

**Validity of LTTE's Use of Force
to Secure to the Tamil People their Right to Self Determination**

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The Tamil people of Sri Lanka were yearning to treasure their newly found freedom from colonial rule with the realization that, for the first time since the fifteenth century, they will have the liberty to use their own language to educate their children, to correspond with the government, and to administer their homeland in a united multi-ethnic nation. Tamils were appalled when the Sinhalese-dominated government began to undermine their basic rights by enacting discriminatory laws and regulations that recognized Sinhalese as the only official language of the nation and gave preferential treatment to the Sinhalese people in matters dealing with university admissions, public service appointments and the allocation of resources.

Their unique culture and the ethnic composition of their homeland were threatened when the government pursued an aggressive policy of settling Sinhalese peasants in Tamil districts under a state-sponsored colonization schemes. Sinhalese politicians also used their majority in parliament to dismantle the constitution safeguards that were incorporated in the constitution of independent Sri Lanka to protect minorities from being discrimination by the Sinhalese majority. Parliamentary and extra-parliamentary protests and non-violent civil obedience campaigns organized by Tamil leaders were ineffective in persuading the Sinhalese majority to abandon their discriminatory policies against the minorities.

Under these circumstances, Tamil leaders had no options, but to form a single party, the Tamil United Front, to demand the creation of a separate Tamil state, Eelam. The Tamil United Liberation Front received an overwhelming support from the Tamil people of the Northern and Eastern Provinces at the general elections of 1977 on a mandate to establish a separate Tamil state. Unfortunately, the Tamil United Liberation failed to persuade the government to concede to some of the basic Tamil demands and to protect Tamils from being victimized by the military and Sinhalese thugs.

Faced with the uncompromising intransigence of the Sinhalese leaders, Tamil youth, most of whom were educated and unemployed, formed underground guerilla movements to launch an armed struggle against the government and its armed forces that were stationed in Tamil. In 1985, six Tamil youth liberation movements presented a common proposal at the Thimpu talks in Bhutan, to specifically stress that Tamil freedom can only achieved if the Sri Lankan government can accept, among other factors, their right to self-determination. By the mid-1980s, most of the Tamil militant movements, except for the Liberation Tigers of Tamils Eelam, had abandoned their armed struggle and sought elections to Parliament.

Scope and Purpose

The purpose of this monograph is twofold. One, to validate the claims of the LTTE that it satisfies the prerequisites of a national liberation movement under international law and represents the majority of the Tamil people in their strive to seek their right to self-determination. Second, to show that the government is more inclined to portray the LTTE as a terrorist movement in order to justify the use force to suppress the Tamil opposition, than to solve the ethnic problem through genuine power sharing with the Tamil minority. The study will focus on five topics to justify LTTE claims that it is not a terrorist organization that targets non-combatants but a movement that seeks equal rights and the right of self-determination for the Tamil people through negotiations. One, all peoples in the post-colonial world, including the Tamils of Sri Lanka, have the right to self-determination, as promulgated in the Geneva Conventions and the additional Protocols. Second, the Liberation Tigers of Tamil Eelam has evolved from a guerilla force to a national liberation movement that abides by the rules of international law in its war against the military and its treatment of non-combatants. Third, the use of force is not the exclusive prerogative of sovereign states and, as a national liberation movement, it has, under international law, the right to use force against a racist or oppressive government that denies Tamils, their right to self-determination. Fourth, the Sri Lankan military has committed war crimes, most of these concerning human rights violations involving torture, mass arrests, disappearances, rapes, the indiscriminate bombing of civilian areas containing homes, places of worship, schools and farms, and the forced evacuation of thousands of people from their villages. Fifth, the government has used its media effectively to magnify the crimes committed by the Tigers while successfully concealing most of the atrocities committed by government forces on innocent Tamil civilians.

Tamil People and their Right to Self-Determination

The Sri Lankan Tamils are using principle of the right to self determination, which has become the norm of international law, to claim that they, as a distinct people with an ancestral territory on the island, have the right to determine their own destiny, including freedom to chose the type of government and pursue freely the social, cultural and economic development of the people and their homeland. They are considered a people because they possess a distinct language, ethnicity, religion, and culture, a shared history and a traditional homeland, distinct from those of the Sinhalese. Archeological excavations, engravings on ancient inscriptions, description of ancient travellers, and historical and literary studies on ancient India and Sri Lanka attest to the fact that Tamils settled in different parts of island in ancient times, but that their identity was suppressed by evolving Sinhalese-Buddhist society by the fifth century. Tamils, however, continued to preserve their separate identity in the northern and eastern parts of the country throughout the ages.¹

The Tamil population of the northern and eastern parts of the island increased with the establishment

¹ To Tamils, the northern and eastern parts of the island are *their single most treasured possessions, a traditional homeland, which thus served to underline their attribute of nationality and distinctiveness from, and non-assimilability by, the Sinhalese*. See Sinnapa Ariyaratnam, *Nationalism in Sri Lanka and the Tamils*, in Michael Roberts, ed., *Collective Identities, nationalism, and Protest in Modern Sri Lanka*, Colombo: Marga Institute, 1979, p.509

of a Tamil kingdom in the north in the thirteenth century following a series of invasion of the island by South Indian rulers beginning in the eleventh century A.D; the Jaffna Peninsula became the nucleus of Sri Lankan Tamil civilization during this period.² Two Sinhalese kingdoms, one in the Southwest and the other in the central hill country also came into existence during this period .

The island came under foreign domination from the sixteenth century, but the Portuguese and the Dutch administered the Tamil-dominated areas as a separate region, distinct from the rest of the island. The whole island was brought under a single administration by the British. The British government for the first time in the nineteenth century although British administrators were fully aware that the two communities did not share the same historical experience, ancestral territory, language and customs.³

The centralization of administration of the country under a unitary system of government did not unite the two ethnic groups. In stead, Sinhalese and Tamils, became suspicious and antagonistic of each other as they competed for employment in the public service and representation in the State Council of the colonial government. The British government was fully aware that the rise of Sinhalese nationalism in the late nineteenth century posed a threat to the Tamil minority, especially when Sinhalese nationalists demanded greater representation of their community and succeeded in forming the Pan Sinhalese Ministry in the 1930s. Sinhalese nationalists has proclaimed, long before the island became independent, that Tamils had no claims to the island, or any part it, as their traditional homeland.⁴

Tamil leaders for their part sought without success constitutional guarantees from the British government to prevent the Sinhalese majority from discriminating against them in an independent Sri Lanka.⁵ Sri Lankan Tamils, a distinct ethnic minority with its own language, ethnicity, religion,

² see also S. Pathmanathan, *The Kingdom of Jaffna, Part I. (Circa A.D. 1250-1450)*; Arasaratnam, *Ceylon*, p. 104; K. Indrapala, *Dravidian Settlements in Ceylon and the Beginnings of the Kingdom of Jaffna*; and Rasanayagam, *Ancient Jaffna*, pp. 273-39 and Chelvadurai Manogaran, *The Untold Story of Ancient Tamils in Sri Lanka*, Chennai: Kumaran Press, 2000.

³B. H. Farmer, *Ceylon: A Divided Nation*, London: London University Press, 1963 (Forward).

⁴ To understand the complex beliefs and sentiments held by Sinhalese Buddhists regarding their unique mission to establish an exclusively Sinhalese-Buddhist nation and how these beliefs conflict with Tamil demands for language rights and regional autonomy, See Donald E. Smith, *Religion, Politics and the Myth of Re-conquest*, in T. Fernando and R. N. Kearney, eds., *Modern Sri Lanka: A Society in Transition*, Syracuse: Maxwell School of Citizenship and Public Affairs, 1979 and Donald E. Smith, *The Sinhalese Buddhist Revolution*, in Donald E. Smith, ed., *South Asia Politics and Religion*, Princeton: Princeton University Press, 1966.

⁵ Following the general elections of 1936, Sinhalese leaders were able to secure for themselves

cultural identity, and traditional homeland, were faced with the prospect of being denied the very rights they were entitled to under the principle of equal rights and the right to self-determination as promulgated under the Geneva Conventions and the additional Protocols when Sri Lanka became independent. Had the British government allowed the Tamil minority to disassociate itself from the sovereign nation of Sri Lanka, or helped them to secure regional autonomy for Tamil areas under a federal system of government, the ethnic problem could have been avoided.

International Law and the Principle of the Right to Self-determination of Peoples

The principle of equal rights and the right to self-determination of peoples had its origin in the American Declaration of Independence of 1776 where it is proclaimed:

We hold these truths to be self-evident that men are created equal, that they are endowed by their Creator with certain inalienable rights, that among these are life, liberty and the pursuit of happiness. That to secure these rights Governments are instituted among men deriving their just powers from the consensus of the governed; that whenever any form of government becomes destructive of these ends, it is the right of people to alter or abolish it and institute new Government.

This declaration ensures that people of the United States have the inalienable right to certain liberties, including, both, the right to chose a democratically-instituted government that meets their needs and aspirations and to change a government that is unjust and unresponsive to their needs and well-being. The American President, Woodrow Wilson, drew his inspiration from this declaration to championed the right of self-determination of peoples of the world. The League of Nations, however, was reluctant to include this doctrine in its Covenant for fear that it would have granted all peoples, whether they were under colonial powers or independent, the very rights proclaimed in the Declaration of Independence.

With the conclusion of World War II, however, the United Nations incorporated the principle of equal rights and self-determination of peoples in its Charter of June 26, 1945 for the purpose maintaining peaceful relations between nations, and thus, it became a norm of international law. The principle of equal rights and self-determination of peoples appears in Chapter 1 (2) and Chapter IX(1) of the UN Charter; Chapter 1(2) became Article 1(2) and Chapter IX(1) became Article 55. These articles indicate that the principle of equal rights and self-determination should be recognized as a norm of international law in order to promote the economic development, human rights and cultural cooperation in all areas of the world. Although these articles dealt with decolonization, there was intensive debate as to whether the principle of equal rights and self-determination should be promoted by a sovereign state that is dealing with its own peoples; peoples refer to different ethnic minorities that comprise a state.

United Nations Charter of 1960 on the Declaration on the Granting of Independence to Colonial Countries and Peoples.

the chairmanships of seven executive committees to form the *pan-Sinhalese ministry*. Tamil leaders were completely excluded from power sharing even before the island became independent in 1948.

The principle that all peoples have the right to self-determination was clarified when the United Nations Declaration on the Granting of Independence to Colonial Countries, the UN General Assembly (Resolution 1514) proclaimed that all peoples have the right of self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social, and cultural development. Accordingly, the principle that all peoples, whether they are the Tibetans, East Timorians, Slovaks, Chechens, or Sri Lankan Tamils, have the right to have their own govern over their own territories became a norm of international law.

For example, the Tibetans in China, would qualify as a people because of the religious and ethnic distinction from the Han people and they occupy a territory that was independent until it was incorporated into China in the mid twentieth century. The distinct peoples, who occupied different territories in the former Czechoslovakia, used their rights to self-determinations to establish the Republics of Czech and Slovakia. Similarly, the Tamils of northern Sri Lanka have the right to self-determination based on the UN General Assembly Resolution 1514 because they are a distinct people who have preserved their cultural and territorial identity on the island since ancient times.

The British government, nevertheless, turned over to the Sinhalese-dominated parliament of independent Sri Lanka without making provision to grant any degree of regional autonomy to Tamil areas. because they are a distinct people with a common language, religion, cultural identity, historical past and territory, distinct from that of the Sinhalese-Buddhist of the South; the country was historically divided into two territories based on distinct language, religion, and government in pre-colonial times.

The 1970 UN Declaration of the Principle of International Law Concerning Friendly Relations and Cooperation Among States. It was only in 1970, after ten years of opposition by Western States to the principle of equal rights and the right of self-determination, UN declared, for the first time in 1970, that colonization of all forms was a crime and also unanimously proclaimed that

By virtue of the principle of equal rights and self-determination of peoples enshrined

in the Charter of the United Nations, all peoples have the right to freely to determine, without external interference, their political status and pursue their economic, social and cultural development, and every state has the duty to respect this right in accordance with the provisions of the Charter.⁶

This declaration, while proclaiming that peoples who were victims of alien subjugation, domination and exploitation, have the right to self-determination, also mentioned that member nations that comply with the principle of equal rights and self-determination have the responsibility of maintaining the unity and integrity of sovereign and newly independent states.

⁶ United Nations General Assembly Resolution 2625(XXV), October 1970, on *Principles of International Law Concerning Friendly Relations and Cooperation Among States*.

The 1970 UN Declaration on the Principles of International Law Concerning Friendly Relations and Cooperation Among States, however proclaimed that state's territorial integrity and political unity can only be guaranteed if the state observes and respects human rights. This declaration, which was approved by the General Assembly on October 24, 1970, proclaims in part that,

Every state has the duty to refrain from organizing, instigating, assisting or participating in acts of civil strife or terrorist acts in another state or acquiescing in organized activities within its territory directed towards commission of acts, when acts referred to in the present paragraph involve a threat or use of force.....

Max M. Kampelman commenting on the UN 1970 declaration on friendly relations, and specifically with the above paragraph, which emphasizes the need for states to observe and respect human rights as they deal with their minorities, states,

.... it would appear under the 1970 declaration that the protection of a state's territorial integrity or political unity is conditioned on that state's observance and respect for human rights, including minority rights. Individual states have placed on record their own interpretation of the words, but it is not unreasonable to conclude that the 1970 declaration disassociates the right of secession from the right of self-determination at the same time as it provides justification for secession from a state that is in violation of human rights.⁷

This Declaration on the Principles on International Law Concerning Friendly Relations and Cooperation Among States represents the contemporary consensus with respect to the use of force as a matter of necessity to secure their right to self-determination when other methods have been exhausted and the declaration says,

A state has a duty to refrain from forcible action, and by "state" we are referring now to the central state where the people...within which the people live...The state has a duty to refrain from forcible action which deprives peoples, referred to above in the elaboration of their present principle, of their right to self-determination and freedom and independence.

The declaration further states that,

Nothing in the preceding paragraph should be construed as authorizing action that would lead to the dismemberment of the state or impair its territorial integrity, if the state is conducting itself in compliance with the principle of equal rights and self-determination of peoples, and is thus possessed of a government representing the whole people belonging to the territory, without distinction as to race, creed or colour.

⁷ Max M. Kampelman, *Secession and Self-Determination*, **Current**, Issue 357, November 1993.

A people has the right to separate in a way that would dismember the state only if the practice of the state is such that they are not represented appropriately in conformity with the idea of self-determination. Simply having membership in the parliament would not necessarily be enough, even when a minority has, among many rights, the right to vote, the right to send members to parliament, and to have full representation as everyone else, to deny a minority the right to self-determination.

When people belonging to a ruling majority are confined largely to a region of the country, distinct from that occupied by people belonging to a minority, as in the case of Sri Lanka, it is inevitable that the views of the minority can be disregarded by the majority, especially if the latter has a two-thirds majority in parliament. Under these stipulations of majoritarian rule, parliament takes positions or the executive takes positions that are detrimental to the interests of that minority.

This is particularly true in a unitary system of government which does not yield to genuine power-sharing between an ethnic majority and an ethnic minority, at least, at the regional level. Under these circumstances, the people belonging to the minority have a right to take action on their own in order to effectuate their right to self-determination. There is not a clear set of principles, but it is necessary look at whether the people are able to control and conduct their own affairs using their own language would be one aspect. To achieve equal rights for them, the people belonging to a minority which occupies a certain territory, has a legitimate claim to a fairly substantial role in the governance of that area of the country.

Under international law, a state can request international organizations to seek the right to self-determination and the United Nations has concerned itself with these kinds of situations. In Europe, the Organization for Security and Co-operation in Europe is concerning itself with these kinds of situations in eastern Europe where large states are break-up into smaller ones based on ethnicity following the collapse of the Soviet Union.

The United Nations has, on occasions, been involved in making recommendations on matters relating to the right to self-determination of peoples in different parts of the world. Those demanding the right to self-determination should qualify as a people in terms of the criteria of their historical identity, their cultural identity, language, religion, et cetera, as well as occupy a particular piece of territory within the state in question. It is not necessary for people seeking the right to self-determination to demand the creation of a separate state. They should, in stead, be able to make their choice from three possibilities.

One, they can merge with an existing state, second, they could be associated with an existing state in some kind of special relationship that gives them rights to deal with most governmental matters, but still retaining a relationship under a federated system with an existing state, or a system that is sometimes referred to as autonomy within an existing state, and third, is independence.

People seeking the right to self-determination do not have the right to engage in armed conflict to secure their objectives under international law before exhausting all peaceful means to resolve the problem with a state that is not in compliance with the principle of equal rights and self-determination, and that it is not possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or colour. The people seeking the right to self-determination should be convinced that a critical stage has been reached in the conflict that they could no longer rely on peaceful means to obtain their objective before they are entitled to engage in armed conflict with the state. The Tamil minority in Sri Lanka, for example, decided to resort to armed conflict with the Sri Lankan state, only after they were convinced that the Sinhalese-dominated government could not be persuaded by peaceful means to redress their grievances.

The UN 1970 declaration on human rights is the culmination of almost ten years of strong debate in the United Nations on the need for colonial powers and governments in sovereign states to respect the human rights of peoples. The timing of the 1970 UN resolution on friendly relations was significant because it dealt specifically with conditions in the post-colonization period when human rights violations became a serious problem in newly formed independent nations and long established sovereign nations.

Many politicians in Asia and Africa, including Sri Lanka, sought the broadest definition of the principle of the right self-determination to secure independence from European countries. Once they became independent, many of the multi-ethnic nations of Asia, including Sri Lanka and Indonesia, and former colonial powers, such as France, Britain and Spain emerged, as well as the Organization of African Unity, which successfully supervised the decolonization of Africa, insisted on a restrictive interpretation of the principle of self-determination on grounds that the right to secede would open a Pandora's box and precipitate the Balkanization of Europe, Asia, and Africa.

In using the term Balkanization, sovereign states states that were dominated by ethnic majorities, denied their minorities the right to self-determination by equating it with secession. On the contrary, secession may be the only option available to an ethnic minority which face systematic deprivation and domination by an ethnic majority, especially when the latter refuses to share power with the ethnic minority and undertakes to resolve the conflict on the battlefield. In many instances, the ruling majority is accused of human rights violations, which are manifested in the form mass graves, disappearances, the indiscriminate killing of civilians and the destruction of homes and places of worship by bombing and shelling, as well as creating a massive refugee problem. The Conference on Security and Cooperation in Europe (CSCE) and the Helsinki Act of 1975 also championed the principle of self-determination by declaring that human rights and human dignity are important factors that should be the norm of national behavior.

International Covenants on Civil and Political Rights of 1976. Tamil People's justification for the right of self-determination was further strengthened when the members of the United Nations signed a series of resolutions and ratified promulgations of several major human rights treaties pertaining to the principle of equal rights and the right to self-determination in the 1970s. Third world nations had, by the 1948, determined to recognize that the right of self-determination was not merely designed to outlaw colonialism, but also elevated it from a principle to a right. It is this position that led to the General Assembly Resolution 217(III), The Universal Declaration of Human Rights .⁸

The argument that the right of self-determination, as proclaimed in the Declaration, was applicable to only colonized or annexed nations was deemed unjust by many third world nations, since nation-building process had created multi-ethnic nations, many of which came to be identified exclusively with dominant ethnic groups claiming to be the original settlers. Minorities in many of these multi-ethnic nations, such as Sri Lanka, were powerless to assert their right to self-determination, even though they had settled as distinct ethnic minorities in separate areas of national territories for centuries. On February 5, 1952, the UN General Assembly adopted Resolution 1514 (XV) which not only accepted self-determination as a legal right, but emphasized that the denial of human rights of all peoples was a violation of the Charter of United Nations and the Universal Declaration of Human Rights.⁹

The resolution, therefore, stipulates that all peoples shall have the rights of self-determination and that states were obliged to respect human rights within their borders. The principles incorporated in Universal Declaration of Human Rights adopted by the General Assembly in 1948 were transformed into legally binding norms through the two Covenants and the Optional Protocols. These instruments were adopted by the General Assembly on December 16, 1966, but only came into force in 1976. These two covenants are, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.¹⁰ Both Articles restate the principle of equal rights and the right to self-determination.

It is declared in Part 1, Article 1 of the Covenant on Civil and Political Rights that all peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development. In Part III Article 2(1), it is declared that The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.

⁸United Nations General Assembly Resolution (217), December 10, 1948, 48:0:8.

⁹United Nations Assembly Resolution, December 14, 1960.

¹⁰*International Covenant on Civil and Political Rights*, U.N.T.S No,14668, Volume 999, 1976 and *International Covenant on Economic, Social and Cultural Rights*, U.N.T.S. No.14531, Volume 993, 1976.

Both these Articles restate the principle of self-determination of peoples and was viewed as extremely significant and important to underline the value of that right in the overall international regime. A language for that was worked out excruciatingly at the United Nations during the 1960s during the sixties, but the covenants did not come into effect until into the seventies. The International Court of Justice in its opinion in the Western Sahara case in 1975 added a dimension of looking to pre-colonial disposition of a situation to determine the status of the people or peoples, depending on whether you were an "s" person with the word or not. Some people simply say self-determination of people, others say peoples, and to think that there is a legal universe between people and peoples.

There was discussion of whether or not a post-colonial disposition of a colonial territory, failing to take into consideration the pre-colonial history, could extinguish the right to self-determination of and by itself. In Sri Lanka, at that time, when there was supposedly some agreements that the colonial power in turning over to the Sinhala political figures, it was with the understanding that the Tamil would have an active participation in the country and it would not be a Sinhala country; it would be truly a country of both where the issues of people would not be part of the political process. Because of some of these situations in the decolonization process, the meaning of the concept of self-determination evolved with the intransigency in some of the situations that it evolved faster. In some situations, the position of one or another group that in the pre-colonial period had been independent deteriorated dramatically. In some instances, the United Nations chose to intervene; in some instances, the United Nations did not. It is also a war against a racist regime and under that analysis it would fall under Protocol I.

Principle of Equal Rights are not entrenched in the present Constitution of Sri Lanka. Tamil demands for the right to self-determination is also justified because the Constitution of Sri Lanka does not contain any provisions that upholds the principle of equal rights and contains constitutional safeguards to protect minorities against discrimination by the Sinhalese majority, although Tamils had secured constitutional guarantees from the British government to ensure that this would not happen. These constitutional safeguards, which were incorporated in a special Section 29 (2) in the Ceylon (Constitution) Order-in-Council of 1946, and referred to as the Soulbury Constitution, proclaimed that,

no law passed by the Ceylon Parliament shall prohibit or restrict the free exercise of the religion or which confers on persons of any community or religions, any privilege or advantage which is not conferred on persons of other communities or religions or impose any disability or restriction on persons of one community or religion which is not imposed on others or alter the constitution of any religious body without the permission of the governing authority of that body.

But once the country became independent in 1948, provisions of Section 29(2) in the Constitution of Sri Lanka were grossly violated as the Sinhalese-dominated Parliament enacted legislation and issued regulations that denied Tamils the very rights and privileges that were accorded to Sinhalese.

