involved in monitoring the cease-fire continued work on maintaining the cease-fire as well as establishing conditions for a renewal of talks.

Finally, after an almost three year hiatus, the LTTE and the GOSL re-established direct talks on February 22-34, 2006 in Geneva, monitored by the Government of Norway. A second “round two” discussion is due to take place in Geneva, April 19-21, 2006, beginning a little more than one week after this Conference. At time of writing, it is unclear if these renewed talks will provide a firmer basis towards a lasting peace or will produce road-blocks that themselves may lead to renewed armed hostilities.

As an attorney specializing in human rights and humanitarian law, I have always looked at full realization of human rights and compliance with humanitarian law as the firmest basis for achieving peace on the island of Ceylon. Looking into the situation for more than nearly 23 years, I am also aware of the geo-political interests of other States in the lands, harbours and resources of the island that have succeeded in keeping the parties to the conflict from any meaningful *rapprochement*. In my view these interests are actually detrimental to both the Tamil and Sinhala communities and other ethnic or religious communities in Sri Lanka. This paper provides a brief review of these two topics.

In any review of human rights that must be realized, the right to self-determination of the Tamil people surfaces as the most important if there is to be a just peace. It is clear that certainly the GOSL must undertake a full and honest review of possible political positions that are necessary to ensure its goal of a unified Ceylon while affording the Tamil people self-determination. One necessity is a full and honest assessment of pre-colonial conditions in which two separate nations – one Sinhala and one Tamil – co-inhabited the island. A second necessity is a full and honest assessment of post-colonial Ceylon, and the many efforts by the Tamil leadership to ensure full rights of a people that, were there to be a unified Ceylon, constitute a national minority. As history shows, each agreement by the Tamil leadership, each of which included substantial compromises of Tamil aspirations, was met with violations and then unilateral rejection and nullification by the Sinhala leadership. Accordingly, the Tamil people were deprived of sufficient political participation to protect all other fundamental rights inherent in a truly democratic society. While others at this Conference are likely to provide more complete details of the critical period between 1949

and 1983, it is clear that at the time of the massacre of Tamils in Colombo in 1983 the possibility of full realization of human rights by the Tamil people would not occur peacefully: the perception that an armed struggle was the only means of protecting their rights, including especially the right to self-determination, was supported by the facts.¹

As there has now been more than 23 years an armed conflict (with a current cease-fire) it is, of course, also essential to undertake an honest review of compliance with humanitarian law, as set out in The Hague and Geneva Conventions and all other treaty-based and customary rules of war. Numerous non-governmental organizations, including my own, have been monitoring compliance with humanitarian law since the situation first deteriorated into war. In the course of the armed conflict, it has been the Tamil people who have, by far, suffered from violations of humanitarian law: the vast majority of civilian casualties are Tamil; and the vast majority of allegations of torture, prolonged arbitrary detention, rape, and military attacks on schools, hospitals, places of worship, and other protected locations have been against the Tamils in the Tamil areas. In fact, the war has been almost exclusively fought in the Tamil areas, although many Tamils residing in the Sinhala areas of Sri Lanka have been killed, tortured, detained, and raped by the GOSL forces and other government entities “outside” the war. Because it is the Tamil people who, in the course of this war, have been subjected to these atrocities, it is difficult to imagine any possible unified government, even one with substantial Tamil autonomy, without some expression of atonement and remedy by the GOSL.² Sadly, at present time even a political arrangement with substantial Tamil autonomy does not appear likely.

Whether the current GOSL is willing or political able to undergo an honest assessment is, of course, a serious question. In my view, there will be no peaceful resolution of this situation without such an honest review, and a drawing of a conclusion by the Sinhala political factions that there is no possibility of a unified Ceylon (absent outside intervention to be discussed below) without a substantial concession on the part of the Sinhala leadership on the “vision” of Sri Lanka. In my view, peace in Sri Lanka encompassing a single State militates that Sri Lanka must be re-envisioned into a two-part State with genuine and effective autonomy for the Tamils in the Tamil traditional homeland in the north and east. The details of that autonomy, of course, would have to be negotiated and finally agreed upon by the LTTE and the GOSL.³ However, at present, I am doubtful that the Sinhala leadership is either willing or politically able to enter into an arrangement mutually acceptable to both the Tamil and Sinhala people: rather, the current Sinhala leadership seems particularly unable to deal realistically with the Sinhala extremists who would seek to block any autonomy of the Tamil people, or to honestly assess history, or to apply applicable international human rights and humanitarian law.