No amendments were introduced in the original Constitution or no provisions have been incorporated in the new Constitutions to incorporate any aspects of fundamental human rights, as proclaimed by framers of the American Constitution that all men are created equal or the principle of equal rights as recognized by international law. Likewise, some of the amendments to the American Constitution on the Bill of Rights which guarantees against unreasonable searches and seizures, the right to trial by a jury, right to a speedy and public trial, to be informed of the nature and cause of accusation. Indeed, the United Nations Universal Declaration of Human Rights proclaims that:

Everyone is entitled to all rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, birth or other status..... No one shall be subject to torture or cruel, inhuman or degrading treatment or punishment..... All are equal before the law and are entitled without any discrimination in violation of this Declaration and against any incitement to such discrimination, etc.¹¹

The Sinhalese majority did not hesitate to introduce legislation denying citizenship and voting rights to Tamils of Indian origin as soon as the country became independent. Aggressive measures were also adopted by the mid-1950s, to deny Sri Lankan Tamils, among other rights, the right to use the Tamil language for education and administration, the right to secure public service employment, and the right to preserve their culture identity and the integrity of their traditional homeland. The government not only rejected Tamil demands for the right to self-determination, but also failed to enforce security measures to protect Tamils from being attacked by Sinhalese mobs during anti-Tamil riots that plagued the island periodically from 1956 to 1983.

These riots caused irreparable damage to Sinhalese-Tamil relationship since the government persistently failed to prevent Sinhalese mobs from killing Tamils indiscriminately or destroying their homes and properties, and forcing thousands of them to become refugees within and outside the country. It was only in the 1980s, after almost 30 years of peaceful protests and exercising restraint from taking retaliatory measures, that Tamil youth took up arms to fight for their legitimate rights. The government, unfortunately, has viewed all forms of opposition from the Tamil people, whether peaceful or violent, as being orchestrated by Tamil terrorists whose main goal is to bring chaos and political instability to the island. In recent years, the government has even made public pronouncements that the country does not face an ethnic problem, but a terrorist problem.

Although there was unitary system of government under the British, they did not attempt to dismantle the separate cultures, and the ethnic groups continued to exist as separate entities. The British promised Tamil politicians, when they were withdrawing from the island, that the land belonged to both ethnic groups and not exclusively to neither Sinhala nor Tamil.

¹¹ *Universal Declaration of Human Rights* adopted and proclaimed by the General Assembly resolution 217 A(III) of 10 December 1948.

Unfortunately, the Sinhalese-dominated government of Sri Lanka had, by amending the constitution and by enacting laws and regulations, transformed it into the land of Sinhalese-Buddhists. The Sinhalese majority even used repressive measures and violated the human rights of the Tamil people to deny them their basic rights. The specific articles referred to in the Covenants on Civil and Political Rights and the Covenant on Economic, Social and Cultural Rights are significant because they have relevance to the manner in which the human rights of the Tamil people have been violated by the government since 1956.

The concept that all people, irrespective of whether they are seeking independence from colonial rule or seeking an end to domination by ethnic majorities in sovereign states, have equal rights to determine their own destiny since the international community has legitimized the aspirations of ethnic minorities to the Balkans, Eastern Europe and in the former Soviet Union. The 1970 UN declaration of friendly relations also legitimized the right of people to self-determination for peoples under alien domination and exploitation. The 1970 UN declaration also legitimates the right of a people to secede from a state where the ruling majority does not observe or have respect for human rights, including minority rights. The Conference on Security and Cooperation (CSCE) and the Helsinki Act of 1975, in particular, specified the standard behaviour that ethnic majorities have to observe in dealing with minorities in areas involving language, religion, culture, education, human contacts and political democracy.

The Sri Lankan government has always claimed that it has the right to use force, according to international law, against any opposition, even though it continues to behave like a colonial power in dealing with its own minority. The government has always stressed that it has the right to use force against Tamil separatists because the latter use terrorist methods to dismantling the democratically constituted government and the territorial integrity of the island. Sinhalese leaders even insist Tamils have no legal right to use force to fight to secure their demands because the democratically constituted government recognizes that all people have right to vote, irrespective of their ethnic background, and to be represented in the parliament. Sinhalese leaders, however, declined to acknowledge that, under the majoritarian system of government, the Sinhalese members of parliament do not rely on the Tamil electorates to be elected, but are at the mercy of the Sinhalese electorates to be elected or to be returned to Parliament at the next elections. They have to, therefore, pay specific attention to the demands of the Sinhalese electorate, which constitutes seventy percent of the population.

It serves no purpose for Tamils who are elected to Parliament by Tamil electorates to serve in the executive branch of the Sinhalese-dominated government if the latter is not interested in redressing the just grievances of the Tamil people. Given the unitary structure of the government, there is no mechanism for Tamils to share power with the Sinhalese-majority at the regional level where the Tamils are in the majority.

Sinhalese leaders have rejected any degree of regional autonomy to Tamil areas on grounds that it would endanger the unity and the territorial integrity of Sri Lanka. The Sri Lankan government also claims that it rejects the right of Tamil people to self-determination on grounds that it is associated exclusively with secession even though Sinhalese leaders are aware that the Tamils were willing to accept proposals that would have granted semi-regional autonomy for Tamil areas under the Banadaranaika-Chelvanayakam Pact of 1957 and the Senenayake-Bandaranaike Pact of 1968; all of which fell far short of their original demand for regional autonomy under a federal system of government.

Only when peaceful methods were ineffective in persuading Sinhalese leaders to grant their legitimate rights that Tamil leaders began to demand a separate Tamil state, first through peaceful methods, and later by engaging in armed conflict with government forces. Indeed, it was the intransigent behaviour of the Sinhalese leaders, who claimed that any degree of regional autonomy to Tamil areas will threaten the sovereignty and the territorial integrity of the island, that led to the failure of all attempts to a peaceful resolution to the conflict. Tamil youth movements initially launched armed attacks on government forces when agitation and protestation within the constitutional framework and extra-parliamentary pretexts failed to solve the ethnic problem.

The right of self-determination of ethnic minorities, who have been historically discriminated by ethnic majorities in multi-ethnic nations, has been further reinforced by the Charter of Paris for New Europe of 1991, which affirms that the ethnic, cultural, linguistic and religious identity of national minorities will be protected and that persons belonging to national minorities have the right freely to express, preserve and develop that identity without any discrimination and in full equality before the law.¹²

Tamils Agitate and Protest Within the Constitutional Framework To Demand Equal Rights and the Right to Self-Determination (1956-1983)

Most of scholars agree that Tamils are a people and have a right to self-determination and when this right was denied by the Sri Lankan government, they had the right to engage in armed resistance to achieve their objectives. Self-determination is a peremptory norm in international law and Article 1 in both of the covenants proclaim that if a people have the right to self-determination, their right should be granted. In the absence of such a grant, then the United Nations allows the use of force to vindicate the right. The following analysis on Tamil agitation and protest within the constitutional framework, will demonstrate that the LTTE decided to launch a protracted armed struggle, on behalf of the Tamil people, against the Sri Lankan government only after all peaceful means to end the conflict were exhausted.¹³

¹²Nazili Choucri, *Analytical and Behavioral Perspectives: Causes of War and Strategies of Peace*, in W. Scotte Thompson and others, eds., *Approaches to Peace*, Washington, D. C.: United States Institute of Peace, 1991, p. 286.

¹³See Jeyaratnam A. Wilson, *The Politics of Ethnicity and Ethnonationalism in South Asia, Contemporary South Asia*, Volume 2(3), 1993. Professor Wilson examines the stages that lead to

Tamil leaders were aware, as early as the 1920s, that many Sinhalese political activists, including constitutional reformists and Buddhist revivalists, possessed a streak of Sinhalese national consciousness and were inclined to sacrifice Tamil interests.¹⁴ In particular, Sinhalese Buddhist activist, Anagarika Dharmapala, who campaigned for the revival of Sinhalese national consciousness, claimed that, since the Sinhalese were a unique race, which had neither been conquered by the European vandals nor by the Tamils, the island belonged exclusively to the Sinhalese-Buddhists.¹⁵ The following sequence of events will show that the politics of discrimination, neglect, and the intransigent attitude of the Sinhalese leaders, with respect to sovereignty and territorial integrity, provoked the Tamil people to abandon parliamentary, extra-parliamentary and non-civil disobedience campaigns and to assert their right to self-determination through armed struggle.

(a) Tamils excluded from the Pan Sinhalese Ministry even before the country became independent. The first wave of Sinhalese nationalism led to the complete exclusion of Tamils from the State Council's Board of Ministers in 1936, which came to be referred as the Pan Sinhalese Ministry, The Sinhalese-majority in the State Council, which included the Minister of Agriculture, D. S. Senanayake, who later became the first Prime Minister of independent Ceylon in 1948, pursued its policy of colonization and Sinhalization of the island.

The new members of the Council included S. W. R. D. Bandaranaike, who spearheaded the movement to make Sinhalese the only official language of the island in 1956, approved all the directives that discriminated against Ceylon Tamils in the areas of agriculture, education, disbursement of funds, and public service appointments. S. W. R. D. Bandaranaike founded a communal organization, the Sinhala Maha Sabha, in 1937, that agitated for the revival of Sinhala traditions, Sinhala language, and Buddhism. This compelled G. G. Ponnambalam, a prominent Tamil lawyer and member of the State Council, to form the All-Ceylon Tamil Congress (TC) in 1944 in order to defend the interests of Tamils. He advocated that one-half of the seats in the proposed legislature of independent Sri Lanka be reserved for minorities and the other half to the Sinhalese majority.¹⁶ This 50-50 proposal was rejected by the Soulbury Commission, which was conducting hearings on the granting of independence to the island, as being contrary to the democratic principle of majority rule.

ethnic nationalities within a decolonized state to seek the right to self-determination in South Asia.

¹⁴ Michael Roberts, *Problems of Collective Identity in a Multi-Ethnic Society: Sectional Nationalism and Ceylon Nationalism 1900-1940*, in Michael Roberts (ed.), **Collective Identity, Nationalism and Protest in Modern Sri Lanka**, Colombo: Marga Institute, 1979, p.353.

¹⁵ Michael Roberts, *Problems of Collective Identity in a Multi-Ethnic Society*, p. 350.

¹⁶ Sinnapah Arasaratnam, *Nationalism in Sri Lanka and the Tamils*," in Michael Roberts, ed., **Collective Identities, nationalisms and Protest in Modern Sri Lanka**, 505.

Once it became evident that the British government would not back down on the issue of territorial representation, G. G. Ponnambalam could have, like Jinnah of Pakistan, demanded the creation of a separate state for Tamils. Apparently, the Tamil leadership was dissuaded from taking secessionist positions because of the presence of thousands of Tamils in Sinhala-majority areas of the Western and Central Provinces.¹⁷ Nevertheless, when his party won nine of the thirteen seats, it contested in the Northern and Eastern Provinces under the Soulbury reforms at the general elections of 1947, G. G. Ponnambalam demanded the right of self-determination for the Tamils.

(b) Tamils of Indian Origin Denied citizenship and voting rights. Decolonization in Sri Lanka resulted in the establishment of Sinhalese-dominated parliament that began enacting laws and issuing regulations that gradually chipped away at the fundamental rights of the Tamil minority. It is as if, the Sinhalese majority was beginning to embrace an internal colonialist system under which the Tamil people came to be ruled by the Sinhalese colonial power.

The Sinhalese-dominated parliament, therefore, used its power to pass legislation under the Citizenship Act No. 18 of 1948, making Indian Tamils, who settled in the predominantly Sinhalese areas of the central hill country during the British colonial period to work for low wages in tea plantations, effectively stateless. Soon after, the Indian and Pakistani Residents (Citizenship) Act No.3 of 1949 was enacted by Parliament to define the conditions under which Indian Tamils could claim citizenship by registration.

More than 975,000 Indians, who were made stateless, had to prove three or more generations of paternal ancestry to become citizens by descent. By denying the right to vote to 90,000 Indians, many of whom had voted in the general elections of 1931, the Sinhalese majority in parliament increased from 67 in 1947 to 73 in 1952. Its majority was further enhanced to 78 in 1959 through redistricting of the electoral districts. These initial measures were taken by the government to give Sinhalese leaders the ability to alter the constitution, and to hold the minorities at their mercy in respect to fundamental rights.¹⁸

G. G. Ponnambalam, who had previously believed very strongly that the rights of minorities cannot be guaranteed under a majoritarian system of government, joined the Sinhalese-dominated government of United National Party lead by D. S. Senanayake, the very person who was a prominent member of the Pan Sinhalese Ministry of the 1930s.

He continued to support the government that enacted legislation denying citizenship and voting rights to the Indian Tamils and refused to openly reject the policy of the government of settling thousands of Sinhalese peasants in the predominantly Tamil districts of the Northern and Eastern Provinces. S. J. V. Chelvanayakam, a prominent Tamil Member of Parliament, belonging to Tamil Congress, quit the government to form the Tamil Federal Party (FP) in 1949.

¹⁷A. Jeyaratnam Wilson, **The Break-up of Sri Lanka**, pp. 62-63.

¹⁸Walter Schwarz, **The Tamils of Sri Lanka**, London: The Minority Rights Group Ltd., Report No.24, 1983.

As the leader of the Federal Party, he also warned the Tamil-speaking people of the Northern and Eastern Provinces that unless the Tamil community launched an effective campaign to halt the government's colonization policy, the ethnic composition of their traditional homeland would be radically altered within a few years.

The FP justified its demands for the creation of a federal form of government on the ground that Tamil-speaking people in the Northern and Eastern Provinces should have priority in the selection of allottees for colonization schemes. The question of creating an independent state for Tamils did not arise at this stage because the federal solution was a way of reconciling the claims of Tamils in the seven Sinhalese Provinces and the Ceylon Tamils living in their traditional homelands in the north and east.¹⁹ The Federal Party was given a clear mandate from the Tamil people in 1956 to seek, through peaceful and parliamentary means, the establishment of a Tamil linguistic state within a federal union of Sri Lanka.

(c) Sinhalese Only legislation.

The British colonial government proclaimed that English shall be the Official language of the country in the nineteenth century and, like the former colonial master, the Sinhalese-dominated parliament also declared that Sinhalese shall be the only Official Language (Act No.33 of 1956) of the country in the 21st century. Tamils were made to realize that they did not possess the same freedom or the rights, as the Sinhalese, to determine how they should be governed, how to preserve their identity and to develop their language and their traditional homeland, which were neglected under colonial rule. The Sinhalese Only legislation, no doubt, violated the principles of equal rights under international law and the UN declaration of human rights because it gave undue advantage to Sinhalese over Tamils in matters relating to education, employment, and corresponding with the government agencies.

Sinhalese politicians justified the enactment of laws beneficial to Sinhalese on grounds that the British colonial government gave preference treatment to Tamils by employing them in large numbers in the public service and in the professions. These politicians were reluctant to admit that Tamils were successful in securing jobs in the colonial government not because they favoured Tamil over Sinhalese, but because Tamils were proficient in the English language which was the medium of instructions in schools that were established in Tamils areas, especially in the Jaffna Peninsula, by Christian missionaries.

It is significant to emphasize that Sinhalese nationalists prohibited proselytization activities of Christian missionaries in Sinhalese areas and thereby denied Sinhalese students the opportunity to be learn the English language in Catholic and Protestant denominational schools.

¹⁹ A. Jeyaratnam Wilson, **The Break-up of Sri Lanka**, op.cit., p. 83.

Given the lack water and productive land to raise food crops in the northern districts, a certain sections of the Tamil populations, such as those belonging to traditional land owners or the Vellalas caste, used their leisure, status and wealth in the Tamil society to acquired proficiency in the English language and secure employment in the non-agricultural sector outside their homeland. .

Sinhalese politicians deliberately concealed the fact that only thirty percent of the Tamil population, especially those belonging to Vellala caste, reaped the benefits of English education and that the large majority of the Tamil people, especially of the Eastern Provinces, were illiterate in the English language during the colonial period. This category of Tamils who were not proficient in the English language, would have benefitted immensely had the Tamil language been also declared as an official language, at least in Tamil areas.

In stead, the benefit of the transfer of power from the Britain to Sri Lanka was bestowed exclusively to the Sinhalese majority and Tamils were compelled to acquire proficiency in the Sinhalese language to secure public service jobs and to correspond with government officials. Sinhalese leaders, nevertheless, believed that they, like the British, could compel Tamils to master the Sinhalese language, a language considered by Tamils to be alien to them.

Most Tamils were called upon to continue, as they had during the colonial period, to acquire proficiency in the language of the ruling ethnic majority and to rely on Sinhalese translators to transact business with the government. Tamil leaders rejected the use of Sinhalese in Tamil areas by claiming that they, like the Sinhalese, wanted to liberate themselves from domination by another linguistic group. Tamils also became deeply concerned that the official language policy of the government would destroy their language, and their distinctive culture which they had zealously nurtured within the confines of their traditional homeland from ancient times.

Sinhalese leaders were reluctant to concede language or any other rights to Tamils because the Buddhist clergy had warned the Sinhalese masses that it was their duty as the chosen race, with a divine mission, to establish, preserve, and develop a Sinhala society based on the sacred values of the ancient past.²⁰ The Buddhist clergy has also warned that the Tamils do not deserve any rights and privileges of the nature sought by Sinhalese-Buddhist state, because Dravidian-Tamils had the notoriety of, among other characteristics, destroying Sinhalese kingdoms, wrecking the Sinhalese-Buddhist culture, usurping the political rights of the Sinhalese, and depriving the Sinhalese of opportunities to secure employment and prestigious positions in the public sector.²¹

²⁰ See Donald E. Smith, *Religion, Politics and the Myth of Conquest*, p.85.

²¹ K. M. de Silva, *Politics and Constitutional Change in Sri Lanka*, **Round Table**, 276, (January 1979), p.55.

Sinhalese political parties, save the traditional left, cooperated in the enacting of the Sinhala Only legislation to the exclusion of the Tamil language. Sinhalese leaders insisted that the purpose of making Sinhala the only official language was to foster the creation of one nation in the island. The Tamil Federal Party, which received the confidence of the majority of the Tamil people at the 1956 General elections insisted that the Tamils' own sense of group identity should be recognized and it rejected the notion that Sri Lankan nationalism should be exclusively linked with Sinhalese identity. In spite of these objections, the Sinhala leadership pledged to the Sinhala people that their language, their Sinhala Buddhist religion, their culture, and history would receive special recognition by the state.

(d) Violation of fundamental rights of Tamils criticized by the architect of the first Constitution of independent Sri Lanka. Lord Soulbury, the Chairman of the Commission that drafted the Ceylon Constitution (1946) and the first Governor General of independent Ceylon (Sri Lanka), while commenting on the measures adopted by the Sinhalese-dominated parliament to enact and enforce discriminatory laws against the Tamil minority stated in 1963, fifteen years after the island became independent, that,

...in the light of the later happenings, I now think it is a pity that the Commission did not also recommend the entrenchment in the constitution of guarantees of fundamental rights, on the lines enacted in the constitutions of India, Pakistan, Malaya, Nigeria and elsewhere. Perhaps in any subsequent amendment of Ceylon's constitution those in authority might take note of the proclamation made by the delegates at the African conference which met in Lagos two years ago. 'Fundamental human rights, especially the right to individual liberty, should be written and entrenched in the constitutions of all countries'. Nevertheless the reconciliation of Tamils and Sinhalese will depend not on constitutional guarantees but on the goodwill, common sense and the humanity of the Government in power and the people who elected it.

22

To Sri Lankan Tamils, the enactment of Sinhalese only legislation meant that their language, culture, and traditional territory, in effect, their identity as a distinct society in Sri Lanka, was to be eliminated. The relations between the two communities deteriorated after the general election of 1956 and culminated in the large-scale ethnic riots of 1958 which was designed to intimidate the Tamils against staging any type of peaceful protest against the government. This was the beginning of a series of anti-Tamil riots that victimized Tamils periodically between the years, 1956 to 1983. With each successive riot, Sri Lankan Tamils became increasingly convinced that their very existence as a distinct ethnic group was contingent on their ability to secure their traditional homeland, even if it meant the use of force.

(e) Peaceful Demonstrators forcefully broken-up by Sinhalese mobs outside Parliament.

²² Lord Soulbury wrote the forward to Bertram H. Farmer, **Ceylon: A Divided Nation**, London: London University Press, 1963.

The Federal Party, led by S. J. V. Chelvanayakam, which was given a clear mandate, during the 1956 general election, from the Tamil people to seek, through peaceful and parliamentary methods, the establishment of a Tamil linguistic state with a federal union of Sri Lanka, staged a peaceful demonstration in the vicinity of parliament to show its disapproval of the Sinhalese Only law. The demonstrators were beaten up by Sinhalese mobs, often with the tacit approval of Sinhalese nationalists and some elements in the government, and this violence was accompanied by an anti-Tamil riot which resulted in the killing of more than one hundreds of Tamil colonists in the government-sponsored Gal Oya Colonization Scheme in the Amparai District.

The government also pursued an aggressive policy of transferring Sinhalese peasants from Sinhalese areas of the wet zone into Tamil-dominated districts in the Eastern Province in order to change its ethnic composition and thereby threatening the integrity of the Tamil homeland. The Federal Party, therefore, called a convention in Trincomalee, a city and natural harbor in the Tamil-dominated Eastern Province, to demand, among other conditions, the creation of a federal form of government that would assure the Tamil people regional autonomy, legislation giving parity of status to both Sinhalese and Tamil languages, grant citizenship rights to Tamils of Indian origin, and end the planned Sinhalese colonization of Tamil areas. The Federal Party also threatened to stage a mass civil disobedience campaign if the government failed to implement the resolution passed at the Trincomalee convention within one year. Prime Minister S. W. R. D. Bandaranaike, was convinced that Tamils were determined to defend their legitimate rights and, in order to avert a major ethnic crisis, he agreed to negotiate a political settlement with S. J. V. Chelvanayakam of the Federal Party in July 1957.

(f) Government Abrogates the Bandaranaike - Chelvanayakam Pact of 1957.

The only agreement negotiated in good faith by the leaders of the Sri Lanka Party (SLFP), the party that held the majority in the Mahajana Eksath Peruma (MEP) coalition government, and the leaders of the Federal Party, was the Bandaranaike-Chelvanayakam Pact of 1957. Had this pact been implemented at this early stage of communal confrontation, much of the contemporary violence and bloodshed could have been avoided.

The leaders did not agree on the establishment of a federal system of government, but the provisions in the pact, included the devolution of administrative powers to the regional councils in the Northern and Eastern Provinces, recognized Tamil as the language of a national minority and made provisions for its use as a language of administration in these provinces, without altering the position of Sinhala as the only official language of Sri Lanka. There will be one regional council for the Northern Province and two or more for the Eastern Province.

The regional councillors were to be elected directly by the electorates that are to be carved out by the delimitation commission and the regional council will have powers over specific subjects including agriculture, cooperatives, land and land development, colonization, education, health, industries and fisheries, housing and social services, electricity, water schemes, roads. Although block grants will be provided to the regional councils, they also had powers of taxation and borrowing. The pact would have also minimized the treat of Sinhalese colonization in the Tamil provinces and permitted Tamils to develop their traditional homeland as they deemed necessary.

The United National Party (UNP) and the Sri Lanka Freedom Party (SLFP) have exploited the Tamil issue to out maneuver each other to win elections. This became evident, even as early as the mid-1950s, after Prime Minister Sir John Kotelawala of the UNP had assured the Tamil people during his visit to Jaffna, the heart of the Tamil homeland in 1955, that both Sinhalese and Tamil would be made the official language of the country.

This statement was, however, deliberately distorted by Sinhalese activists who suggested that if both languages were given equal status, Sinhalese people would be forced to study Tamil. S. W. R. D. Bandaranaike of the SLFP, who championing the Sinhalese-Buddhist cause, took advantage of the views help by Sinhalese activists to declare that Sinhala will be declared the only official language of Sri Lanka, with a provision for the reasonable use of Tamil. Prime Minister Kotelawala did not hesitate to break the promise he had made to the Tamil people on the language and declared that Sinhalese will be declared the only official language if his party was returned to power in the forthcoming general elections.

No sooner Mr.Kotalawala made his announcement, Mr. Bandaranaike declaring that Sinhala will be made the official language in twenty-four hours if his coalition party (MEP) won the elections. Mr, Bandaranaike even failed to mention that provision for the reasonable use of Tamil will be incorporated in the Sinhalese Only Bill. Mr. Bandaranaike, who became the Prime Minister in 1956, kept his promise by making Sinhala the only official language without making any provision for the reasonable use of Tamil.²³ It became obvious to Tamil leaders that Sinhalese leaders were inclining to make any proclamations that would return them to power and were apathetic to the just demands of Tamils

(g) United National Party spearheaded the movement that rejected the Bandaranaike - Chelvanayakam Pact.

²³ See Walter Schwarz, *The Tamils of Sri Lanka*. London: The Minority Rights Group Ltd., Report No.25, 1983. This report states that the provisions for the reasonable use of Tamil was deleted from the Bill because of pressure from Sinhalese nationalists and Buddhist activists, like L.H. Mettananda who threatened to fast unto death if these provisions were incorporated in Sinhala Only legislation.

The growing opposition from the Buddhist clergy, Sinhalese nationalists and the United National Party, forced the Prime Minister to delay the implementation of the Pact. History will show that the United National Party (UNP) and the Sri Lanka Freedom Party (SLFP) have used the Tamil issue outmanoeuvre each other to gain power. Indeed, however minor they may be, any concessions that were offered to Tamils by the party in power, are often depicted by the opposition as selling out our people.²⁴ In order to placate the opposition, Mr. Bandaranaike issued an order requiring all motor vehicles to display the Sinhalese character Sri on license plates throughout the island in order to assure those opposed to the Pact that the provisions in the pact will not nullify the Sinhala Only Act. Mr. Chelvanayakam became dubious about the Prime Minister's declared intention and launched a protest campaign against sending public transport busses with the Sinhalese license plates to Tamils areas.²⁵

The Federal Party also persuaded principals of Jaffna schools to rescind their proposal to conduct Sinhalese classes for the benefit of Tamil students. As expected, one action intensified the other. When Sinhalese-license plates were painted over by Tamil protesters, Sinhalese mobs defaced Tamil homes and businesses and harassed Tamil people. The reprisals by Sinhalese mobs and the peaceful non-violent demonstrations staged by two hundred members of the Buddhist clergy (Bhikkhus) of the MEP in front of the Prime Ministers residence, compelled the Prime Minister to abrogate the act in April 1958. The Bandaranaike-Chelvanayakam Pact was one of the many promises to Tamils that Sinhalese leaders failed to honour for almost half a century.

(h) Anti-Tamil riots of 1958.

The Federal Party, disappointed by Banadaranaike's refusal to implement the Pact, called a convention in May 1958 to plan a massive campaign in Vavunia District, the southern most district in the Tamil-dominated Northern Province. This gathering was opposed by some Sinhalese nationalists, and what began as the stoning of buses and trains that were transporting Tamil delegates via Polonnaruwa , a district the borders the Tamil-dominated Trincomalee District, ended in the massacre of Tamil in many parts of the island, especially in the capital city of Colombo where many Tamils were employed.

²⁴Donald Horowitz, **Ethnic Groups in Conflict**, Berkely: University of California Press, 1985.

²⁵ A. Jeyaratnam Wilson, *Politics and Political Development since 1948*, in K. M.de Silva, ed., **Sri Lanka: A Survey**, London: C.Hurst and Co., 1977, p.303.

The methods used to punish Tamils for using peaceful methods to display their opposition to the government's decision on the Pact, ranged from rape to outright killing by Sinhalese thugs. Some of these killings and the burning of Tamil property were instigated by casual workers and squatters who lived in government sponsored colonization schemes located in Tamil districts.²⁶ The anti-Tamil riots, which were orchestrated by Sinhalese extremists, did not spare any areas on the island, except in the Tamil homeland which became a safe haven for over 12,000 refugees displaced from Colombo. These anti-Tamil riots of 1957, which were designed to deter Tamils from participating in any type of demonstrations against the government, marked the beginning of a series of ethnic confrontations involving violence and bloodshed that would continue in the years to come. With each successive anti-Tamil riot, Sri Lankan Tamils become more convinced that their very survival was contingent on their ability to secure their traditional homeland for themselves.

(i). Tamil Language Act 1958 was not enacted because of the opposition from the Bhikkus.

None of the rioters were taken into custody but prominent members of the Federal were arrested and detained for inciting the riot. In order to pacify the Tamil population, the government used its emergency powers to quell the riots and enacted the Tamil Language (Special Provisions) Act 28 of 1958 which incorporated provisions for the use of Tamil language as the medium of instruction in schools and universities. In addition, the Tamil Language Act permitted Tamil students to take entrance examination to the public service in Tamil, although entrants were required to attain proficiency in Sinhalese within a specified time. The Act, however, did not permit Tamil students whose parents were not Sinhalese to be educated in the Sinhalese medium. The Act also allowed Tamils to transact business with the government in their language and to use the Tamil language for prescribed administrative purposes in the Northern and Eastern Provinces without prejudicing the use of Sinhala Only. The new government that was formed by Srimavo Bandaranaike, the widow of the assassinated Prime Minister, S.W. R. D. Bandaranaike, implemented the original language policy of the previous government and legislation was introduced to make Sinhalese the only language of the courts. The government ignored all the provisions of the Tamil Language Act 28 and Tamil ceased to be a regional language.

(j) A State of Emergency lasting 243 days was imposed in Tamil areas in 1961.

Srimavo Bandaranaike's government placed emphasis on Sinhalese Only despite the strong opposition from the Federal Party because it intended to counter criticism by the UNP and the Sinhalese Buddhist militants that her party was preparing to sacrifice Sinhalese interests through a secret treaty with Tamils. The Federal Party responded by embarking on major civil disobedience (Satyagraha) campaign that brought the activities of the government to a halt in Tamil areas and also defied the government by establishing a separate postal system to serve Tamil areas.

²⁶Tarzie Vittachi, *Emergency 1958, The Story of the Ceylon race Riots*, London: A Deutsch, 1958.

The government responded by arresting Tamil leaders, banning the Federal Party, restoring its administrative control over Tamil areas under a state of emergency, and dispatching army units to Jaffna. Some army personnel even assaulted peaceful demonstrators and innocent bystanders in Jaffna. The dispatching and stationing government troops to intimidate peaceful demonstrators and to quell civil disobedience campaigns became a regular feature in Tamil areas since the 1960s. Many Tamil public servants, who failed to achieve proficiency in the Sinhalese language, were denied annual salary increases or forced to retire during the period of the state of emergency, which lasted 243 days, since its imposition on April 17, 1961.

The Federal Party called off its planned disobedience campaign when Mrs. Bandaranaike showed interest in implementing the provisions of Bandaranaike's Tamil Language (Special Provisions) Act of 1958 and introducing legislation to decentralize powers to district councils. Unfortunately, even if these proposals were accepted to the UNP and the Buddhist clergy, they could not be enacted into law because Mr. Bandaranaike's coalition government collapsed in December 1961.

(k) Government Abrogates the Senanayake-Chelvanayakam Pact of 1968.

The United National Party succeeded in forming a National Government with the Federal Party and the Tamil Congress in 1965 by defeating Bandaranaike's coalition government in 1965. The UNP had promised the leaders of both parties that it would seek to resolve the Tamil problem in return for the support they extended to it. The Tamil Language (Special Provisions) Act of 1966 was implemented, without giving any room to criticize the UNP, by incorporating the very provisions of the Tamil Language Act of 1958.

These regulations, which provided for the transaction of all government and public business and for the maintenance of public records in the Tamil language in the Northern and Eastern Provinces, were approved by Parliament in 1966. While Act also provided for official government communications in both Tamil and Sinhalese, correspondence between the central government and the people of the Northern and Eastern provinces continue to be in Sinhalese even today. These provisions were, nevertheless, criticized by the opposition and Sinhalese nationalist on grounds that the removal of restrictions not only bestows parity of status to the Tamil language, but also paved the way for the eventual take over of the country by removing the restrictions imposed on Tamils seeking public service jobs.

The opposition and the Buddhist clergy staged demonstrations and strikes the day the Tamil Language Act was tabled in Parliament, and these contributed to anti-Tamil disturbances in Colombo. Indeed, by agreeing to the provision of the Tamil Language (Special Provisions) Act of 1966, Tamils had virtually accepted Sinhalese as the official language of the country, although the opposition accused the UNP of surrendering Sinhalese interests to the Federal Party. It was, therefore, not surprising that the provisions of the District Council Bill, which were drawn by mutual consent between the Prime Minister, Dudley Senanayake and S. J. V, Chelvanayagam, and referred to as the Senanayake-Chelvanayakam Pact of 1968 was not implemented. These provisions would have granted some measure of regional autonomy to Tamils at the district, rather than the regional level, similar to the provisions proposed by the Bandaranaike's coalition government before the 1965 elections.

To Tamils, the implementation of Tamil Language Regulations did not produce any substantial benefits and, the regional autonomy proposals of both, Mrs. Srimavo Bandaranaike's coalition government and the National Government did not contain provisions that would have granted regional autonomy to Tamil areas, similar to those proposed in the Bandaranaike-Chevanayakam Pact of 1956. The most disturbing aspect of the District Council Bill was that it did not furnish authority to Tamil district councils to restrict the settlement of Sinhalese peasants in Tamil districts under government-sponsored colonization schemes. The Federal Party withdrew its support to the government since the District Council proposal was not pursued any further by Prime Minister Dudley Senanayake. This is the last instance when the Federal Party extended its support to Sinhalese parties because the relationship between Sinhalese and Tamils deteriorated after 1966.

The opposition parties mobilized public sentiment against the National Government on many issues, especially with those dealing with the Tamil Language Act and the District Council Bill, and staged demonstrations and strikes. In 1970, Mrs. Bandaranaike, whose Sri Lanka Freedom Party (SLFP) had joined with two Marxists parties to form the United Front, was victorious at the general elections and formed the new government.

(I) The United Front Government enacts laws that confer special privileges to Sinhalese, their language and the Buddhist Religion.

Mrs. Bandaranaike's government, which won the elections without the support of the Tamil people, was obliged to satisfy the aspirations of her pro-Sinhalese supporters, who were made to believe that the Sinhalese Only Act was compromised by the previous government. In order to allay their fears, a new constitution was adopted in 1972 reaffirming the position of Sinhalese as the only official language of the nation and conferring special status on Buddhism. An important clause in the Constitution declared that it shall be the duty of the state to protect and foster Buddhism.²⁷

²⁷ Government of Ceylon (Sri Lanka), **The Constitution of Sri Lanka**, Colombo: Government Press, 1972.

This was a direct threat to Tamils who feared that government funds will be used to convert Tamil-Hindus to Buddhism and establish Buddhist schools in Tamil areas to teach Sinhalese and Buddhism, as had been done in the past. The previous government of the UNP, moreover, had turned down a request made by its own Home Minister, Mr. Thiruchelvam, a Tamil, to enact legislation to grant the status of a sacred city to Trincomalee revered by Hindus of South India and Sri Lanka since ancient times. According to the Paul E. Pieris, a Sinhalese, these Hindu temples were in existence on the island long before the arrival of Buddhism to Sri Lanka.²⁸

This was not a new proposals but a concept that originated in the 1930s when Anuradhapura was declared a sacred city to the Buddhists. In the desire to preserve the sacred status of Anuradhapura, Tamils and Muslims were forced to leave the central areas of the city. The concept of Trincomalee as a sacred place for Hindus was rejected by the Buddhist clergy. The Sinhalese-dominated government eventually proclaiming that Trincomalee was actually a Buddhist place and seized most of area surrounding the Tirukkoneeswaram Siva Temple and transformed them into areas shared by both the Buddhists and the military.

The new constitution eliminated the only clause in the Constitution that specifically stated that parliament has no right to enact legislation which would confer undue advantage to a race, religion, or community. It is as if, Tamils were relegated to the status of second-class citizens since there were no provisions to safeguard their fundamental rights and freedoms. To show their strong disapproval, the Tamil Members of Parliament boycotted the constitution assembly that drafted the constitution.

(m) Tamil leaders demand the creation of a separate Tamil State on the island.

The drafting of the 1972 Constitution of Sri Lanka convinced Tamil leaders that all forms of peaceful protest have proved ineffective in persuading the Sinhalese majority from enacting laws that does not recognize the principle of equal rights according to international law. Tamil leaders had attempted many times to negotiate a political settlement to the ethnic problem, but the Sinhalese leadership was more interesting in fulfilling the needs of the Sinhalese majority, rather than be concerned of the consequences that would result from denying Tamil demands.

After all, Tamils had not retaliated when they were confronted by mobs during anti-Tamil riots and there was not reason to fear the Tamil leadership which was not united. Indeed, the beginnings of concerted action by all Tamil leaders to resist Sinhalese domination began in 1977 when they formed the Tamil United Front (TUF) under the leadership of S. J. Chelvanayakam.

²⁸See Paul E. Pieris. *Nagadipa and Buddhist Remains in Jaffna*, **Journal of Royal Asiatic Society (Ceylon Branch)**, Volume 28(70), pp.17-18.

This period also coincides with the formation of Tamil new Tigers, which became the Liberation Tigers of Tamil Eelam in 1976. Tamil leaders became cognizant of the reality that it was the lack of unity among Tamils that encouraged Sinhalese leaders to ignore their demands in the past and for the SLFP and the UNP to manipulate the Tamil issue for their own political ends. They could no longer overlook the fact that Sinhalese governments had, on several occasions, reneged on their promise to enact appropriate legislation to redress Tamil grievances, and they realized that they had to change their strategy to secure the language and territorial rights for their community.

(n) The Tamil United Front (TULF) and the Vaddukkoddai Resolution of May 14, 1976.

The Tamil United Front (TUF), had by 1977, changed its demands for the creation a federal system of government to the establishment of a separate Tamil state, to be called Eelam. On the most potent factors in propelling the TUF towards separation was the rapidly increasing impatience and militancy among Tamil youth in the Jaffna Peninsula. Tamil youth questioned the ineffectiveness of the conventional tactics employed by the older generation of Tamil leaders to secure the legitimate rights of Tamils.²⁹ Tamil youth were able to pressure the TUF to move quickly towards a drastic solution, which in their view, cannot be achieved as long as there was a Sinhalese majority in Parliament in control of the government.

The only option they saw was to persuade TULF leaders, to use whatever means at their disposal, to establish an independent Tamil state. The leaders responded by renaming TUF as the Tamil United Liberation Front (TULF), and convened the Vaddukkoddai Convention on May 14, 1976, to reiterate their call for the establishing of the secular state of Tamil Eelam by resorting to parliamentary and extra-parliamentary form of protests. This newly formed constitutional political movement that resorted to extra-parliamentary forms of protests bore little or nor results, although the TULF received the overwhelming mandate from the Tamil people of the Northern and Eastern provinces, in the parliamentary elections of 1977, to establish an independent Tamil state.

(o) The Tamil Militant Movements and the Escalation of the ethnic conflict.

Tamil youth had been disappointed with their leaders for abandoning their original demand for the creation of a federal system of government and for willing to accept watered down proposals that merely decentralized administration to Tamil provinces or districts. They were deeply concerned that Tamil leaders have failed, among other objects, to halt the aggressive policy of the government to settle Sinhalese peasants in Tamil districts under government-sponsored colonization schemes, explore ways to furnish educational and employment opportunities to young people, to secure the right to use of the Tamil language for regional administration and secure funds to develop irrigation, agriculture, industries and infrastructure in Tamil areas.

²⁹ Robert N. Kearney, *Language and the Rise of Tamil Separatism in Sri Lanka*, **Asian Survey**, 18, June 1978, page 530

They believed that the peaceful protests have merely encouraged Sinhalese extremists to ignore Tamil demands and to renege on their promises. Tamil educated youth experienced severe unemployment problem and were even admission to universities based on merit. The government had instituted standardization of examination scores between language media that those taking the examination in the Tamil language were required to achieve a higher score than those taking the examination in the Sinhalese language in order to gain admission to a university. As one observer noted, in the years 1970-1975, the mode of access to higher education was altered in such a way as to benefit Sinhalese largely at the expense of Ceylon Tamils.³⁰

As the expectations of fair-power sharing, harbored by Tamils, were dashed and discontentment among Tamil youth surged, the political will for Tamils to live together with the Sinhalese vanished. When all peaceful methods were exhausted to achieve a political settlement to the ethnic crisis failed, Tamil youth took up arms to establish a separate Tamil state by the use of force.

The Legitimate Right of the Tamil People to Use Force.

It is often argued that an ethnic minority that is subject to discrimination and deprivation in a state where the power is concentrated in an ethnic majority, the former can remedy the situation by mutual agreement through negotiations, public opinion, moral argument, practical appeal and political pressure.³¹ It is also argued that should the two ethnic groups fail to find common ground that would permit the pursuit of peaceful and mutually beneficial coexistence within the same state, then separation becomes the instrument of last resort.

All types of peaceful offers, protests and demonstrations failed to persuade the Sinhalese dominated governments, which have been under the control of both major Sinhalese parties, namely the UNP and the SLFP, to abandon the aggressive policy of discriminating the Tamil minority in compliance with the principle of equal rights as proclaimed by the United Nations. The rationale for Tamils to seek the right to self-determination and the legitimate right of Tamil militants to use force to secure the right of self-determination are analysed.

- (1) the discriminatory policy of the government,
- (2) repeated history of broken promises: Sinhalese parties manipulate the Tamil issue for their own political advantage,
- (3) the reluctance and failure of the government to prevent Sinhalese mobs from perpetrating violence on innocent Tamils from 1956-1983,

³⁰ C. R. de Silva, *The Impact of Nationalism on Education: The School take-over(1961) and the University Admissions Crisis, 1970-1975*, in Michael Roberts, ed., **Collective Identities and Nationalism, and Protest in Modern Sri Lanka**, p.475.

³¹ Max M. Kampelman, *Session and Self-determination*

(4) the Prevention of Terrorism Act and the government's reliance on terror tactics to scuttle dissent, and

(5) Sinhalese colonization of Tamil districts.

(1)The Discriminatory policies of the government and the Covenant on Civil and Political Rights³²

Although Sri Lanka was not a signatory to the International Covenant on Civil and Political Rights in 1976, yet most of these provisions were incorporated in the Universal Declaration of Human Rights of 1948. Part II Article 2 1. of this Covenant states,

Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. During a span of twenty years, however, the Sinhalese-dominated parliament of independent Sri Lanka stripped thousands of Indian Tamils of their voting rights and citizenship and enacted laws and issued regulations that denied Tamils the use of their own language for official use, as well as denied them opportunities afforded to Sinhalese in securing employment in the civil service, including the right to promotion, pensions, and even to positions in the civil service.

Part III Article 25 (c) of the Covenant on Civil and Political Rights also states that all peoples in a state should have access, on general terms of equality, to public service in his country. Tamil children, however, were denied access to higher education based on merit in 1976. Part III Article 26 of the Covenant on Civil and Political Rights, prohibits the discrimination of people on the basis of their ethnic background. It states,

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Part III article 27 of the same Covenant specifically prohibits by law, the right of a majority to deny a minority preserving its own culture, language, religion within a territory regarded as its traditional homeland. This article states,

In those States in which ethnic, religious or linguistic minorities exist persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.

³²U.N.T.S.No.14668, Volume 999, 1976.

The ethnic character of the Tamil homeland has being deliberately altered by the government as it pursues its aggressive policy of settling Sinhalese peasants in Tamil districts under government-sponsored colonization schemes. The opportunities that were denied to Tamils with regard to employment opportunities and access to higher education were legally prohibited by certain articles of the International Covenant on Economic, Social and Cultural Rights. Specifically, Part III Article 7. (c) of this covenant states that equal opportunity should be available for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence.³³ Part III Article 13. 2. (c) of the same covenant also stated that higher education shall be made equally accessible to all, on the basis of capacity by every appropriate means, and in particular by the progressive introduction of free education.

Indeed, Tamils became the target of overt discrimination and the Sinhalese-dominated government did not hesitate to demonstrate that it represented the Sinhalese people, rather than Tamils. The government had even repealed a provision in the first Constitution of Sri Lanka, Section 29(2) of the Ceylon (Constitution) Order in Council of 1946, which provided safeguards against discrimination by the Sinhalese majority.

(2) Repeated History of Broken Promises:

Sinhalese Parties Manipulate the Tamil Issue for their own political advantage. The National Party (UNP) and the Sri Lanka Freedom Party (SLFP) exploited the Tamil issue to out maneuver each other to win elections. Indeed, both the Bandaranaike-Chelvanayakam Pact and Senanayake-Chelvanayakam Pact were abrogated, even though they fell far short of the original Tamil demands for substantial regional autonomy under a federal system of government because of objections from Sinhalese activists and the opposition in parliament.³⁴

³³ U.N. T. S. No. 14531, Volume 993, 1976.

³⁴ Ormolu Fatness, *Religion and Politics in Sri Lanka*. New Delhi: Manohar Press, 1976:

270-271. Fatness indicates that the most influential Buddhist clergy warned Bandaranaike's government that it was committing an act of treachery against the Sinhala-Buddhist nation by implementing the pact since it will give the Tamils the opportunity to establish a separate state. J. R. Jeyawardene, who later became the President of the island, also organized a march from Kandy to Colombo in protest of the Bandaranaike-Chelvanayakam Pact of 1957. It was President Jeyawardene's United National Party that accepted Tamil claims that the northeast is the historical habitation of the Tamil-speaking people and that they should be administered by the Northeast Provincial Council under the terms of the Indo-Sri Lanka Accord of 1987.

Plans to enact the Tamil Language (Special Provisions) Bill of 1958 was even abandoned in 1970 when Srimavo Bandaranaike's United Front Government reaffirmed Sinhala as the only official language without making any provisions for the use of Tamil as the language of administration for Tamil districts. Government documents and correspondence with people in the Tamil areas continue to be in the Sinhalese language in the New Millennium. Although Prime Minister J. R. Jayawardene of the UNP amended the Constitution to make Tamil a national language with Sinhalese in the late 1970s, no serious effort has been made by the government to enforce the law. Indeed, even though Sri Lanka became independent half a century ago, one of its peoples, the Tamils, are still required to communicate with the government in Sinhala, a language alien to Tamils.