Looming outside of the negotiating rooms, however, are the geopolitical interests of certain other States. These interests have prolonged the war and may well make any thought of re-envisioning Sri Lanka through peace with justice for the Tamil and Sinhala peoples in Ceylon an impossible dream. In this paper I will set out the interests of the United States. This is because in my view those that, while being largely hidden, the U.S. interests in Sri Lanka pose the most serious barrier to the establishing of a just peace in Sri Lanka.

¹ The right of people to resort to rebellion against tyranny and oppression is part of customary international law, and enshrined in the 3rd preambular paragraph of the Universal Declaration of Human Rights.

² Of course, it is because of these atrocities that so many Tamils sought and received asylum throughout the world: at present nearly 25% of the pre-war Tamil population is in exile.

³ Such an agreement could also go through some ratification process by both the Tamil and Sinhala communities.

The U.S. substantial interests in Sri Lanka result from its plans greatly to expand its role and power in Asia. First of all Sri Lanka has airfields, such as in Palaly, that could provide highly useful bases for the U.S. airpower. In addition, Sri Lanka has several deep-water ports that would be very useful for basing U.S. naval forces. U.S. interest in Trincomalee harbor, for example, was a major factor in the direct involvement of India in Sri Lanka beginning in 1987, as is apparent by the letter of annexure to the Indo-Sri Lanka accord of that year in which the Prime Minister of India stated that no action would take place in Trincomalee that was against the interests of India. Current discussions of widening the Palk Straights to allow large vessels to pass through are disturbing in light of U.S. interests. Other U.S. interests in Sri Lanka are its natural resources, such as titanium, and the potential for the exploitation of natural gas and petroleum. Most of the land and resources coveted by the U.S. lie in the traditional Tamil areas.

Understanding the interests of the U.S. in the Tamil areas of Sri Lanka goes a long way to explaining its exceptionally harsh rhetoric against the Tamils and LTTE. The U.S. appears determined to have the conflict in Sri Lanka viewed as terrorism and counter-terrorism rather than a war, and it continues to accuse the LTTE of acts, such as political assassinations, that have either been shown to have been committed by others or that have never actually been investigated at all.⁴

The constant repetition of this political rhetoric, which is so similar to the constant linkage of Saddam Hussain with the events of 11 September 2001 and Al-Qaeda, has also been echoed by other States that, apparently, support U.S. goals for the region, or unwittingly go along with it. This manifestation of a new “coalition of the willing” severely impairs the possibility of a positive outcome in the renewed talks between the parties or an eventual just peace. This political rhetoric also helps to weaken still further the Geneva Conventions, viewed as “quaint” by the current U.S. Attorney General and so terrifyingly violated in the course of military operations in Iraq. More ominously, this steady “terrorism” rhetoric could lay the foundation for direct U.S. involvement in Sri Lanka affairs on the pretext of combating terrorism.⁵ Such action would, of course, obliterate Tamil self-determination, and essentially all other rights.

In conclusion, as part of any process to re-envision Sri Lanka, the LTTE and the GOSL, as well as the international community as a whole needs to assess properly the situation Sri Lanka in light of human rights (especially the right to self-determination), humanitarian law and with full understanding of the outside geopolitical interests that have long impeded resolving this conflict. This Conference reflects that the Sinhala and Tamil peoples are the ultimate stake-holders in any agreements or plans, and have both the right and duty fully to participate in re-envisioning Sri Lanka.

⁴ At the same time, the U.S. does not even raise the issue of the assassination of Tamil leaders.

⁵ I regard raising the “child soldiers” issue against the LTTE, but not against the GOSL, as part of an orchestrated attack to present plausible reasons for intervention into the Sri Lanka conflict. I also regard the United States orders to the American Red Cross to not provide any humanitarian assistance in the Tamil areas, as part of this policy. The American Red Cross has raised hundreds of millions of dollars for Tsunami aid but essentially none of it was provided in the Tamil areas.