(3) The reluctance and failure of the government to prevent Sinhalese mobs from perpetrating violence on innocent Tamils from 1956-1963.

Tamil politicians had pinned their hopes, since the mid-1950s, on the effectiveness of the peaceful protests, demonstrations and civil disobedience campaigns to persuade Sinhalese-dominating governments to redress their grievances. To their horror, these peaceful methods merely encouraged the military and Sinhalese mobs to intimidate and terrorize innocent Tamils. Indeed, the rise of Tamil militant movements in the 1970s was provoked by the terror tactics used by both the military and Sinhalese mobs to stifle Tamil opposition to the discriminatory policies of the government since 1956. Most of the violence perpetrated on Tamils by Sinhalese mobs, between 1958 and 1983, could have been avoided if Sinhalese nationalists had not preached racial hatred against Tamils. This was a gross violation of human rights, especially when Part III Article 20. 2 of the International Covenant on Civil and Political Rights of 1976 states that any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law. Some of the most horrible incidents of mob violence directed against Tamils, between 1956 and 1983, are discussed below.

(a) Sinhalese Mob Violence of 1956.

Tamil opposition to discriminatory laws and regulations under the direction of the Federal Party took the form of non-violent disobedience campaigns designed to persuade the government to grant concessions. In most instances thugs or the police broke up these peaceful demonstrations, but some of these demonstrations led to anti-Tamil riots in which Sinhalese mobs used terror tactics and violence to suppress Tamil dissent, even when it relied on non-violent ways and methods. The first of these non-violent campaigns began when 300 members of the Federal Party staged a demonstration in the vicinity of parliament on June 5, 1956. to show their opposition to the tabling of the Sinhala Only bill in the legislature. To the horror of the Tamil community, the demonstrators were not only beaten up by thugs, but Sinhalese mobs terrorized Tamils in different parts of the Sinhalese-dominated areas and killed more than one hundred and fifty Tamils in the recently established government-funded Gal Oya peasant colony located in the Tamil-dominated Eastern Province. More Tamils were driven out by Sinhalese settlers who had moved into this colony from Sinhalese areas. The 1956 anti-Tamil riots marked the beginning of the period of repeated mob violence when Sinhalese activists instigated Sinhalese mobs to use intimidation, arson, looting, rape, and mass-murders to compel Tamils to accept Sinhala Only legislation and unrestricted colonization of Tamil districts by Sinhalese settlers. With each successive riot, Tamils, especially its youth, became more convinced that their very survival was contingent upon their ability to secure their traditional homeland for themselves by non-violent methods.

(b) Sinhalese Mob Violence of 1958.

The Federal Party, disappointed by the refusal of Prime Minister Bandaranaike to implement the Bandaranaike-Chelvanayakam Pact of 1957, called a convention in May 1958 to launch a mass disobedience campaign in Vavuniya in the Northern Province. This gathering was opposed by Sinhalese activists, and what began as the stoning of buses and trains, erupted in an anti-Tamil riot of a more violent nature resulting in the massacre of Tamils in many areas, especially in Colombo. Some of the killings and burning of Tamil property were instigated by casual workers and squatters settled in colonization. This colonization schemes are located in the vicinity of Tamil districts.³⁵ The government waited four days before proclaiming an emergency and restoring order with the help of the army. Almost 700 Tamils had lost their lives by then and more than 12,000 Tamil refugees from Sinhalese-majority areas had to be evacuated to the safety of their traditional homeland in the northeast.

(c) Sinhalese Mob Violence of 1977.

³⁵ See Tarzie Vittachi, *Emergency 1958: The Story of Ceylon Race Riots*, London: A. Deutch, 1958. Vittachi, a Sinhalese journalist, who was the Editor of the Ceylon Observer, raised the following question in his concluding remarks at the end of this book: *Have the Sinhalese and Tamils reached the parting of the ways?*

The anti-Tamil riots of August 1977 flared up when the Tamil United Liberation Front (TULF), formed by the amalgamation of Tamil parties, won the overwhelming support of the Tamil people of the northeast on a mandate to establish a separate Tamil state called Eelam at the general elections of 1977. The concept of a separate Tamil state clashed with the concept of Sinhalese ethnic nationalism which stipulates that only Sinhalese-Buddhists could claim membership in the political nation of Sri Lanka, and no other community can claim the island, or any portion of it, as its traditional homeland. Sinhalese extremists and the Buddhist clergy infuriated by the strong demand of the Tamil electorate for creation of a separate Tamil state took the opportunity to retaliate violently.

It was not surprising that a false rumor concerning the killing of a Sinhalese policeman by Tamil militants fueled the anti-Tamil riots of 1977. Unruly mobs repeated the carnage of 1958, but with a greater vengeance. More than 300 Tamils were killed and 35,000 Tamils had to seek refuge in refugee camps. Indian Tamils also became the target of Sinhalese mobs and more than 200,000 fled for safety to India and to the areas of northeast. Over 40,000 Indian Tamils became refugees and destitute; some of them were settled along the southern border of the Northern Province. The President's Commission of Inquiry into the incidents concluded that the TULF's anti-Sinhalese propaganda advocating separation was one of the main causes for the anti-Tamils riots.

Tamils were infuriated that the government had not taken swift action to contain the riot and the public statements made by some Sinhalese politicians following the riots disheartened them further. The significance of this anti-Tamil riot was that it encouraged Tamil militants to reject peaceful methods to secure Tamil rights.³⁶ The LTTE stepped up its program of violence, not against the Sinhalese civilians, but against the police and army personnel who were stationed in Tamil areas.

(d) Sinhalese army stationed in Tamil areas to scuttle resistance.

Violence was perpetrated on Tamils both by Sinhalese mobs and by government armed forces, which were staffed almost exclusively by Sinhalese. Sinhalese personnel began to dominate the military as recruitment to the forces came to be restricted to Sinhalese since the mid-1950s.³⁷ Government-imposed changes in recruitment to the military and the Sinhala only legislation had, indeed, systematically excluded Tamils from the armed services.³⁸ Tamil youth, infuriated with the overt discriminatory policies of the government had, by the late 1970s, began to form underground militant movements to confront government's armed forces which were stationed in the Tamil areas to suppress the rising tide of Tamil militancy.

³⁶ See W. I. Siriweera, Recent Developments in Sinhala-Tamil relations, *Asian Survey*, 20, 9 (September 1980): 903-913.

³⁸ See C. R. De Silva, *The Impact of Nationalism on Education: The School Take-Over (1961) and the University Admission Crisis 1970-1975*, in Michale Roberts, ed., **Collective Identities, Nationalism and Protest in Modern Sri Lanka**, Colombo: Marga Institute, 1979 and C.

Most of the soldiers who were called upon to accomplish this task had never been to Tamil areas or had personal contacts with its inhabitants or had the language skills to communicate with the local people. This created a situation in which government soldiers who were stationed in Tamil areas had to operate in unfamiliar terrain and among people who were unaccustomed to them. The government, at the outset, did not introduce any draconian laws to intimidate the Tamil population against participating in peaceful protests, demonstrations and civil disobedience campaigns. The military, instead, used terror tactics to threaten Tamils, especially the youth, to comply with government regulation and special orders. Two of these incidents are described below.

(i) The arrest of Black-flag demonstrators and others under emergency powers. The first major action that was carried out against Tamil youth by the police and the military was in March 1973, when more than one hundred Tamil youth were arrested for staging a black-flag demonstration during the official visit of Prime Minister Srimavo Bandaranaike's cabinet to Jaffna. In the same year, the government arrested more than two hundred Tamil youth suspected of being militants using emergency powers. The second incident occurred in January 1974 when the police charged into crowd of people attending a conference.

(ii) Police charge into crowd. The first major incident involving government security personnel occurred in January 1974 when Mrs. Bandaranaike's government refused approval for the holding the fourth world conference on Tamil language and culture in Jaffna, the Tamil cultural center for Sri Lankan Tamils, from January 3 to January 10, 1974. In stead, the government insisted that it should be held in Colombo.

The international Tamil conference was scheduled previously in Malaysia, South India, France and the conferees decided to hold the conference in Sri Lanka in 1974. The conference was, nevertheless held, but it did not attain the level of success the organizers expected because the government withheld visas from foreign participants, especially Tamil academics. The meeting was held in the open air since the police did not grant permission to hold the meeting in a hall the organizers requested. The public meeting which was held on the last day of the conference was broken up when the police charged into the crowd with tear gas and baton, forced electric pylons to crash and killed seven people. To many Tamils, especially the youth, this was a deliberate attack on them and the very fabric of their language and culture. This enraged Tamil youth since no inquiry was held into the incident and the government did not offer any apology for it. Instead of trying to diffuse tension, the security forces were bent on creating chaos in the Tamil areas. In another incident, for example, Sinhalese police in Jaffna ran amok when they were not allowed to enter a carnival as nonpaying guests.

Tamil militants retaliated against the presence of the military in Jaffna by organizing series of robberies and even committing acts of violence against the police, military personnel, and others whom they considered to be traitors to the Tamil cause. They also compelled Tamil politicians from different parties to unite under the banner of the United Liberation Front (TULF) to participate in the general election of 1977 on a mandate to establish a separate Tamil state, Eelam. TULF received overwhelming support from the people, but this infuriated the Sinhalese police stationed in Jaffna. The Sinhalese-dominated government had, by 1977, convinced that, in addition to the use of force, draconian law had to be enacted to eradicate the guerilla activities of the Tamil militants.

(e) The Prevention of Terrorism Act and human rights violations.

Following the anti-Tamil riots of 1977, the government proscribed Tamil militant movements by issuing Order No.16 of 1978, which permitted security forces to torture youth whom they detained. One year later, the Prevention of Terrorism Act No.48 of July 19, 1979 was enacted in keeping with the President's promise to get rid of Tamil militant activity, although no measures were taken to arrest and punish those who instigated and participated in the anti-Tamil riot of 1977.

The draconian act permitted suspects to be held incommunicado for up to eighteen months without trial, thus creating classic conditions for torture. Many of the provisions of the Prevention of Terrorism Act violated the provisions of the UN Declaration of Human Rights and the International Covenant on Civil and Political Rights of 1976. The following articles in Part III of the Covenant contain specific references to human rights violations. Article 9. 1 states, everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

Article 9. 2 states, anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him. Article 9. 3. States, anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.

Article 9.4. states, anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful

Many of the atrocities committed by police and military forces under the Prevention of Terrorism Act have been well-documented by human rights groups and abuse of human rights by the Sri Lankan government was brought to light by Amnesty International, Report of a Mission to Sri Lanka, 1975.³⁹

³⁹ London: Amnesty International Publication, 1976.

A 1982 report of the Amnesty International also indicated that the government used torture and political killings against Tamils even though it had the responsibility under International Covenant on Civil and Political Rights to observe human rights even in a national emergency.⁴⁰ It was also reported that the Prevention of Terrorism Act was introduced to enhance the power of the security forces and to remove the basis protection for human rights of detainees under the Act.

The report also claimed that the lack of discipline among the security forces had predictable results in matters dealing with torture and the ill-treatment of detainees. Subsequent reports released by Amnesty International confirmed the widespread use of torture against political detainees. A report of the American Association for International Commission of Jurists, headed by Dr. Virginia A. Leary, Professor of Law, State University of New York at Buffalo, criticized the Sri Lankan government for not pursuing a vigorous policy of investigating and prosecuting of police and army personnel who were responsible for setting fire to homes, public buildings, and businesses in May-June 1981.⁴¹ This incident is discussed in greater detail in section .

(f) Sinhalese soldiers Set Fire to Most Treasured Library of Tamils.

The Prevention of Terrorism Act was enacted in 1979 and a state of emergency was passed soon after giving powers to security forces to dispose of dead bodies without an inquest. This inaugurated a period of terror when the security forces in Jaffna began burning and destroying shops, killing Tamil youth, arresting them arbitrarily and setting up torture camps, all of which resulted in the disappearance of many young men. The Tamil public was drawn to the militant movement as harsh measures, including torture and murder, were adopted by the military and police against suspected militants or guerillas, referred to as terrorists by the government.

The Jaffna Public Library was set on fire by military personnel on May 31, 1981, after Tamil militants killed two Sinhalese policemen at an election rally organized by the TULF. In retaliation, off-duty policemen and Sinhalese soldiers went on a rampage, with the tacit approval of a government minister, looting, killing, and setting fire to the Jaffna Public Library with its 95,000 volumes of rare books of historical and cultural significance to Tamils. Even the house of a Tamil Member of parliament from Jaffna was set on fire and the only remaining Tamil daily, 'Ealanadu' office was also set on fire.

(g) Human rights violations.

⁴⁰ London: Amnesty International Publication, 1983

⁴¹ *Ethnic Conflict and Violence in Sri Lanka-Report of a Mission to Sri Lanka on behalf of the International Commission of Jurists, July/August 1981.*

The International Commission of Jurists headed by Professor Leary also reported that police officers convicted of acting illegally have been promoted by decisions made at the cabinet level by ministers. The Commission also condemned the Act in no uncertain terms when it stated that the South African Terrorism Act has been called a piece of legislation which must shock the conscience of a lawyer. Many provisions of the Sri Lankan Prevention of Terrorism Act are equally contrary to accepted principles of the Rule of Law.

Paul Sieghart of the International Commission of Jurist commenting on the Prevention of Terrorism Act in another report also stated,

The Provisions are quite extraordinarily wide. No legislation conferring even a remotely comparable powers is in force in any other free democracy operating under the Rule of Law, however troubled it may be by politically motivated violence. Indeed, there is only one known precedent for the power to impose restriction orders under section 11 of the Sri Lankan PTA, and that - as Professor Leary rightly pointed out in her report - is comparable legislation currently in force in South Africa.... such a provision is an ugly blot on the statute book of any civilized country.⁴²

These gross violation of human rights by the Sri Lankan government could have averted had the United Nations or member nations who had signed either the International Covenant on Civil and Human Rights or Universal Declaration of Human Rights to condemn the government and ease the problems Tamils faced in their own homeland. All appeals made to these international bodies by the elected representatives of Tamils to ease the problems faced by Tamils was not heeded. To Tamils, the presence of Sinhalese soldiers in their own land had generated a sense of alienation and a feeling of being humiliated, since 1973.

To them, the army was an arm of the Sinhalese-dominated government that relied on the military to resolve the ethnic conflict. Given the history of broken promises and violence perpetrated by Sinhalese mobs and the military on Tamil civilians, Tamils could no longer rely on the government to redress their legitimate grievances. It was not surprising that the Tamil people had to rely on Tamil militants to restore peace and prosperity to their homeland. They backed the tactics of Tamil militants to launch attacks on government forces stationed in Tamil areas. Sinhalese soldiers, for their part, carried out retaliatory attacks on innocent civilians under the pretext of maintaining national security. These terror tactics used by the military aggravated the civil unrest and drove the Tamil population to Tamil militants.

⁴² *A Mounting Tragedy of Errors- A Report of the International Commission of Jurists, 1984.*

Even as late the 1990s, the indiscriminate bombing in the war zone had turned many Tamils against the government, although the government refuted one of the bombing incidents by claiming that sometimes bombs were carried away by the wind.⁴³ Indeed, it was in this climate of terror that the LTTE began to intensify its armed resistance against the security forces by using of guerrilla tactics, bombing of government installations, and assassinating informants and supporters of the Sinhalese-dominated government. The final incident which accelerated the pace of conflict between government forces was the anti-Tamil riot of 1983.

(h) Sinhalese Mob Violence of 1983. The anti-Tamil riots of July 1983, which some describe as the Genocide in Sri Lanka, began when a truckload of thirteen Sinhalese army personnel was ambushed by the LTTE on July 23rd, 1983 in Jaffna. The Sinhalese-dominated government did not hesitate to display the bodies of the slain soldiers in Colombo to show their condolence and reverence for them. This inflamed the passions of Sinhalese politicians, Sinhalese activists and the Buddhist clergy.

The government was aware that this ambush may have been in retaliation for the killing of 175 Tamils by the military in the previous month and for the raping of four inmates of a hotel located in Thinnavelly, the same village where the thirteen soldiers were ambushed, by some soldiers, one week earlier. This anti-Tamil riot affected Tamil areas, such as the Jaffna, where 175 Tamil homes were set ablaze and Trincomalee, where ten Tamils were killed in Trincomalee in the Eastern Province. It was also well-documented that the army had gone a spree of raping and killing young girls in Tamil areas; raping was to the army a kind of punishment.

More than 2,000 Tamils living in Colombo lost their lives; another 1,000 were killed elsewhere on the island. Almost ninety-five percent of the property owned by Tamils in the South was destroyed and 75,000 Tamils, almost one-half of the Tamils living in Colombo, were made homeless and housed in refugee camps in the city. Many of these middle-class Colombo Tamils had no interest in supporting the militant movements or the concept of Eelam and were contented living in Colombo. The violence affected all areas of the country, including the Central Hills country, the home of Indian Tamils, and in Vavuniya, Trincomalee, and Amparai where thousands of Sinhalese peasants had been settled in colonization schemes.

This anti-Tamil riot approached that of a communal holocaust because it was, according to a well-recognized Sinhalese author, well planned by the Jatika Sevaka Sangamaya, a powerful trade union 'which had an effective say in the working of government offices and corporations.'⁴⁴ In some instances, security forces were directing the hysteria driven mob and no efforts were made by government to stop the carnage by imposing a curfew or to show any compassion to the Tamils.

⁴³ If they get Bored with the War *The Economist*, 317, 7679, November 3, 1990, p. 42

⁴⁴ Gananath Obeyesekera, Political Violence and Future of Democracy in another 1,000 Sri Lanka, *Internationales Asienforum*, 15, (May 1984): 36-60. Under the heading of *The Institutionalization of Political Violence* (pages 44-50), Obeyesekera analyzes the circumstances leading to the formation of the Jatika Sevaka Sangamaya as a militant organization and how it is being put to political use by Members of Parliament. Also see T. D. S. A. Dissanayake, *Agony of Sri*

The government did not punish those who perpetrated violence on the Tamil people, but debarred Tamil representatives from parliament and held them under detention for instigating the riots by advocating a separate Tamil state. It was these responses that outraged the Tamil community and convinced its members, including moderates, that it was no longer possible for them to live peacefully under Sinhalese domination.

The LTTE had the backing of the Tamil community to establish a separate Tamil state and the stage was set for the violent confrontation between Tamil militants and government forces, which has continued into the late 1990s.

It is significant that in the aftermath of the 1983 anti-Tamil riots, thousands of Tamils sought refuge in foreign countries. By 1986, there was an exodus of 100,000 Sri Lankan Tamils to South India and about 40,000 to various countries in Europe. By the beginning of 1990, almost 300,000 Tamils had taken refuge in various countries, including the United States and Australia. The Anti-Tamil riots of 1983 drove hundreds of Tamil youth to militant movements and, with the training they had in Tamil Nadu, they were ready to use extreme measures, including guerilla tactics, to confront Sinhalese mobs and the security forces.

To many of the militants, all avenues for the peaceful resolution of the conflict had been exhausted and, given the determination of Sinhalese activists and security personnel to rely on violence to suppress Tamil dissent, there was no option but to use armed resistance to confront the enemy. Until 1983, Tamils were the victims to Sinhalese mob violence in Sinhalese areas and very few Sinhalese civilians, policemen, or security personnel had been killed. This situation changed dramatically as Tamil militants began to arm themselves and do what the Sinhalese had done to the Tamil people prior to July 1983. Sinhalese police and army personnel who were stationed in large numbers in the northeast to counter Tamil militancy became the target of LTTE's armed resistance. The LTTE had, by the mid-1980s matured into a Tamil national liberation movement. Related to the anti-Tamil riots of 1983 was the massacre of Tamil prisoners in Colombo.

(i) Sinhalese Mob Massacre Tamil Prison Inmates

Lanka, Colombo, 1984. Dissanayake commenting on the role of the army in the 1983 riots was that They were a passive department and merely looked on nonchalantly, p. 81.

Sinhalese mobs also perpetrated violence on Tamil inmates the prisons. In 1983, at the height of the anti-Tamil riots, Sinhalese prisoners in the Welikada Prison in Colombo massacred fifty-three Tamil inmates who were imprisoned for political reasons under the Emergency Regulations and the Prevention of Terrorism Act of 1979.⁴⁵ This attack which was instigated and backed by prison officials and government troops who stood by and watched Sinhalese prisoners gouging the eyes of Kuttumani, a Tamil militant who had proclaimed that his desire to donate his eyes so that many Tamils may witness the birth of Eelam. The Welikada massacre was repeated on December 12, 1997 in Kalutara when Sinhalese mobs armed with swords and knives attacked Tamil political detainees who had staged a protest fast to demand that they be charged and their cases heard as soon as possible. Three of the detainees were killed, one of them was hacked to death in the presence of an armed sentry.⁴⁶ These incidents aggravated the polarization of the Sinhalese and Tamil communities, especially when it became apparent to Tamils that the government's security personnel were behaving in a totally partisan manner.

Other Factors Contributing to the Rise of Tamil Militant Movements

(j) Sinhalese Colonization of Tamil Districts

Sinhalese politicians and scholars are reluctant to admit that the government's policy on all aspects of peasant colonizations, including the targeting the Tamil areas for settling Sinhalese peasants and the methods of selecting colonists from different communities were carefully designed to establish peasant colonies composed of exclusively Sinhalese people in traditionally Tamil districts. Government's policy on colonization and subsequent events, such as the failure of the government to prevent the forced evacuation of Tamil colonists from many of these peasant colonies by Sinhalese mobs during the horrible period of repeated anti-Tamil riots, and the forced eviction of thousand of Tamil families from their traditional villages in Manal Aru Region of the Mullaitive District in the Northern Province so that hundreds of Sinhalese could be settled in an exclusively Tamil area suggest that the Sinhalese-dominated parliament was determined to expunge Tamils from large areas of their homeland. Sinhalese scholars claim that the government's policy on colonization were not designed to drive Tamils from their traditional villages because most of the colonization schemes were establishing in the western interior of the Eastern Province which have always been largely empty.

⁴⁵ Karuraratne, the Chief Warden of Welikade Prison, told the commission inquiry into the prison killings that hundreds of Sinhalese prisoners armed with axes, poles, iron rods, and sticks attacked the Tamil prisoners who were housed in a separate wing.

⁴⁶ See S. S. Selvanayakam, Call for Jubilee Amnesty, Sunday Times (Sri Lanka)., December 21, 1997 and Tamilnet (December 01, 1997), *Three Prisoners killed by Sinhala inmates*.

There was no satisfactory explanation as to why the selection process was not carefully designed to establish mixed ethnic neighborhoods so that Tamils and Muslims would not be intimidated by Sinhalese colonists. What was most distressing to the Tamils was that when tensions erupted, the government failed to furnish protection to the Tamil colonists who were either killed or driven out of the colonization schemes by marauding Sinhalese mobs. Some of those who terrorized the Tamil colonists were retail traders, laborers, and squatters who encroached on these colonization schemes illegally.⁴⁷

Indeed, Sinhalese mobs succeeded in cleansing the government-sponsored colonies of Tamils during the horrible period of repeated anti-Tamil riots. The government not only failed to stop ethnic cleansing in the western interior of the Eastern Province, it was instrumental in the forced evacuation of hundreds of Tamil families from their traditional villages located in the heart of the Tamil homeland in the Northern Province. Many of the atrocities and revenge killings carried by the army and the LTTE in the Eastern Province or across the border in the Anuradhapura and Polonnaruwa Districts were directly linked to the establishment of the peasant colonies of exclusively Sinhalese settlers in areas which had, until the late 1970s, been the home of thousands of Tamil inhabitants for generations. To Tamils, the forced evacuation of Tamils from mixed ethnic peasant colonies, established in the predominantly Tamil districts, is regarded as ethnic cleansing. This aspect of ethnic cleansing is discussed below.

(i) Ethnic Cleansing Stated in Amparai District.

Tamil colonists of the Gal Oya Colonization Scheme in the Amparai District were the first group to be forcefully driven out in 1956 by Sinhalese settlers. The proportion of Sinhalese colonists in peasant colonization schemes that were established in the northeast was much larger than of Tamils, but with increasing communal tension, these colonies were transformed into purely Sinhalese peasant colonies. Tamils were forcefully driven out from these colonies and, many times, with the assistance of security forces. Tamil militants, especially those of the LTTE, frustrated in the inability of moderate Tamil leaders to dissuade the government from pursuing this aggressive policy on peasant colonization decided to use violence to stop the expansion of Sinhalese settlements in the traditionally Tamil areas.

(ii) Ethnic Cleansing: The Tragedy of Manal Aru.

⁴⁷ B. H. Farmer, *Pioneer Peasant Colonization in Ceylon*, New York: Oxford University Press, 1957, p. 203 and p. 229.

The government evacuated more than 3000 Tamil families from the Thannimurippu Colony and its vicinity in the Mullaitivu District under the Accelerated Mahaveli Development scheme. This development scheme involved the augmentation in the supply of water to the area by transferring water from the Mahaveli Ganga to the region via local rivers and channels. Some of the villagers were even driven out of the region by the security forces and the military was even accused of murdering 29 of those who were forced to leave the region. The tragedy of Manal Aru did not end with the forced evacuation of Tamils because none of the Tamils who lost their farmland were never resettled in the area. Instead, more than 25,000 Sinhalese colonists were settled in area when the Manal Aru scheme came into operation in 1984 (see Figure 2b).

The name Manal Aru was subsequently changed to the Sinhalese name Weli-Oya. Similarly, the Tamil-name Thannimurippu colony was changed to the Sinhalese name, Janakapura colony. These colonists have been armed and additional protection is furnished by establishment of army camps in its vicinity. Tamil Ibelieve that the location of this colony was designed to deny Tamils the right to claim any district on their island as their traditional homeland anytime in the future, or to demand the merger of the northern and eastern provinces by virtue of the linkage that has existed between the Tamil populations of the two provinces in the past. Similar plans are afloat to colonize the Batticaloa District, a predominantly Tamil district, under the Maduru Oya Project with Sinhalese settlers (see Figure 2b). Sinhalese colonization in an exclusively Tamil district has been responsible for some of the ruthless violence that continues to be perpetrated by the security forces and the LTTE on innocent civilians.

The establishment of Sinhalese settlements in traditionally Tamil areas became a major concern to Tamil leaders and Tamil youth who proclaimed that since the prospects of seeking employment in Sinhalese areas were increasingly difficult, it was imperative that they use all their power at their disposal to preserve the territorial integrity of their traditional homeland. This became a critical issue because the Tamil homeland was the only area in the whole island that provided a safe haven to thousands of Tamil who fled the riot-torn areas between 1950s and 1980s. Tamil youth were also concerned that Sinhalese colonization would ultimately make them minorities in their own homelands and that their cultural and geographical identity will be ultimately undermined. The LTTE was, thus determined to use armed resistance to prevent the expansion of Sinhalese peasant settlements in Tamil areas, especially when it involved the displacement of thousands of Tamil inhabitants in exclusively Tamil areas, such as in Mullaitivu District.⁴⁸

(iii) Colonization and Changes in the ethnic composition of Tamil districts.

⁴⁸ See Chelvadurai Manogaran, *Ethnic Conflict and Reconciliation in Sri Lanka*, Honolulu: University of Hawaii Press, 1997 and , *Colonization and Politics: Political Use of Space in Sri Lanka's Ethnic Conflict*, in Chelvadurai Manogaran and Brian Pfaffenberger, eds. *Sri Lankan Tamils: Ethnicity and Identity*, Boulder, Colorado: Westview Press, 1994.

Sinhalese colonization into Tamil provinces changed the ethnic composition of the Tamil provinces and created two Sinhalese electorates by the late 1970s (see Figure 2b). It is estimated that almost a quarter of the island's population was moved from the Wet Zone to the Dry Zone between 1946 and 1971, under peasant colonization schemes. These colonization schemes altered the ethnic composition of Tamil provinces.

In particular, Sinhalese population in the Trincomalee District increased from 3.8% to 33.6% of the total population between 1911 and 1981. During the same period, the Tamil population decreased from 56.8% to 33.7% in the district. In the Amparai District, Sinhalese population increased from 7.0% to 38%, while the Tamil population declined from 37.0% to 20.0% between 1911 and 1981. This rapid increase in the number of Sinhalese settlers in the Eastern Province led to the creation of the Sinhalese electorates of Seruvila and Amparai in 1976.

Even though Tamil leaders consider Sinhalese colonization of Tamil districts as form of ethnic cleansing, Sinhalese politicians continue to justify the policy on grounds that Sri Lankan Tamils like Sinhalese have been migrating to Sinhalese areas. Tamil migration into Sinhalese districts, however, has been voluntary and personally financed. Tamils sought residence in Sinhalese areas for the sole purpose of securing white collar jobs because the Tamil-dominated dry areas of the North and East lack water for successful farming. Moreover, the migration of Sri Lankan Tamils into Sinhalese areas has neither significantly changed the ethnic composition of any Sinhalese districts nor created Tamil electorates in Sinhalese provinces (see Figure 2b).

The Right to defend the Tamil People against government forces and Sinhalese mobs.

In the beginning, Tamil militant movements, including the LTTE, used force, as a defensive measure, to challenge the repressive measures imposed on the Tamil people by the government and its military. Protocol I of 1977, which deals with peoples fighting in the exercise of the right to self-determination, contains provisions (Articles 48-79) prohibiting attacks on civilian targets, although this declaration was rejected by the Reagan administration on grounds it legitimizes terrorism. Article 13(2) of Protocol II, dealing with non-international armed conflict, which has not been ratified by the United States, states that the civilian population, as such, as well as individual citizens, shall not be the object of attack.

Acts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited. Article 51 of the United Nations Charter, while prohibiting the use of force, does allow for exceptions in the case of self-defense, but it is also obligatory for the aggrieved party to report the measures adopted to the Security Council and even seek military assistance. The plea of self-defense has been argued by Third World nations to cover the use of force by people who were oppressed. In the case of the Tigers, they had to defend the people against the repressive measures adopted by the government to deny them their right to self-determination and to forestall the government from settling Sinhalese in Tamil areas.

They had no alternative, but to also use offensive measures to defend their territory. The government also used draconian laws and repressive measures to detain Tamils without trial for long periods of time, and during the period of detention many were tortured or disappeared as they became victims to Sinhalese police force. Although forced disappearances has sometimes been dealt extensively, it is not clear whether the government is either involved in these disappearances or does not want to deal with these incidents.

The LTTE, also called the Tamil Tigers, matured into a liberation movement during the period, 1978-1983, when it was accused by the government to have been responsible for the death of 73 persons, more than 265 bombings, robberies, assaults and other criminal acts but the government did not maintain any figures on the thousands of Tamils who had been slain by Sinhalese mobs and security forces.⁴⁹ Indeed, the government denounced the Tigers for committing terrorist acts while it did not prevent its military forces and Sinhalese mobs from terrorizing Tamil civilians since 1956. Sri Lanka witnessed the emergence of a Tamils national liberation movement spearheaded by the Liberation Tigers of Tamil Eelam (Tigers) in the early 1980s.

It is also significant to note that for the time first time since the origin of the ethnic conflict a civil war between the military and the Tiger fighters replaced the anti-Tamil riots of the 1950, 1960, and 1970s. The right of Tigers to use force can be attributed to their resolve to end the violence that was perpetrated by the military and Sinhalese mobs on the Tamil people, on a persistent basis, since the 1950s. This attitude of the Tamil people to resort to violence under the given circumstances is justified, since Heather Williams states, it does not automatically follow that the denial of rights justifies the use of force to secure self-determination; but it is little wonder that persistent denial of demands for self-determination led to calls for remedies, including the use of force.⁵⁰

The disenfranchisement of the plantation Tamils, Sinhala-only language, making Buddhism the national religion, so that Sri Lanka was viewed culturally Sinhala, and that is so pervasive even to this day. Attempt to describe Sri Lanka and create Sri Lanka as belongs exclusively to the Sinhalese that led to the formation of military units to defend the principal of equal rights to self-determination. There was an attempt to re-invent the history of Sri Lanka so that 2,000 years ago the Tamils were the invaders and this anti-Tamil sentiment among the Sinhalese created the notion that if we permit Tamils to have any say any more, they would take over the country; sort of re-inventing fears of 2,000 years ago. Speeches were even made by Sinhalese politicians in Parliament that Tamils and that they have taken our country. In the 1960s, a legislator even stated that the Tamils are trying to seize our country, as if it didn't belong to the Tamils. So, that tone and then the resultant Sinhala-only type legislation created extreme social unrest.

⁴⁹Robert N. Kearney, *Ethnic Conflict and the Tamil Separatist Movement*, p.907.

⁵⁰Heather Wilson, **International Law and the Use of Force by National Liberation Movements**, New York: Oxford University Press, 1988, p.91.

In the seventies and eighties, the answer to the social unrest, rather than renewed nation building between the two sectors, resulted in extremely oppressive legislation for detention without cause, detention of Tamils, essentially, under a guise of emergency regulations and other legislative mechanisms which would justify mass arrests. Tamil leaders strived, without success, to negotiate a political settlement of the Tamil issue from 1958 to approximately 1972, when the Tigers came into being. The minority even expressed its desire to have a separate Tamil state at the general elections of 1977, although this was to be achieved through negotiations and discussions.

At this stage the government's devolution plans and proposals to provide a certain degree of autonomy to the north and east were tried and rejected, tried; it was sort of a relentless history of failure. There was a certain amount of communal strife in Sri Lanka since 1956, but it was the anti-Tamil riots of 1983, which many human rights investigators have called it genocidal that convinced Tamils that they had to use armed force for self-determination. Invoking the term genocide to the situation in Sri Lanka is not extreme, given the language of, This is our country and they are invaders, and the enormously high casualty list of numbers of dead bodies of Tamils.

This was a chaotic situation where people simply went out on a rampage and found Tamils and hacked them to death right on the streets. Obviously, if a process of trying to live together isn't working, communal rioting and a mad genocidal spree such as '83 can only further buttress a call to self-determination and the use of force to defend oneself. Many other national liberation movements, including the African National Congress, were compelled to use violence or sabotage when all peaceful means failed to convince governing authorities to abandon their repressive legislation and measures. Indeed, Nelson Mandela had stated during his trial in April 1964,

..we shrank from any action which might drive the races further apart than they already were. But the hard facts were that fifty years of non-violence had brought the African people nothing but and more repressive legislation and few and fewer rights.⁵¹

The factor that Tamils are represented in the government is relevant in determining whether or not the Tamil people have sufficient rights to self-determination at present. In Sri Lanka, however, there are no elected representatives, representatives from the Tamil areas in the government. There are, however, some Tamil-speaking representatives in the government, but they were not elected on a platform of the Tamil people as a whole voting for self-determination.

⁵¹ Nelson Mandela, *I am Prepared to Die*, in David Mermelstein, **The Anti-Apartheid Reader**, New York, 1987, p.222.

It may be that some of the Tamil members of Parliament do want self-determination, but is it correct that at certain points most Tamil representatives have been elected on a platform of a separate state. Indeed, Tamils have no effective representation in the government of Sri Lanka at the present time, especially since, a very large percentage of the Tamil population in the north is living in refugee camps and is scattered in the jungle all over the region. There is no direct relationship between them and members of Parliament, because they are in a sense in hiding and many of those people do not feel that the government, whether we are talking legislation, even Tamil representatives, or the president of Sri Lanka and the executive represents them or has anything to do with them.

Most of the Tamil people, including those made homeless and forced to live in the jungle and refugee camps, believe that Tamils can no longer rely on Sinhalese leaders to permit them to take care of their own affairs in the safety of their homeland. The possibility of achieving this through peaceful resolution was extinguished through the communal rioting in 1983. At that point the Tamil people had a right to vindicate the right to self-determination with the use of force. Prior to 1983, there was a dialogue taking place and there were some understandings reached at the negotiating table between Sinhalese and Tamil leaders, but after 1983, the Tamil people could no longer wait for Sinhalese leaders to settle their just grievances. Tamil did not believe that Sinhalese leaders will negotiate with Tamil leaders in good faith to resolve the Tamil problem when they had no even attempted to resolve the Tamil language and the colonization issues since 1956.

This does not imply that the Tamils had the right of self-determination only in the 1980s. Indeed, the right to self-determination has existed all along. It is nevertheless important to emphasize that the Tamil people had waited long enough, and it was obvious by 1983 that it was not going to happen without armed resistance. Indeed, Tamils decided to launch an armed struggle after exhausting all peaceful means to resolve the problem as required by the 1970 UN Declaration on the Friendly Relations and Cooperation between States. As a minority, the Tamils did not have the authority nor the means to convince the international community that the government was violating the provisions of the 1970 UN Declaration by using repressive measures to deny them the right to self-determination..

Once a people in the quest of self-determination has a right to the use of force, the fighters are treated as combatants and military operations are governed by the rules and obligations of humanitarian law. Like the Tamil fighters, the government of Sri Lanka is also obligated to comply with humanitarian law and is under the protections of humanitarian law. This situation arises, because of the unique place of self-determination in international law, the international community is obliged to side with those fighting for the right to self-determination. It is the only time in armed conflict where third parties must take a side. Any events that occurred in the course of an armed conflict is governed by the Geneva Conventions and in the exercise of the principle of self-determination.

Therefore, they must be looked at and analysed under the applicable Rules of both the Hague Convention, customary Hague law and the Geneva Conventions and customary Geneva law. All armies have, to some degree, engaged in violations of the rules of war, as stipulated in Geneva Conventions, in dealing with people seeking the right to self-determination. The government of Sri Lanka, in particular, is an extremely troubling violator, since the army has made repeated attacks on the civilian population, places of worship, shelters, etc.

The violations of the rules of war by the government of Sri Lanka, are not terrorist acts but war crimes. It is a war of self-determination in which a national liberation is conducting a warfare against the government of the behalf of the right people who are seeking the right to self-determination. It is also a war against a racist regime and under that analysis it would fall under Protocol I. Those who have a narrow view of the right to self-determination stress that once the colonial power was removed, whether by force or peacefully, the right to self-determination was extinguished. It is stated that

Most authorities agree that the right originally applied to people not in control of their traditional territory due to foreign or colonial occupation and domination. The dominated people held the right to self-determination as long as the colonial power was present. This situation of Tamil self-determination in Sri Lanka also falls within this, since the removal of the colonial regime did not lead to the turn over the Tamil kingdom to the Tamils and the Sinhala kingdom to the Sinhala. The British government turned over both to the Sinhala. Indeed, the Tamil people meet the classic narrow definition of self-determination since the decolonization process was flawed. The ensuing difficulties dramatically show it was flawed and the war resulting from the flaw is a war of self-determination.

The current Tamil national struggle has not been viewed as justified in the exercise of self-determination by the majority of the world's governments for political reasons. International community is made to believe that even under this narrow view of self-determination there is neither the widespread systematic violation of the human rights of an ethnic group such as the Tamil people nor the existence of an armed conflict at the level of civil war for Tamils to automatically invoke the right to self-determination.

The international community has no effective remedies for improving Tamil rights and pressure from the community to date is ineffective because of the power of the government that has protected Sri Lanka diplomatically. Proponents of the narrow view refuse to recognize the principles in Protocol I so that they won't ratify or won't recognize, for instance, a war of self-determination against a racist regime. That was the policy of the United States, for instance, in the South African situation and we did not ratify because of that. The refusal to recognize the right of self-determination of Tamils is politically based and has no legal foundation. Most scholars in the field of international law have, however, recognized a right to self-determination of the Tamil people, This view is shared by the majority of non-governmental organizations as shown by the signed joint statements they submitted of the United Nations affirming that.

The starting point of the vindication under self-determination began before there had been grounds for at least making a determination for civil war and so the application of humanitarian law should probably be reviewed from possibly the mid-seventies, but resort to violence to vindicate the right to self-determination stated in 1983 onward, as a result of communal violence. It is legitimate to state that provisions of the Geneva Convention became applicable in 1973-1974 when the civil war, associated with the formation of militant groups, military command, and the carrying out of military operations began.

The civil war that raged in Sri Lanka, between 1956 and 1973-1974, was characterized as a period of extreme political unrest and episodes of communal violence, but not organized military operations. The provisions of Geneva Convention, Protocol II and Common Article 3, were applicable to this period of civil war, but from 1983 onwards the laws of war, as proclaimed in Protocol I, came to be applicable. Under these provisions, third party obligation to either support the Tamil cause directly or indirectly came into play. Under protocol II, which came into effect in 1977, subsection (1) of Article 4 (d) refers to acts of terrorism. This term is used when Sinhalese Sinhalese civilians attacked Tamils and vice versa.. If the military forces attacked civilian population, it would be a violation of the Geneva Conventions and will be characterised as a war crime. Both the army and the Tigers have engaged themselves in acts of human rights violations.

In terms of the issue of the right to self-determination and the international opinion with respect to this, many non-government organizations have made statements recognizing the right of the Tamil people to self-determination, unlike many government. Is it routine for non-government organizations, which consist of members who are experts in the field of human rights, to get accredited. They include, Canadian NGO's, American NGO's, European NGO's, international NGO's. Tamil groups have not been accredited because the Sri Lankan government blocks them in the Committee of Economic and Social Council.

Most of the major non-governmental organizations, internationally, have come forward affirmatively, either by signing a statement such as this one, making a statement or submitting a document or quoting other scholars, urging the right of self-determination of the Tamil people. Academic opinion is used as a source of international law as identified in the Charter, the United Nations Statute of the International Court of Justice. It is a source of customary international law. In the United States' jurisprudence, since the very earliest Supreme Court, expert opinion is viewed as a source of international law and it was written into one of our key opinions on customary international law, the *Paquete Habana* in the year 1900 where the primary reliance was on scholarly opinion. So, in that sense, the statute of the International Court of Justice duplicates the already-existing customary international law hierarchy of sources of international law.

There is no consensus on what constitutes terrorism and acts committed by combatants engaged in civil war or war of self-determination are excluded from terrorism. These acts are either legitimate acts of war or they are actions carried out in the course of armed conflict that are specifically prohibited and, therefore, are chargeable under violations of The Hague or Geneva Conventions or customary international law and theoretically liable to tribunals such as the ones now existing in The Hague for the former Yugoslavia and Rwanda. The act which would legally be a war crime would, if committed by a group or person not covered under the Geneva Conventions, cannot be called a terrorist act. It could be the exact same act committed in wartime by a combatant, it is a war crime; committed in another situation by a non-combatant, it would be terrorism.

The use of arms is vindicating the principle of self-determination when it is acceptable to a reasonable people that continued dialogue or the possibility of political settlement is impossible. In the process of trying to work out the realization of self-determination, there is nothing in the concept that requires that the parties have to request the U.N. to negotiate, before taking up arms. There is ample evidence that in the period between 1948 and 1983, there was intense domestic discussion and many efforts to work out a political settlement to the satisfaction of the parties in question. During that time, there was also some gesture toward the international community to mediate or moderate or intervene or help out, relatively.

There was some involvement of internationalized bodies in attempting to work out the Tamil-Sinhala problem in Sri Lanka. When the United Nations did become involved, it was ironically at the time when reasonable Tamils had concluded that there was no other avenue to work. And, at that same time, the United Nations did become involved with the conflict in condemning the communal violence in a resolution of the sub commission in 1983, another review in 1984, some action at the commission, a lot of speeches by governments condemning the Sri Lanka government for violations, not leading to resolutions at that point but throughout the period, and offers of mediation and assistance by a number of governments in the period between 1983 to the present.

A key note of the Commission on Human Rights 1987/61 resolution was that there should be a cease fire and discussions or negotiations. First of all, there was a recognition of the application of humanitarian law. Second of all, there was a listing of the reports of special rapporteurs of the Commission on Human Rights which verified many, many human rights and humanitarian law violations in the course of the conflict. But, the main impetus of that resolution was to say to both sides to the conflict, Negotiate and the Commission on Human Rights takes an interest in achieving such a negotiation. Although there was justification for the use of force did exist, there was still ongoing efforts to seek peaceful resolution of the conflict and there are today.

Formal recognition of the application of humanitarian law to the situation in Sri Lanka was made at the Commission on Human Rights, the 1987 session, when the Resolution on Sri Lanka specifically invoked it. It is United Nations Commission on Human Rights Resolution 1987/61. The humanitarian law applies to only in armed conflict.

Liberation Tigers of Tamil Eelam

Tigers, a Genuine National Liberation Movement.

The LTTE originated as a guerilla organization in the early 1970s to resist the repressive measures espoused by the government to suppress peaceful protests and demonstrations organized by Tamil people in opposition to the laws and regulation that discriminated against them. These repressive measures, which included mass arrests, torture and the killing of innocent civilians by the military and the police force, were designed to intimidate the Tamil people of the Northern and Eastern Provinces against participating in peaceful protests. It was initially called the Tamil New Tigers and it came to be referred to as the Liberation Tigers of Tamil Eelam in 1976. As a guerilla movement, it used ruthless methods to eliminate physically and politically many members of rival Tamil guerilla movements and emerged as a national liberation movement representing the majority of Tamil people by 1993; other militant groups abandoned their arms and sought elections to parliament.

The LTTE is a Tamil nationalist movement, rather than a Marxist movement, which is committed to both, the preservation of Tamil rights and institutionalizing the principle of equal rights by banning the outmoded caste system and the dowry system which violated the fundamental rights of women and members of lower castes in the Tamil areas. In particular, it is opposed to the traditional social system which bestows undue advantage to the political and social elites in the Tamil traditional society. It even discouraged the old elites, especially of the Vellala caste, from returning to their homeland, but these restrictions are no longer in vogue since most of the expatriates have, over time, begun to rely on the movement to secure the right to self-determination of the Tamil people and have accepted the social reforms instituted by the LTTE.

Like any other guerilla movement it had growing pains. It used political murder as a tool to strike against the following categories of people. One, the oppressors, such as those representing the Sri Lankan government and the Indian Peace Keeping Force. Second, traitors to the Tamil cause. Third, those collaborated with the military.

Amirthalingam, the leader of the TULF, was murdered in 1989 by the LTTE, which regarded him as a traitor to the Tamil cause on grounds that he did nothing to further the Eelam cause, within or outside the parliament, even though he ran on the platform of an independent Tamil Eelam in 1977. The LTTE even accused Amirthalingam for having betrayed the ideas of the Father of the Tamil Nation, S. J. V. Chelvanayakam.

It also rose to power by isolating and eliminating most of the rival movements, such as the Tamil Eelam Liberation organization (TELO), which it claimed betrayed the cause of Eelam by aligning itself with the Indian secret service (RAW); a service that rejects the concept of a separate Tamil state. There was also genuine ideological and political differences between the LTTE and the Elam Peoples Revolutionary Liberation Front (EPRLF), an explicitly a Marxist- Leninist Organization, that it eliminated. Personal rivalry and competition between the leaders of the two organizations also played a role in the demise of the EPRLF as a militant movement.

It emerged as a powerful organization fighting for the self-determination of the Tamil people by the late 1980s. The Indian government of Rajiv Gandhi also regarded the LTTE as a powerful organization that had the support of the majority of the Tamil people when it signed Indo-Sri Lanka Accord in 1987. Unfortunately, the Accord failed to resolve the ethnic problem because the LTTE was not directly involved in the negotiations and did not have the final say on critical matters dealing with the selection of representatives to the Interim Provincial Council, the treatment of those who violated the terms of the Accord, the role of the International Peace Keeping Force (IPKF) in keeping peace and order, etc. The Indo-Sri Lanka Accord collapsed when the leader of the LTTE and President Premadasa's UNP government united in their efforts to ask for the removal of the IPKF from Sri Lanka in 1990.

The LTTE has been accused of intimidating and forcing Muslims to leave the Jaffna Peninsula between 1986 and 1990. The Muslims claim to be of Arab descent for political reasons even though they became Tamil-speaking people when their male ancestors married Tamil women. They are primarily concentrated in the Eastern Province and in Kandy and Colombo districts, but lived in the city of Jaffna until 1990, when they were forced by the LTTE to leave peacefully to the western district of Puttalam for political reasons. Unlike the Federal Party, the LTTE failed to draw the Muslims into the movement, especially after the Hindu/Muslim clashes which erupted in the Eastern Province and Mannar in 1985.

Muslims are courted by all groups, especially by Sinhalese parties, for political advantage and the Tamils and Muslims have competed for economic and political advantage in the Eastern Province. Reports on the LTTE massacre of Muslim fishermen and merchants in the Northern and Eastern Province have not been substantiated because of press censorship, but it is well known that the army recruited large number of Muslims, as home guards, to confront the LTTE since 1991. The Muslim home guards have been blamed for perpetrating violence on innocent civilians and LTTE sympathizers and there are reports that Muslim fundamentalist group called Jihad had even declared war against Tamils for control of the Eastern Province.

The report that one hundred Muslims were killed by Tigers in August 1992 in the Eastern Province were denied by the LTTE command, but the LTTE was definitely responsible for the orderly evacuation of Muslims from Jaffna in November 1990. This action, according to Kittu, one of the LTTE commanders, was done as a safety measure to prevent the Tamils from attacking Muslims because there was growing tension between Tamils and Muslims in the Eastern Province. The LTTE command had promised them that their property will be returned to them when they return at a later date.

The LTTE has always been stigmatized as a terrorist organization by the Sinhalese majority even after the LTTE leadership had informed the Secretary General of the UN in 1987 that they would abide by humanitarian provisions of Protocol I and Protocol II of the Geneva Convention, which prohibit the targeting of non-combatants. Under these conditions, the members of the LTTE are entitled to use force and be treated as combatants and can only be charged for war crimes if they attacked non-military targets. As combatants they cannot be charged under criminal law of the land even if they target non-combatants.

The members of the LTTE are dedicated to the Tamil cause and observe a strict code of conduct, which, among other rules, prohibit drinking or having affairs with their female combatants. It does not discriminate against its female fighters who have their own divisions and fight side by side with their male counterparts on the battlefield. Indeed, the LTTE fighters have never been accused of raping and killing of women, although the government has charged the movement of using child soldiers in the battlefield.

The following section summarizes some of the conditions which legitimize the Tigers as a national liberation movement.

(a) Recognizing LTTE as a national liberation movement.

Tamil people have, under international law, the right to self-determination in its war against a racist regime and the International Committee of the Red Cross (INRC) is monitoring the human rights situation in Sri Lanka since it recognizes the Tigers as a national liberation movement. There is also a formal agreement concluded between the LTTE and United Nations Human Rights Commission for Refugees (UNHCR) and accordingly, a resolution was adopted stating that the humanitarian law, as declared in the Geneva Conventions and Protocols, apply to the struggles between the Tigers and the Sinhalese-dominated government.

Like the African National Congress, the Tigers deposited an instrument of accession with the Geneva Conventions and Protocols. Indeed, the Red Cross would not have participated in monitoring the human rights situation in Sri Lanka, if it was ascertained that the LTTE was a terrorist organization committed to common crimes. The UN has recognized, at least implicitly, that as a national liberation movement, the members of Tamil Tigers should be treated as privileged combatants under international law. Since the LTTE is identified as a national liberation movement by the UN High Commission for Refugees, it is treated as if it was a de facto government representing the territory and the Tamil people it represents, by international organizations and agencies.

(b) It has all the characteristics of a national liberation movement.

It originated as a guerrilla movement in the early 1970s and carried out bank robberies, made financial demands from the wealthy individuals and from active sympathizers to finance its operations. It also assassinated informants and politicians they regarded as traitors to the Tamil cause, and launched surprise attacks and raids on police and military targets, often using remote devices to detonate bombs in the path of moving military vehicles. They have never been involved in the kidnapping, hijacking and the taking of hostages during the history of its existence.

The basic differences between the guerilla movement of the 1970s and the national liberation movement of the present are that, (a) the guerilla movement relied on mobility to launch surprise assaults on government forces and installations using remote devices, (b) it did not control any territory to conduct its administration and to conform to the rules of armed conflict, and (c) it was not certain that it had the support of the people it was supposedly representing.

The Tigers emerged as a national liberation movement after, almost, ten years of evolution during which it used ruthless methods to eliminate other Tamil militant movements. The definition of what constitutes a national liberation movement was resolved when 102 states and three national liberation movements signed the Final Act at the conclusion of the Diplomatic Conference in 1977.⁵² Only 65 of them ratified the treaty and the United States has yet to ratify the Protocol. A national liberation movement were defined as organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable it to carry out substantial and concerted military operation and to implement Protocol II.⁵³ Indeed, Sri Lanka has not ratified the protocols. Had it ratified Protocol II, it would not have been possible for it to brand the Tigers as a terrorist movement.

Tigers fulfill the definition of national liberation movement in the following ways.

(1) It has developed into a very powerful armed group since its early beginnings in the 1980s, and while, it has been accused of violating the laws of armed conflict for attacking civilian targets, at several occasions in the past, it has evolved into a conventional army that has the capacity to fight a well-funded and well-equipped government forces in order to defend the Tamils traditional homeland.

(2) Its charismatic leader, Velupillai Pirabakaran has built the organization from a small group of youth militants to a standing army of several thousands. He is directly involving in the planning, and the decision making on all matters relating to war and negotiations with the government. His is also known to be directly involved in directing military maneuvers on the field and been credited for some of major successes his fighters have achieved on the battlefield against government forces. The combatants carry arms in the open and engage in a conflict with the army on a routine basis (3) The Tigers are dedicated to the Tamil cause and gained control over significant parts of the Tamil homeland in the new millennium. It engages in conscription, levies taxes, and has a distinctive flag of the Tamil homeland, which is recognizable at a distance (4) It represents the Tamil people in their struggle for the right to self-determination.

(c) It represents the Tamil people who regard the military as a foreign occupying force.

⁵² This Final Act was signed on June 10, 1977 by three national liberation movements, namely the PLO, PAC and SWAPO. The ANC and AMCZ(Zimbabwe) did not sign it. In 1987, Protocol I was opened for signature in 1987 and many of the great powers, including the United States have not ratified the Protocol yet. Many of the other countries, including Israel and South Africa, which opposed Article 1(4) because they were involved in conflicts with national liberation movements. Many countries, including Sri Lanka, have not ratified Protocol II since they did not wish to abide the laws of armed conflict as stipulated in Protocol II when dealing with internal armed opposition from national liberation movements.

⁵³ Heather Williams, **International Law and the Use of Force by National Liberation Movements**, p.183.

Tamil people regard the Sinhalese-dominated government as an alien racist regime and is entitled to a right of self-determination under Article 1(4), Protocol I, especially when they are represented by a national liberation movement. Tamil people, living both within and outside Sri Lanka regard their the northern and eastern parts of the island as their traditional homeland and the expatriates continue to support the Tigers because most of them were compelled to leave the island under tragic circumstances following the anti-Tamil riots of 1977 and 1983. Many of them lost their friends, relatives, loved ones, their ancestral homes and properties, as well as, have fond memories of their homeland with its temples, churches, schools and other cherished landmarks and surroundings. David Hoosan, indicates that many ethnic groups, like the Tamils of Sri Lanka, become attached to their homelands because they gradually come to identify with their environments, perceived as archetypal, endowed with love and celebrated in songs and poetry, as well as understood in terms land use and economic development.⁵⁴

Tamil support for the use arms in the ethnic conflict stems from the premise that Sri Lanka a divided nation, in which the language policy of the government has created a new generation of Sinhalese and Tamils who are not conversant in each others language or are familiar with their respective religions and cultures. They have lived in isolation from each other and have been indoctrinated to believe in their own glorious part; the Sinhalese are made to believe that the island belongs exclusively to them, while Tamils are reminded of their ancient origin and of the glorious days of the northern Tamil kingdom on the island.

There has been very little intermixing between the two groups and the political situation on the island has compelled many Tamil inhabitants of the north and east, where the war is being fought between the military and the Tigers, to take refuge elsewhere on the island, especially in the capital city of Colombo. In is under these circumstances, that capture of the Jaffna Peninsula in 1996 and the hoisting of the Sinhalese Lion flag by the military in commemoration of its victory have invokes a sense of hatred among Tamils.

Many soldiers view the northern assignment as a means to earn extra pay, although they have been indoctrinated to believe that all areas on the island belong exclusively to Sinhalese-Buddhists. As children, these soldiers have been taught in their primary and secondary schools to glorify the concept of Sinhala-Buddhist nation and the need to maintain Buddhist-Sinhalese hegemony over the whole the island. Imtiaz Ahmed states that as soldiers in an exclusively Tamil area, they were expected to ensure that the model of security dedicated to the hegemony of the majority Buddhist-Sinhala community is strictly adhered to.

⁵⁴ Hoosan, Davis, **Geography and National Identity**. Blackwell Publishers, Cambridge, 1977.

This security model has not only alienated the minorities-- particularly the Hindu-Tamils-- but also militarized the society and its approach to conflict resolution.⁵⁵ Tamils view the Sinhalese military as an occupying force from a foreign country that should be driven out by the Tigers by the force of arms. It should be emphasized that it is the Tamil people of Tamil-dominated districts of the Northern and Eastern who have been affected by the war, although international community is made to believe that all areas of the island, particularly those inhabited by Sinhalese, have been affected by the bloody war. Indeed, the Sri Lanka government has been purchasing sophisticated weapons at exorbitant prices to bomb and shell the Tamil-dominated north and this explains why there has never been a single incident in which the Tamil population has welcomed the military to drive out the Tigers.

Tamils perceive the Sri Lankan military as an alien force that is less concerned about the plight of the Tamil people, but more eager on occupying the territory and controlling its inhabitants. There are other national liberation movements, such as the Provisional IRA,(PRIA), which are branded as terrorist groups, even though they have the right to fight against what they perceive as alien armies. The justification of the PRIA to rely on armed struggle to achieve its goals are almost similar to those of the Tigers. E. Moxon-Browne states,

I have argued that the PIRA is not simply a terrorist movement in the accepted sense of the term. Its longevity, its history and its goals suggest that it is deeply rooted in the society in which it operates. Although it indulges in acts of terror from time to time, it also fights a military campaign against what it perceives as an alien army. Unlike the Baader-Meinhof Group, the Brigade of Rosse and other terrorist groups, the PRIA's aims are feasible, internally consistent and find some measure of support among the wider population. In essence, the PRIA represents the cutting edge of a movement that finds roots in the frustration of the relative deprivation experienced by a section of the Catholic community in Northern Ireland.⁵⁶

(d) It has the authority to use force against the racist state.

The development of Humanitarian law of armed conflict is contained in the two Protocol additions to the 1949 Geneva Conventions. Protocol 1 applies to international conflicts while Protocol II applies specifically to non-international conflicts. Protocol II would apply to wars of national liberation movements except that it does not cover rules on the treatment of prisoners of war. Protocol II does specify that the national liberation movement should have the force to confront the state, as well as have the authority to represent the people it is fighting for.

⁵⁵ Emtiaz Ahmed, *Rebuilding Sri Lankan Security*, *Peace Review*, 8, 2, June 96, p.275.

⁵⁶ E. Moxon-Browne, *Terrorism in Northern Ireland: The Case of the Provincial IRA*, Paul Wilkenson, (ed), **Terrorism: a Challenge to the State**, New York: John Wiley and Sons, 1977, pp.161-162.

The humanitarian law also applies to those peoples who are fighting against racist regimes. The humanitarian protections provided in Protocol II apply to the Tamil national liberation movement (LTTE) because it involves the conflict between a state and an organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement Protocol II. Unfortunately, states, such as Sri Lanka, have not ratified Protocol II and under these circumstances, a national liberation movement, such the Tigers, has to rely on the ICRC, which obtains declarations from the parties to the conflict that they will comply with the Geneva Conventions and Protocols relating to the observation of humanitarian principles. The ANC, which was recognized a national liberation movement, signed the Protocol of the Geneva Convention that bound it to the humanitarian conduct of the war, especially as it relates to the avoidance of civilian targets.

Both the Sri Lankan government and the Tigers are equally required to comply with the Geneva Conventions and Protocols but both parties have on occasions violated the laws and customs of war by attacking civilians targets. The Sri Lanka government has even failed to comply with Article 3 common to the four Geneva Conventions which apply to non-international armed conflicts, especially as they relate to violence to life and persons, in particular murder of all kinds, mutilation, cruel treatment and torture.

James Bond has identified Sri Lanka as one of the nations that have failed to publicly recognize any obligations under article 3; and public reports indicate what would appear to widespread violations of its basic provisions.⁵⁷ Indeed, Sri Lanka and many other multi-ethnic nations regard wars of national liberation movements as problems of internal public order, prosecuting members of these movements in domestic courts under domestic criminal law, and refusing to apply the Geneva Conventions or allow visits by the International Red Cross as indications that governments do not accept the international of armed conflicts.⁵⁸

⁵⁷ See James E. Bond, **The Rules of Riot: Internal Conflict and the Law of War**, Princeton: Princeton University Press, 1974, p.123.

⁵⁸ Heather Wilson, **International Law and the Use of Force by National Liberation Movements**, p.124.

Although Sri Lanka has permitted the ICRC to operate on the island under certain restrictions, it has not conformed to the other provisions of the Geneva Conventions. On the other hand, J. S. Tissanayagam commenting on the decision of the LTTE to conform to the humanitarian provisions of the Geneva Conventions and Protocols states that it, is constrained to adhere to the basic rules of war, especially its humanitarian aspects, which are enshrined in international human law (IHL). What is known is that the LTTE informed the Secretary General of the United Nations in 1987 that it was prepared to respect, certain provisions of the Geneva Convention. There are Article I, Protocol I and Article III.... Article I refers to international conflict. Protocol II and Article III refers to subjects closer to the conflict in Sri Lanka. Protocol II is an obligation by combatants during non-international (internal) armed conflict, while Article III is the exchange of prisoners. Being a non-state party, the LTTE cannot ratify these provisions... Interestingly, the Sri Lanka government has not ratified Protocol II. The LTTE says that with government refusing to ratify Protocol II it is impractical to expect the LTTE to adhere to the principles of this provision unilaterally.⁵⁹

Article 1(4) of Protocol I is also applicable to the situation in Sri Lanka which the Tamil people regard as a racist regime that uses repressive measures to deny them linguistic and territorial rights since they are not belong to the Sinhalese race of Aryan origin and are not the chosen people of the island. This article specifically states that peoples fighting against racist regimes have the right to use arms in exercising their right to self-determinism, provided they, as well the state that is opposing it, to conform to obligation and legal rights set forth for international conflicts. The reference to racist regimes in the article, which has not been ratified by United States, states,

This includes situations, armed conflicts, in which peoples are fighting against colonial domination, alien occupation, and against racist regimes in the exercise of their right of self-determination, as enshrined in the Charter of the United Nations, and the Declaration on the Principles of International Law concerning friendly relations and co-operation among states in accordance with the Charter of the United Nations.

The effect of this is that if a people is using military force in order to effectuate its right to self-determination, they are bound by the body of law that regulates international armed conflict. So in one respect, it imposes on the Tamil minority obligations to comport with the rules related to international armed conflict, if they do take up arms and put an obligation on the minority to comply with the rules of war. This implies that if combatants are captured, they are entitled to be treated as prisoners of war, rather than as common criminals. An attack on a military target would be thus regarded as compliance with the rules of war. If the combatants violate international law, such as targeting civilians, such actors would be war crimes, and would be treatable in that fashion. Heather Wilson states,

⁵⁹J. S. Tissanayagam, *Will Geneva Convention get government and LTTE closer?*, **Sunday Leader**, December 11. 2000.

International law is still a matter of consent, not consensus. As a matter of law, not all states are agreed that national liberation movements have the authority to use force. Nevertheless, it would be a mistake to overlook the changes in ideas which have taken place largely in the last forty years. Wars of national liberation are no longer matters where international law definitely favors the established governments to promote international order and protect the status quo. On the contrary, largely due to the influence of newly independent states with support of the communist countries, all states have at least recognized the separate international personality of 'peoples' who have the right to self-determination and condemned the use of force against these peoples even if states have not condoned the use of force to effect change.⁶⁰

Heather Williams, a leading authority on the authority of liberation movements to use force, also states elsewhere in her book that many states have not acknowledged that National Liberation movements have legitimate rights to use force to secure their right to self-determination....It could be that these governments are just violating the law.⁶¹

(e) The blockade of areas under Tiger control.

The blockade of areas under Tiger control by Sinhalese-dominated governments is a recognition by the government that they are at war with a national liberation movement and are not dealing with common criminals. It was one of these blockades that compelled the Indian government to drop food and medical supplies from the air in 1987. The Sri Lanka has, on several occasions, been denounced by the Tigers and international organization of deliberately withholding food and medical supplies and other essentials to people under the control of the LTTE and this remains one of the major issues that the LTTE insists should be settled before other issues are taken up at the negotiating table.

(f) The willingness of the government to negotiate with Tigers gives them legal recognition, as a national liberation movement.

The Sri Lankan government has recognized the belligerent status of the LTTE and made several attempts to negotiate a political settlement with it to resolve the conflict.. President Kumaratunga's government even signed a formal cessation of hostilities agreement with the Tamil Tigers and the document was signed by Mr. Prabaharan, who, as the head of Tigers, represented the Tamil people. Some of the details of the unsuccessful negotiations to end the ethnic conflict are presented below. This section will focus primarily on the Indo-Lanka Peace Accord of 1987, the Premadasa - LTTE peace talks of 1990 and President Kumaratunga-Prabakaran dialogue of 1995.

The Indo-Lanka Peace Accord of 1987. .

⁶⁰ Heather Wilson, **International Law and the Use of Force by National Liberation Movements**, p.135

⁶¹

Ibid., p. 126.

The government had initiated three peace talks, with and without Indian assistance, between 1984 and 1987, when the LTTE established military control over the Jaffna Peninsula and large parts of the Northeastern Province. The LTTE was able to build its military capability because its members were free to travel by boat to Tamil Nadu in order to smuggle arms. Tamil Nadu also provided sanctuary, military training, communications, and funds for the movement. The All-Party Conference, which was convened by government in 1984, broke up in disarray because the United National Party government failed to convince various sections of Sinhalese society to accept proposals for the devolution of powers to Tamil areas. Both the government and the LTTE, however, used the All-Party Conference as a breathing space to strengthen their respective military positions. When it became difficult to dislodge the LTTE from the Tamil areas, the government was compelled to initiate peace talks, brokered by the Indian government in 1985.

It was at Thimphu Talks, convened in 1985, that the leaders of the LTTE and other of the Tamil militants movements articulated their common position regarding the autonomy of Tamil areas. They asserted that any peaceful settlement of the Tamil issue should incorporate constitutional provisions that would recognize Tamils as a distinct nationality with a distinct homeland and with right of self-determination. This declaration clashed with the views of Sinhalese nationalists, who asserted that only Sinhalese-Buddhists could claim membership in the political nation of Sri Lanka, and that no other community had any claim to the island, or any portion of it, as a traditional homeland. It is in the light of this declaration that the failure of all other peace initiatives should be examined. As Mohamed Rabie states, value-related conflicts are disputes over loyalties, individual beliefs, group identities, ethnic relations, cultural perceptions, and values. They are issues that do not lend themselves to political compromise and thus tend to be non-negotiable.^{62 1}

The Thimphu Talks would have ended the civil war had the Sri Lankan government been willing to grant a substantial degree of autonomy to Tamil areas, but the government's reluctance to compromise on this issue was dictated by the growing strength of its military forces. The LTTE continued to display its military strength by inflicting heavy losses on government armed forces. The greatest toll from the conflict fell on the Tamil civilians, many of whom were either killed, made homeless, or forced to flee the country. Commenting on the prevailing situation, Howard Wriggins has stated that the effects of the conflict on both the government and the LTTE was "approaching a mutually hurting stalemate that might presage compromise, but was not yet sufficiently severe enough to conclude a negotiated settlement."^{63 2}

⁶² Mohamed Rabie, **Conflict resolution and Ethnicity**, West Port, Connecticut: Praeger Publishers, 1994, pp.23-24.

⁶³ Howard Wriggins, *Sri Lanka: Negotiations in a Secessionist Conflict*, in William Zartman, ed., **Elusive Peace: Negotiating an End to Civil War**, Washington, D. C.: The Brookings Institution, 1995, p. 56.

The government signed the Indo-Lanka Accord of 1987 and agreed to receive Indian troops, in order to maintain peace in the Northeastern Province. This accord would have ended the conflict had its signatories not overlooked some basic norms and procedures of political dialogue and negotiations essential for concluding a peace settlement. Given the conflicting demands of Sinhalese and Tamils, the Accord was designed to allay some of the fears of both parties. It incorporated provisions that, in addition to ensuring the sovereignty, unitary character and territorial integrity of the island, recognized its multi-ethnic make-up. The Accord also satisfied LTTE demands that Northern and Eastern Provinces, which are regarded as the traditional habitation of Sri Lankan Tamils, be administered as single unit. Unfortunately the Accord diluted the concept of a Tamil "homeland" (Eelam) by establishing Sinhalese settlements in the exclusively Tamil districts of Vavuniya and Mullaitivu by gazette notification. It was not very specific about the powers devolved to the Provincial Councils and the Chief Minister, and also lacked constitutional guarantees.⁶⁴

⁶⁴ Kumar Rupesinghe, *Mediation in Internal Conflicts: Lessons from Sri Lanka*. In Jacob Bercovitch, ed., **Resolving International Conflicts**, Boulder, Colorado: Lynne Rienner Publishing Company, p.161.

The most negative aspect of the Indo-Lanka Peace Accord was that the LTTE, one of the main parties to the conflict, was not directly involved in the negotiating process. The government and Indian negotiators refused to allow the LTTE to participate in the negotiating process, or to make arrangements with the LTTE leadership and Sinhalese negotiators to engage in honest and frank discussions in order to acknowledge their respective grievances. In so doing, the government failed to recognize the dignity and honor of the Tamils as a distinct nationality offended by its discriminatory policies. The relationship between the Indian peacekeeping force and the population deteriorated because the terms under which the Indian troops could function and move in the Northeast Province were not discussed. Although President Premadasa recognized the LTTE as a legitimate organization, the Jayawardene government characterized the LTTE as terrorist organization representing the interest of no community on the island.⁶⁵ This attitude hampered any progress that could have been achieved in the peace process. Indian mediation was necessary because serious mistrust of each other's motives remained a major obstacle to resolving the complex, emotional by-charged concepts of a Tamil nation and traditional homeland. India's agreement to mediate, however was motivated not by the conviction that the Sinhalese majority should be persuaded to redress the just grievances of the Tamil people, but rather by the fear that the establishment of Eelam will awaken Tamil secessionist sentiments in Tamil Nadu.⁶⁶ India did not have the leverage necessary to persuade the antagonists to negotiate a permanent peace settlement. Instead, it became part of the problem. Tamil question, nevertheless, cannot be resolved without an impartial mediator acceptable to both sides. because the Tamil problem has been used effectively by both major parties to jockey for power.

⁶⁵ On the problem of caused by asymmetry and how governments *enjoy the dual role of umpire and participant*. see Charles King, **Ending Civil Wars**, New York: Oxford University Press, 1987, pp.47-49

⁶⁶ Howard Wriggins, *Sr Lanka: Negotiations in a Secessionist Conflict*, p.45

President Premadasa-LTTE Peace Talks of 1990. The year 1990 should have been the most favorable time for negotiating a permanent peace settlement because the government and the LTTE had mutually agreed to persuade the Indian government to withdraw its peacekeeping force from the island, albeit for different reasons. The LTTE was given the dominant stage in the negotiating process; its leadership had made a public pronouncement it did not doubt the sincerity of the Sinhalese President who has pledged to meet the basic demands of the Tamil people. The government even furnished arms to the LTTE, in order to eliminate the Indian-sponsored Tamil national Army. The LTTE, for its part, took the major step of registering itself as a legitimate organization committed to the use democratic methods to contest elections to the Northeast Provincial Council. Contrary to its critics, the LTTE was willing to accept the provisions of the provincial councils, a far cry from its original demands of establishing a separate state. Significant progress towards establishing a permanent peace were being made, since no preconditions was placed on participating in the peace process. Indeed, all the ingredients for ending the war and for negotiating a lasting peace were in place. Unfortunately, hostilities resumed soon after Indian troops were withdrawn from the island.

Various reasons have been attributed for the sudden collapse of the negotiations, including the delays encountered in dissolving the existing Provincial Council and the repeal of the Sixth Amendment to the Constitution, which debarred Tamils advocating separation from holding any public office. The LTTE complained to the government about its decision to open negotiations with the Eelam Peoples Revolutionary Liberation Front (EPRLF), a rival Tamil group with links to India. The LTTE was also aware that the government was helping to arm other Tamil groups, especially the People's Liberation Organization of Tamil Eelam (PLOTE), which were previously supported by the Indian government, in order to crush the LTTE. In particular, it accused Mr. Lalith Athulathmudali of beginning to strengthen the PLOTE soon after the Indo-Lanka Peace Accord was signed in 1987. The LTTE began to mistrust the motives of the government when it was questioned about the problems faced by government forces in Tamil areas and notified to restore law and order in these areas. The government also insisted that all political parties would participate in the elections to the Northeast Provincial Council and that the LTTE cadres were to surrender their arms in order to ensure free and fair election.

President Premadasa's sudden decision to initiate talks with the EPRLF, and his insistence that LTTE cadres should lay down their arms, may have led to the collapse of the peace talks. The LTTE also accused President Premadasa of building-up military camps and air fields in the Eastern Province. Like previous Sinhalese leaders, President Premadasa succumbed to the demands of Sinhalese extremists, who stressed that any form of devolution of powers to Tamil areas would jeopardize the survival of Sinhalese-Buddhist society and spell disaster to the sovereignty and integrity of Sri Lanka. Rupesinghe has also indicated that, the opposition parties did their best to undermine perceptions of progress andand against this background government spokesmen made contradictory and sometimes provocative statements that hindered confidence-building necessary to sustain the peace process.⁶⁷ This impasse may have also provided an opportunity for the LTTE leadership, which had hitherto displayed its unwillingness to accept any settlement that did not recognize Tamils as a distinct nationality with a traditional homeland. The LTTE leadership vowed that its cadres would not lay down their arms until a lasting solution to the ethnic problem could be found, and the Eelam War II began with great intensity. Once India, the common enemy, left the island, the government of the United National Party and the LTTE became rivals once again.

⁶⁷ Rupesinghe, Kumar, "Mediation in International Conflict: Lessons from Sri Lanka, p. 162.

President Kumaratunga-Prabakaran Dialogue of 1995. The greatest hope for a negotiated settlement of the conflict came when Mrs. Chandrika Kumarathunga won the elections to the Presidency in 1994, on a mandate promising to end the war. Unlike many of her predecessors, including her father, she won the elections not by championing the cause of Sinhalese masses, but by promising to redress the longstanding grievances of ethnic minorities.

The LTTE leadership trusted the genuineness of her desire to resolve the Tamil problem. Prospects for a lasting peace seemed very favorable when the President announced, during the opening session of the Parliament, that, in addition to the cessation of hostilities, she would resume talks with the LTTE without any preconditions. She also announced that she would present a package of proposals to devolve substantial powers to Tamil provinces, and that Rupees 39 billion had been earmarked for the reconstruction and rehabilitation of the war-torn areas of the Northeast Province. Monitors from Norway, Canada and Netherlands, who were selected to observe the cessation of hostilities, were allowed to meet with Velupillai Prabakaran, the leader of the LTTE in early February 1995.

The initial talks between the negotiators proceeded without any complaints by either party, but problems emerged with the third-round of talks; the truce collapsed after 14-weeks of negotiations. When hostilities resumed with greater ferocity, it became evident that the warring parties had used the fourteen weeks of cease-fire to build up their respective armed forces. The government made no secret of its purchases of machine guns, tanks, gunboats, helicopters, anti-missile weapons, and fighter planes during the negotiating phase.

It was making preparation to inflict heavy losses on the enemy, in the event that the war was resumed. Charles King commenting on the reasons for the resumption of hostilities between the government and the LTTE, has stated that, according to the government's argument, the LTTE had demonstrated its underlying commitment to violence with the attack, while the LTTE held that the government had merely been using the cease-fire to increase its superiority over the Tamils.⁶⁸

⁶⁸King, Charles, *Ending Civil Wars*, 1997, p. 60.

President Kumarathunga was sincere about her commitment to end the conflict, but her advisors did not formulate carefully devised plans and procedures for accomplishing critical tasks related to rehabilitation and reconstruction within specific time periods. Whether the peace initiative could have been saved if the government's negotiating team had the authority to make quick decisions on matters relating to lifting of the embargo on essential food and fuel items, eliminating all the restrictions on fishing in Tamil areas, removing the army camp from Pooneryn, and permitting LTTE cadres to carry arms in the Eastern Province during the time frame agreed upon during the three-round of talks in uncertain.

The LTTE leadership had also insisted that all plans for the reconstruction and rehabilitation works be completed before the political package could be discussed. In his letters to the President, Prabakaran had, among other things, expressed his disappointment over the composition of the negotiating team and the release of confidential information to the press, while talks were conducted in secret. The LTTE high command was beginning to have serious misgiving about the government's commitment to a peaceful settlement of the Tamil question, since it complained that government was using the media to discredit the organization in the eyes of the international community.⁶⁹

The LTTE was sensitive to how it was portrayed by the international community since, unlike the government, it does not enjoy international recognition. It was fully aware that the previous government, under President Wijetunga, was very successful in purchasing arms from foreign countries, because the government succeeded in convincing the international community that the problem in Sri Lanka is not related to ethnic differences but to violent terrorism by the Tigers against the state.

⁶⁹Prabakaran expressed his displeasure with the government for conducting the talks in secret and for releasing the contents of only those letters that were favorable to the government in a letter written to President Kumaratunga on February 25, 1995. See *Peace Process: Drifting into War of Words*, **Tamil Times**, 14(3), March 1995, p. 7.

Minister Ratwatte did confirm, during a press conference held at the Parliamentary Complex on January 6, 1995, that there were delays in alleviating some of the urgent problems facing the local population due to the assassination of Mr. Gamini Dissanayaka.⁷⁰ ³ The government did lift the embargo on many items and remove restrictions on fishing in most areas soon after the fourth round of talks, but it was too late. The government shifted the location of the Pooneryn army camp 600 meters from the Pooneryn-Sangupiddy road, but refused to remove the camp completely for security reasons. Whether the LTTE was justified in calling off the peace talks for any of the reasons cited above is difficult to assess. An LTTE spokeswoman blamed the President Kumaratunga for the failure of the peace talks when she stated that the President's handling of the LTTE in the negotiating process and her attitude towards the suffering and hardships of the Tamils indicate that she is unrealistic and unskilled in the art of dealing with complex and serious issue.⁷¹ ⁴ It is probable that the absence of clearly defined objectives and procedures to accomplish the initial tasks of rehabilitation and reconstruction, plus LTTE's displeasure with the political package, led to its sudden withdrawal from the negotiations. It is inconceivable that the LTTE would have accepted a devolution package that did not incorporate at least the concept of power sharing associated with federalism.⁷²

The President Kumaratunga-LTTE dialogue provided the most important hope for bringing about lasting peace in Sri Lanka, because she was willing to acknowledge the just grievances of the Tamils. She made special efforts to acknowledge the honor and dignity of Tamils, although she failed to recognize them as a distinct nationality with a traditional homeland on the island. The LTTE trusted her commitment to peace, but their relationship soured as the talks progressed. The LTTE complained, among other things, about the inability of government's negotiating team to make critical decisions, the absence of any well drawn-up plans to carry out specific tasks according to mutually agreed-upon schedules, and the manner in which information on the progress of the talks was disseminated to the public.

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Peace Talks With the LTTE: President Kumaratunga Explains, **Tamil Times**, 14(1), 1995, p. 6.

⁷¹ Adele Ann Balasingham, *Chandrika Kumaratunga, the LTTE and the Tamil Conflict*, **Tamil Times**, 14(4), 1995, 16-17.

⁷² Rohan Edirisinha and Paramsothy Savarimuthu, *The Case For A Federal Sri Lanka*, **Tamil Times**, 14 (1), 1995, pp. 13-15, and 26, and 14(2), 1995, pp.16-18.

The Sri Lanka government continues to fight the Tigers on the battlefield in Northern Sri Lanka, while at the same time, it is aware that the ethnic conflict can only be resolved by negotiating with the Tigers.⁷³ Indeed, all the moderate Tamil parties, except for one, have informed President Kumaratunga, for the first time since the mid-1980s, that they are backing the Tigers in their effort to bring lasting peace to the island by negotiating with her government. The Norwegian government continues to offer its good auspices, as it done in the past, to functions as an facilitator, to settle the dispute between the warring parties. The Norwegian government, therefore has always treated the Tigers as combatants, with full rights and privileges as a defacto government along the lines that PLO. Cease fire monitoring group, made up of members from different countries, was established in relation to the cessation of hostilities agreement of 1995 and the Norwegian government continues to explore means of establishing a group to monitor cessation of hostilities on the island, if and when, the government and the Tigers agree to a cease fire. The countries that agreed to monitor the cessation of hostilities in 1955 did so, because Tigers have belligerent status, with the privileges, rights, and obligations of combatants under international law.

International Law and Wars of Self-Determination: War Crimes and Terrorist Acts

The right of a liberation movement to use force in defence of its territory under seize by a state is recognized in several resolutions of the UN General Assembly and in Protocol I. A war by a national liberation movement will be treated identically to an international armed conflict, between two states, and the rules are the same, except as supplemented by the Protocol I addition to the Geneva Convention which applies to in wars of self-determination. Protocol I was promulgated because of the pervasiveness of Apartheid and some of the problems in the decolonization process and part motivated by Vietnam and the Vietnam War. Under international law, a people in the quest of self-determination has the right to use force, the fighters are treated as combatants and military operations are governed by the rules of international war and rules and obligations of humanitarian law. Both the Tiger fighters and government soldiers in Sri Lanka are considered combatants and are obliged to comply with humanitarian law and are under the protections of humanitarian law.

This situation arises because of the unique standing the right of self-determination has in international law and the international community is obliged to respect and side with those people fighting for the right of self determination. It is the only time in an armed conflict where a third part must take a side. Any event that occurred in the course of an armed conflict, in which one party exercises the right to self-determination, is governed by the Geneva Conventions. The war of this nature is analysed under the applicable rules of both the Geneva Conventions and customary Geneva law, as well as the Hague Conventions and customary Hague law.

⁷³ For detailed information on the outcome of these negotiations, see, Chelvadurai Manogaran, Sri Lankan Dilemma: *Negotiated Settlement or Continuing War*, in Chamber Rupersinghe, (ed.) **Negotiating Peace in Sri Lanka: Efforts, Failures, and Lessons**, Colombo: Gunaratne Offset Limited, 1998, pp. 253-269.

Any act committed by a combatant on unarmed civilians is not considered a terrorist act, but treated as a violation of the rules of war. It is brought to tribunal for violations of the rules of war which could be at the level of war crime. The antiquated Rules of Civil War, which dealt with all types of vocabulary, such as state of siege, state of insurgency, state of belligerency have been replaced with relatively clear rules under the Civil War Rules in international law.

Since the war in Sri Lanka is a war of self-determination, the civil war language is not relevant, but if we were to at least concede it is a civil war, putting aside the whole question of self-determination, the minimum criteria for application of Common Article 3 to the Geneva Conventions and Protocol II are clearly met. It is, therefore, appropriate to recognize that there is an armed conflict occurring between government forces, meaning military forces, and the fighters of the national liberation movement in Sri Lanka. Military forces and the LTTE fighters, who, under responsible command, are able to exercise sufficient control over territory in order to engage in sustained and concerted military operations. The word military is extremely important and, clearly since 1983, the LTTE, the Liberation Tigers of Tamil Eelam have met that test. Therefore, if we treat the situation in Sri Lanka as one of a civil war, then that is relevant.

All armies have, to some degree, engaged in violations of the rules of war, as stipulated in Geneva Conventions, in dealing with people seeking the right to self-determination. The government of Sri Lanka, in particular, is an extremely troubling violator, since the army has made repeated attacks on the civilian population, places of worship, shelters, etc.

The violations of the rules of war by the government of Sri Lanka, are not terrorist acts but war crimes. It is a war of self-determination in which a national liberation is conducting a warfare against the government on the behalf of people seeking the right to self-determination. It is also a war against a racist regime and under that analysis it would fall under Protocol I. Those who have a narrow view of the right to self-determination stress that once the colonial power was removed, whether by force or peacefully, the right to self-determination was extinguished. It is stated that most authorities agree that the right originally applied to people not in control of their traditional territory due to foreign or colonial occupation and domination. The dominated people held the right to self-determination as long as the colonial power was present. This situation of Tamil self-determination in Sri Lanka also falls within this, since the removal of the colonial regime did not lead to the turn over the Tamil kingdom to the Tamils and the Sinhala kingdom to the Sinhala. The British government turned over both to the Sinhala. Indeed, the Tamil people meet the classic narrow definition of self-determination since the decolonization process was flawed.

The ensuing difficulties dramatically show it was flawed and the war resulting from the flaw is a war of self-determination. The current Tamil national struggle has not been viewed as justified in the exercise of self-determination by the majority of the world's governments for political reasons. International community is made to believe that even under this narrow view of self-determination there is neither the widespread systematic violation of the human rights of an ethnic group such as the Tamil people nor the existence of an armed conflict at the level of civil war for Tamils to automatically invoke the right to self-determination.

The international community has no effective remedies for improving Tamil rights and pressure from the community to date is ineffective because of the power of the government that has protected Sri Lanka diplomatically. Proponents of the narrow view refuse to recognize the principles in Protocol I so that they won't ratify or won't recognize, for instance, a war of self-determination against a racist regime. That was the policy of the United States, for instance, in the South African situation and we did not ratify because of that. The refusal to recognize the right of self-determination of Tamils is politically based and has no legal foundation. Most scholars in the field of international law have, however, recognized a right to self-determination of the Tamil people, This view is shared by the majority of non-governmental organizations as shown by the signed joint statements they submitted of the United Nations affirming that.

The starting point of the vindication under self-determination began before there had been grounds for at least making a determination for civil war and so the application of humanitarian law should probably be reviewed from possibly the mid-seventies, but resort to violence to vindicate the right to self-determination stated in 1983 onward, as a result of communal violence.

It is legitimate to state that provisions of the Geneva Convention became applicable in 1973-1974 when the civil war, associated with the formation of militant groups, military command, and the carrying out of military operations began. The civil war that raged in Sri Lanka, between 1956 and 1973-1974, was characterized as a period of extreme political unrest and episodes of communal violence, but not organized military operations. The provisions of Geneva Convention, Protocol II and Common Article 3, were applicable to this period of civil war, but from 1983 onwards the laws of war, as proclaimed in Protocol I, came to be applicable. There were clear indication by early 1980s, as revealed in Amnesty International reports, that the government has inflicted human rights violation on the Tamil people and that Tigers were fighting back to defend its people.

In terms of the issue of the right to self-determination and the international opinion with respect to this, many non-government organizations have made statements recognizing the right of the Tamil people to self-determination, unlike many government. Is it routine for non-government organizations, which consist of members who are experts in the field of human rights, to get accredited. They include, Canadian NGO's, American NGO's, European NGO's, international NGO's. Tamil groups have not been accredited because the Sri Lankan government blocks them in the Committee of Economic and Social Council.

Most of the major non-governmental organizations, internationally, have come forward affirmatively, either by signing a statement such as this one, making a statement or submitting a document or quoting other scholars, urging the right of self-determination of the Tamil people. Academic opinion is used as a source of international law as identified in the Charter, the United Nations Statute of the International Court of Justice. It is a source of customary international law. In the United States' jurisprudence, since the very earliest Supreme Court, expert opinion is viewed as a source of international law and it was written into one of our key opinions on customary international law, the *Paquete Habana* in the year 1900 where the primary reliance was on scholarly opinion. So, in that sense, the statute of the International Court of Justice duplicates the already-existing customary international law hierarchy of sources of international law.

There is no consensus on what constitutes terrorism and acts committed by combatants engaged in civil war or war of self-determination are excluded from terrorism. These acts are either legitimate acts of war or they are actions carried out in the course of armed conflict that are specifically prohibited and, therefore, are chargeable under violations of The Hague or Geneva Conventions or customary international law and theoretically liable to tribunals such as the ones now existing in The Hague for the former Yugoslavia and Rwanda. The act which would legally be a war crime would, if committed by a group or person not covered under the Geneva Conventions, cannot be called a terrorist act.

It could be the exact same act committed in wartime by a combatant, it is a war crime; committed in another situation by a non-combatant, it would be terrorism. The use of arms in vindicating the principle of self-determination when it is acceptable to a reasonable people that continued dialogue or the possibility of political settlement is impossible. In the process of trying to work out the realization of self-determination, there is nothing in the concept that requires that the parties have to request the U.N. to negotiate, before taking up arms. There is ample evidence that in the period between 1948 and 1983, there was intense domestic discussion and many efforts to work out a political settlement to the satisfaction of the parties in question.

During that time, there was also some gesture toward the international community to mediate or moderate or intervene or help out, relatively. There was some involvement of internationalized bodies in attempting to work out the Tamil-Sinhala problem in Sri Lanka. When the United Nations did become involved, it was ironically at the time when reasonable Tamils had concluded that there was no other avenue to work out. And, at that same time, the United Nations did become involved with the conflict in condemning the communal violence in a resolution of the subcommission in 1983, another review in 1984, some action at the commission, a lot of speeches by governments condemning the Sri Lanka government for violations, not leading to resolutions at that point but throughout the period, and offers of mediation and assistance by a number of governments in the period between 1983 to the present.

A key note of the Commission on Human Rights 1987/61 resolution was that there should be a cease fire and discussions or negotiations. First of all, there was a recognition of the application of humanitarian law. Second of all, there was a listing of the reports of special rapporteurs of the Commission on Human Rights which verified many, many human rights and humanitarian law violations in the course of the conflict. But, the main impetus of that resolution was to say to both sides to the conflict, Negotiate and the Commission on Human Rights takes an interest in achieving such a negotiation. Although there was justification for the use of force did exist, there was still ongoing efforts to seek peaceful resolution of the conflict and there are today.

This has been one of the thorns in the side of human rights people for years trying to get the parties to the table and many times the LTTE has come to a table only to have one of their delegates assassinated on the way in. The LTTE is open to negotiations but want international observers, whether through the United Nations or through a country that offers its services.

Formal recognition of the application of humanitarian law to the situation in Sri Lanka was made at the Commission on Human Rights, the 1987 session, when the Resolution on Sri Lanka specifically invoked it. It is United Nations Commission on Human Rights Resolution 1987/61. The humanitarian law applies to only in armed conflict.

Under these rules, if a member of a national liberation movement targets non-combatants, the attacker will be guilty of violating the Geneva Conventions, especially Protocol I, and arrested for committing war crimes. Likewise, if a members of national liberation movement, such as the LTTE, were to commit attacks on civilians outside the Tamil areas, where the conflict is not concentrated, they would have, under Protocol and Geneva Conventions, committed a war crime and subject to prisoner of war status under the Third Geneva Convention. This is particularly true if the Liberation Tigers of Tamil Eelam attacks civilians outside the Tamil areas on the island.

The attacker will be prosecuted under war crimes, but subject to prisoner of war status under the Third Geneva Convention. A national liberation movement is entitled to force to repeal the enemy from the former's territory. If the target was military, it wouldn't be an act of war and not a criminal act. Even if an individual performs violent acts on a territory of third state, uninvolved in a conflict, the member of a national liberation movement involved in that act, keeps his other status as a combatant. Likewise, if a soldier in an army commits a rape, he remains a prisoner of war, but he can be prosecuted for the rape.

There has always been a problem in multi-ethnic countries, such as Sri Lanka, to associate all politically-related violence with terrorism, although there have been genuine difficulties in arriving at a general agreement as to what constitutes terrorists. Even the United Nations has failed to define terrorism since 1985. Many countries, including the United States, have manipulated the term terrorism, especially when the terms terrorism and freedom fighters can be used differently by two groups that are fighting against each other. The first world states wanted to treat all the activities of national liberation movements as common crimes or terrorism, but this was opposed by the third world states. The United States, Russia, the former apartheid regime in South Africa, have used the term terrorism to label and brand various groups and organizations that they did not like for reasons of policy. The United States has its own formal definition of terrorism to mean an act premeditated act of violence against non-combatants for the purpose of influencing the public.

But the United States has also used the term terrorism to suit its needs. For example, the Reagan Administration praised the Contra Forces as freedom fighters, although the Contra forces were committing terrible acts of violence against the people of Nicaragua for supporting the rebels, who were regarded as terrorists. It has been used by governments, such as the Sri Lanka government to stigmatize national liberation movements that comply with the rules of Protocol I, which has the widest consensus of international opinion over how the world community should best deal with acts of violence committed by members of so-called national liberation movements against innocent civilians population that it represents. The government of Sri Lanka, on the other hand, believes that it has the authority to use all types of terror and intimidation to suppress politically motivated opposition from the Tamil minority.

The Sri Lankan government has never consented to treat captured members of the LTTE as any other combatant in armed conflict. Instead of treating them as prisoners of war, they are tried as a criminal. Under normal rules of war, those who are captured should be interned for the duration of the conflict or released upon a condition of a pledge to refrain from further participation in hostility, or traded in a prisoner of war exchange as proclaimed by the rules of warfare and rules of law in Protocol I, which represents the widest consensus of over how the world community should best deal with acts of violence committed by members of so-called national liberation movements against innocent civilians. It does nothing more, just deals with the treatment of so-called national liberation movement members as combatants, and accordingly, in accordance with the rules of warfare and the rules of law, they should be treated in a certain way as any other member or soldier of regular armed forces.

Protocol I which deals with national liberation movements does not use the term terrorism, although Protocol II, which deals with civil war situations, uses the phrase acts of terrorism is included in Article 4 and paragraph 2(b) in dealing without an acceptable, agreeable international definition of the term. It does state in Article 55, number 4, subparagraph 4, that even if indiscriminate attacks are prohibited on civilian population, such acts are treated as war crimes.

Even a member of a national liberation movement carries out an attack on civilians in another country, the perpetrator of the violence will be charged for committing war crimes and not as a terrorist act because of the definitional problems with terrorism; these acts committed by national liberation movements are treated as war crimes under the Geneva Conventions and Protocol I. The international community has yet to agree on a legal or political meaning for the term terrorism and even the UN ad hoc Committee on Terrorism could not agree upon a definition of the word terrorism. National liberation movements have to ratify the Geneva Conventions and Protocols in order to make it clear that innocent Israeli civilians, women, children, whoever, would not be subject to attack..

The analysis of the misinformation disseminated by the media, under strict rules of press\censorship, on the motives and activities of the LTTE suggest that the Sinhalese-dominated government, like many of the governments that are dominated by ethnic majorities, is determined to maintain the territorial integrity at any cost, as well as the anomalies in international law that uphold territorial integrity in disregard of gross and genocidal internal conflicts.⁷⁴

Who Commits Terrorist Acts: The Sri Lanka Government or the LTTE

The Sri Lanka government has persistently projected Tigers as terrorist, rather than a national liberation movement, while condoning the brutal measures its security forces have employed, since the mid-1950s, to intimidate and terrorize the civilian population of Tamil districts under the pretext of eradicating terrorism. The government of Sri Lanka believes that, as one of the few sovereign states that has not ratified Protocol II, it has the exclusive right to wage war using all repressive methods, including terror, against both combatants and non combatants in the war-torn areas of the predominantly Tamil districts of the north and east. It is significant to stress that most of the death and destruction on the island have been confined to the predominantly Tamil-dominated districts, especially in the Jaffna District settled by almost exclusively by Tamils, and that more than ninety five percent of the non-combatants killed in the war are Tamils.

Indeed, the government has been very successful in suppressing the truth that the war is restricted to the Tamil districts and that Tigers have the support of the majority of Tamils to remove the occupying Sinhalese forces from the Tamil traditional homeland. It is significant to note that the retired Colonel Anil A. Athale, a Sinhalese, is critical of the misinformation disseminated by government media on the LTTE when he states,

⁷⁴Isaias Afwerki, *Challenge from Within*, **Harvard International Review**, Volume 17(3), Summer 95.

Two primordial emotions - Tamil insurgency and Sinhalese sense of grievances - thus fuel the conflict in Sri Lanka. Thus while the Tamils' actions seem aggressive, they are in effect defensive. It is worth noting that except for a sneak attack one in a while, the LTTE has confined its actions to the Northern and Eastern provinces. The LTTE is thus only using offensive tactics while it is on a strategic defensive. The Sinhalese are on a strategic offensive and believe that they have a right to rule the whole island. The struggle is also about power sharing.⁷⁵

The Sri Lanka government has persistently projected Tigers as a terrorist organization while condoning the repressive measures espoused by its security forces. The government of Sri Lanka believes that it has no obligations to ratify Protocol II, since it being a sovereign state, has the exclusive right to wage war using all repressive methods, including terror, against Tamils. It has even convinced the international community that the LTTE, as terrorist organization with minimum backing of the Tamil people, is determined to destabilize the country. It has been very successful in suppressing information on major incidents in which its armed forces have committed atrocities against innocent Tamil civilians. On the other hand, it has used the local and international media very effectively to broadcast each and every incident that is connected with the targeting of non-combatants by the LTTE.

A very good example of the misinformation that the Sri Lanka government is successful in providing to the international community on the nature of acts committed by the LTTE is well dramatized in the paper written by John Deutch on terrorism.⁷⁶ Deutch, in attempting to divide terrorist acts into different categories states that second category is terrorism is carried out by groups trying to overthrow their own governments or achieve independence. Here we find the largest number of incidents.

For example, the bloodiest act of 1996 occurred when the separatist Liberation Tigers of Tamil Eelam blew up an explosive laden truck in Colombo, Sri Lanka, killing 90 people and wounding more than 1,400 others. This statement not only exaggerates the numbers killed and wounded, but it does not mention the terror that was perpetrated on the Tamil people by the government and Sinhalese mobs since 1956.

⁷⁵ Redcliff Special/Colonial Anil A. Athale (ret'd), *Sri Lanka - War Without End, Peace Without Hope*, <http://www.redcliff.com/news/2000/may/22/lanka.htm>

⁷⁶ John Deutch, *Terrorism*, **Foreign Policy**, Issue 108, Fall 1997.

It does not mention the fact that in July the previous year, the bombing of a church in the Tamil-dominated north, killing one hundred and twenty one people, many of whom were women and children and in another indiscriminate, bombing, killed one hundred civilians in another area. Likewise, the incident, Deutch describes as the bloodiest Act of 1996, followed the capture of the Jaffna Peninsula by government forces, using its fire power from land, sea and air in December 1995. In this particular incident, three fourths of the Jaffna Peninsula was destroyed, thousands of homes were demolished, several hundreds were killed, and more than 500,000 were rendered homeless and forced to flee to the mainland.

The government also made it a point to raise the Sinhalese Lion flag to celebrate the victory of the capture of the cradle. The blowing up of the explosive in Colombo in 1996, although not warranted, was in response to the mental anguish Tamils were subject to by the horrible invasion of their homeland by government forces. What the government forces did in Jaffna squares with Deutch's definition of terrorism as acts of violence committed against innocent persons or noncombatants to achieve political ends through fear and intimidation.

This is precisely what happened to the Tamil people as the Sinhalese majority was politically motivated in maintaining Buddhist-Sinhalese hegemony over Tamils, at any cost, even if it involved death and destruction.⁷⁷ Roy Godsen, who delivered a speech on International Terrorism, before the Committee on the Judiciary, U.S. House of Representatives, Washington D.C. on April 6, 1995, stated that terrorist act may include violent efforts to disrupt, to sabotage, to destroy property or quality of life and to maim and kill.⁷⁸ Indeed, the Sri Lanka army committed the very acts against the people of Jaffna six months after this speech was delivered.

Unfortunately, the international media and international scholars have yet to write about the horrors associated with, among other incidents, the Chemmani mass graves containing the bodies of more than 500 Tamil youth who were tortured and buried by the military when it invaded Jaffna in 1996, killing of 27 Tamil inmates of the Bindunuwewa rehabilitation camp, allegedly by villagers with the tacit approval of the police, on October 27, 2000 the killing of 8 civilians of Mirusuvil, one only five years old, by army personnel on December 19, 2000, the Kumarapuram massacre in which 24 civilians were killed, allegedly by the Sri Lanka Army on February 11, 1996 in the Trincomalee District and the massacre of eight to fifteen Tamil civilians of a peasant colony by Muslim policemen and homeguards in Amparai District on September 24, 1997.

⁷⁷See *The Victory Still to Come*, **The Economist**, Volume 337 (7944), December 9, 1995, pp. 39-40.

⁷⁸Roy Godson, *International Terrorism, Vital Speeches of the Day*, Volume 61 (17), June 15, 1995.

These acts of violence committed by the Sri Lankan military on Tamil civilians are more heinous than those that were committed by the Tigers on few occasions on Sinhalese civilians. No major reports have been issued by Sri Lankan or foreign scholars, especially those who are specialists on the topic of international terrorism, that the Sri Lankan military has in these instances committed terrorist acts on innocent civilians or non-combatants to achieve political ends through fear and intimidation.

The U.S. Department of States is very critical of the Sri Lankan military for being responsible for numerous extrajudicial killings, disappearances, torture and other cruel, inhuman or degrading treatment or punishment, arbitrary arrests, detention, or exile, and the use of excessive force and violation of humanitarian law in internal conflict in 2000.⁷⁹

The government has also used terror to force Tamil people to leave areas traditionally inhabited by them for centuries and to settle Sinhalese. These incidents prompted the LTTE launch attacks on Sinhalese civilians living along the fringes of Tamil areas. Many of the incidents associated with retaliatory or revenge killings by both the military and LTTE fighters are described below.

Forced Evacuation of Tamils Refugees and LTTE's First Major Revenge Attack on Sinhalese Civilians. By 1984, the government began to concentrate its military operations in the Eastern Province, where troops mounted a series of attacks on Tamil villages to flush out militants. Most of the victims of these raids were Tamil civilians; many of whom were killed or rendered homeless. Of the 111 army camps distributed in the Northern and Eastern Provinces, 30 were located in the Trincomalee District where areas vacated by Tamils for security reasons were being colonized by Sinhalese peasants. The army frustrated by its inability to marginalize the LTTE conducted a ruthless campaign of burning towns and villages and thereby displacing thousands of Tamils in the Eastern Province. It is estimated that at least 3,300 Tamil civilians were tortured and killed by the military in the in 1984. Tamil militants, for their part, retaliated by attacking Sinhalese peasant colonies and fishing villages in the Eastern Province which were established by driving out hundreds of Tamil fishermen.

The most vicious of revenge killings occurred in November 1984 along the border of the Northern Province where Sinhalese settlements were gradually encroaching into Tamil districts. This type of encroachment resulted in the forced evacuation of hundreds of Indian Tamils who had been settled in two private farms, Kent Farm and Dollar Farm, after they had to flee the central hills country during the anti-Tamil riots of 1977.

⁷⁹ U.S. Department of State, **Sri Lanka: Country Reports on Human Rights Practices - 2000**, Released by the Bureau of Democracy, Human Rights and Labor, February 2001.

The two settlements were established with the help of Voluntary groups, such as the Gandhian Society and the Tamil Refugee Rehabilitations Organization. Four hundred and fifty Sinhalese ex convicts were resettled at the very sites where the Indian Tamils refugees had lived and worked for almost seven years. Enraged over the establishment of a Sinhalese colonization scheme in Welisariya, the LTTE raided one of these settlements and killed 60 Sinhalese civilians. Another 20 Sinhalese civilians from the second settlement were subsequently killed.

Police and troops which were rushed to the scene gunned down more than 30 Tamils, none of whom were involved in the raid. The LTTE continued its raids by killing 59 Sinhalese civilians from a fishing village in the Mullaitivu District. In retaliation, the army went on a killing spree and at the end of the second day, twenty-seven bodies of Tamil civilians were found in Mullaitivu. These killings forced Sinhalese settlers from the border areas of the northeast to take refuge in the Sinhalese districts in the west.

Security Forces Terrorize Villagers in Valvettithurai and LTTE's Second Major Revenge Attack on Sinhalese Civilians. The war between the LTTE and the security forces intensified in May 7, 1985 when the LTTE blew up an army truck with five soldiers in Valvettithurai, the home of the LTTE leader, Velupillai Prabhakaran. In another attack conducted in the same area and on the same day, the LTTE is alleged to have used grenades to kill an army major and five soldiers.

The army took its revenge on the civilians by laying siege to eleven Tamil villages in the area. Young men were dragged from their homes lined up and shot. Some were shot while they attempted to run. The most gruesome incident involved the blowing up of a community centre with 25 men. Indeed, 75 civilians had lost their lives for no fault of their own at the end of this horrible incident. To avenge the killings of Tamil civilians in Valvettithurai, it has been alleged that some members of the LTTE, who had disguised themselves as military men, entered the city of Anuradhapura, once the ancient capital of the country in north central Sri Lanka, and killed 146 Sinhalese civilians on May 15, 1985. The militants it was reported displayed the same brutality that the security forces inflicted on Tamil civilians in Valvettithurai. The government was successful in using its media to describe the Anuradhapura incident as random killing and scholars, such as Cecilia Albin, have no hesitation in characterizing this as a terrorist act involving the extensive random killing of large groups of Sinhalese civilians.⁸⁰

The Military's Reprisal Killings of Tamil Civilians.

⁸⁰ Cecilia Albin, *The Politics of Terrorism: A Contemporary Survey*, in Barry Rubin (ed), **Terror as a State and Revolutionary Strategy**, Washington, D.C.: John Hopkins University Institute, 1989, p.216.

In a blood-chilling reprisal for the killing of Sinhalese civilians the previous day in Anuradhapura, soldiers dressed in T-shirts and blue pants to give the impression that they were from the navy boarded a vessel and killed forty-eight Tamils, including women and children who were traveling to the island of Nainathivu, off the coast of Jaffna. Each one of the adults was asked to repeat their names, addresses, and destination before being herded into the back of a vessel to be shot and disposed of.

One of the victims of this incident who was knocked down by a rifle butt for refusing to give out his identity, was able to give a detailed description of this horrible incident by pretending to be dead. The government, which normally ignores complaints about killings, was forced to order an investigation in this case. On May 16, 1985 army commandos raided three villages in Batticaloa District and shot a number of Tamils in their homes. Some forty men were driven to a cemetery and ordered to dig their own graves before they were shot.

The killings continued during the Thimpu Peace Talks, but the most grisly massacre of Tamil civilians took place on August 16 and 17, 1985. Air force personnel, who escaped a land mine explosion in Vavuniya on August 16, went on a rampage killing 15 Tamil civilians and setting fire to several shops. On the following day, 250 Tamil civilians, including women and children, were murdered by government soldiers and Sinhalese thugs in Trincomalee. In another incident that occurred on September 20, 1985, Sri Lankan home guards entered a home in Amparai and shot 15 Tamils, including infants and women. On November 8, 1985, the LTTE is alleged to have killed 49 Sinhalese civilians in Trincomalee and this was followed by the shooting to death of 33 Tamils by the army. In addition to these killings, civilians in the densely populated areas of the Jaffna Peninsula had to endure a series of aerial bombing that were carried by the air force after the peninsula came under the control of the LTTE from March 1986. On July 19, 1986, the Sri Lankan army massacred 25 Tamil civilians in Batticaloa. On January 1996, nearly 100 Tamil peasants working in paddy fields in the Amparai District were hacked to death by members of the armed forces. The indiscriminate killing of civilians from these aerial bombardments were halted and Indian Peacekeeping Forces (IPKF) were deployed under the terms of the India-Lanka Accord of 1987.

The Government Engineers a Scheme To Evict Hundreds of Tamil Families From Vavuniya and Mullaitivu. Another scheme to ethnically cleanse an important area in the heart of the Tamil homeland was hatched by the government when the northeast was under the control of the IPKF. It was devised by Gamini Dissanayake, the Minister of Land and Land development and Minister of Mahaveli Development, who issued a gazette notification on April 14, 1988 that more than 7,590 Tamil families from 42 villages would be displaced from the Vavuniya District under the Mahaveli development Scheme. This scheme was designed to extend the Sinhalese colony of Weli Oya westwards into the heart of the Tamil territory when the IPKF was stationed in the northeast. Fortunately, Indian official succeeded in foiling this effort.

The war continued after the IPKF departed from the island in March 1991. In June of the same year, 150 Tamils were killed in the Eastern Province. The next major killing occurred on January 1993 when naval personnel shot and hacked to death four boats of civilians at Kilaly. Only 35 bodies bearing marks of torture and gunshot wounds floated in the lagoon.

Government Forces, the LTTE, and Revenge Killings.

Revenge killings of civilians by government security forces and the LTTE over the question of settling Sinhalese peasants in Tamil districts took place long after the military was deployed in the Tamil provinces to suppress activities of Tamil militant movements. Although the military and the LTTE have been equally guilty of carrying out revenge killings in the eastern part of the island, incidents involving the killings of Tamil civilians by the military are seldom reported by the media. On the other hand, major incident involving the alleged killing of Sinhalese civilians by the LTTE are reported as unprovoked incidents that can only be committed by a terrorist organization that is determined to annihilate Sinhalese civilians and to launch surprise attacks on security forces, as well as cause damage to government installations for no apparent reason.⁸¹

LTTE Ambushes Soldiers in Retaliation for killing and torturing of Tamil Civilians.

It was in the climate of violence and retaliation that the LTTE ambushed thirteen soldiers on July 23, 1983 and this in turn led to the horrible communal holocaust. This ambush was in retaliation for the killing of 175 Tamils by the security forces in mid-July of the same year.⁸²

The most violent incidents involving the killing of civilians by both the military and the LTTE occurred in or in the vicinity of government-funded peasant colonization schemes which were rapidly established in the Tamil-dominated Northern and Eastern provinces. Revenge killings continued in the Jaffna Peninsula after the anti-Tamil riots of 1983 and Sinhalese soldiers continued to vent their frustrations by attacking civilians.

⁸¹ See Thomas Sewell, Racism Under New Management is Still Racism, *Human Events*, 52, 44, p. 19. Thomas states that *Sri Lanka has been torn apart by decades of internal strife and civil war, with atrocities and counter-atrocities.*

⁸² See S. J. Thambiah, *Sri Lanka: Ethnic Fratricide and the Dismantling of Democracy*, Chicago: University of Chicago Press, 1985. Thambiah indicates that the killing of the thirteen soldiers may have been retaliation to the torture and indiscriminate killing of Tamil civilians in the previous months. Some even alleged that this ambush was in retaliation that some soldiers had raped four female inmates of a hotel in Thinnavelly, Jaffna, only one week earlier.

For example, On March 28, 1984, nine civilians were killed by Sri Lankan Air force personnel when they came under attack on their way to their barracks on March 28, 1984. In April of the same year, an estimated 234 Tamil civilians were reported to have been killed by security forces in Jaffna when the LTTE detonated a bomb which hurled a truck load of army personnel into a ditch without causing any deaths. The Colombo government dismissed the charges by declaring that all those killed by the security were terrorists. In August of the same year, the army killed 22 civilians in Jaffna in retaliation for the killing of J. Herath, the Superintendent of Police, by a time bomb in Vavuniya. In September 1984, a group of soldiers, enraged over the killings of a number of soldiers in the Mullaitivu District, hijacked a van at a lonely spot and killed all of its 40 passengers.

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Forced Evacuation of Tamils Refugees and LTTE's First Major Revenge Attack on Sinhalese Civilians.

By 1984, the government began to concentrate its military operations in the Eastern Province, where troops mounted a series of attacks on Tamil villages to flush out militants. Most of the victims of these raids were Tamil civilians; many of whom were killed or rendered homeless. Of the 111 army camps distributed in the Northern and Eastern Provinces, 30 were located in the Trincomalee District where areas vacated by Tamils for security reasons were being colonized by Sinhalese peasants. The army frustrated by its inability to marginalize the LTTE conducted a ruthless campaign of burning towns and villages and thereby displacing thousands of Tamils in the Eastern Province. It is estimated that at least 3,300 Tamil civilians were tortured and killed by the military in the in 1984. Tamil militants, for their part, retaliated by attacking Sinhalese peasant colonies and fishing villages in the Eastern Province which were established by driving out hundreds of Tamil fishermen.

The most viscous of revenge killings occurred in November 1984 along the border of the Northern Province where Sinhalese settlements were gradually encroaching into Tamil districts. This type of encroachment resulted in the forced evacuation of hundreds of Indian Tamils who had been settled in two private farms, Kent Farm and Dollar Farm, after they had to flee the central hills country during the anti-Tamil riots of 1977. The two settlements were established with the help of Voluntary groups, such as the Gandhian Society and the Tamil Refugee Rehabilitation Organization. 450 Sinhalese ex convicts were resettled at the very sites where the Indian Tamils refugees had lived and worked for almost seven years. Already enraged over the establishment of a Sinhalese colonization scheme in Weli Oya, the LTTE raided one of these settlements and killed 60 Sinhalese civilians. Another 20 Sinhalese civilians from the second settlement were subsequently killed. Police and troops which rushed to the scene gunned down more than 30 Tamils, none of whom were involved in the raid. The LTTE continued its raids by killing 59 Sinhalese civilians from a fishing village in the Mullaitivu District. In retaliation, the army went on a killing spree and at the end of the second day, twenty-seven bodies of Tamil civilians were found in Mullaitivu. These killings forced Sinhalese settlers from the border areas of the northeast to take refuge in the Sinhalese districts in the west.

Security Forces Terrorize Villagers in Valvettithurai and LTTE's Second Major Revenge Attack on Sinhalese Civilians.

The war between the LTTE and the security forces intensified in May 7, 1985 when the LTTE blew up an army truck with five soldiers in Valvettithurai, the home of the LTTE leader, Velupillai Prabhakaran. In another attack conducted in the same area and on the same day, the LTTE is alleged to have used grenades to kill an army major and five soldiers. The army took its revenge on the civilians by laying siege to eleven Tamil villages in the area. Young men were dragged from their homes lined up and shot. Some were shot while they attempted to run. The most gruesome incident involved the blowing up a community center with 25 men. Indeed, 75 civilian had lost their lives for no fault of their own at the end of this horrible incident. To avenge the killings of Tamil civilians in Valvettithurai, it has been alleged that some members of the LTTE, who had disguised themselves as military men, entered the city of Anuradhapura, once the ancient capital of the country in north central Sri Lanka, and killed 146 Sinhalese civilians on May 15, 1985. The militants it was reported displayed the same brutality that the security forces inflicted on Tamil civilians in Valvettithurai.

The Military's Reprisal Killings of Tamil Civilians.

In a blood-chilling reprisal for the killing of Sinhalese civilians the previous day in Anuradhapura, soldiers dressed in T-shirts and blue pants to give the impression that they were from the navy boarded a vessel and killed forty-eight Tamils, including women and children who were traveling to the island of Nainathivu, off the coast of Jaffna. Each one of the adults was asked to repeat their names, addresses, and destination before being herded into the back of a vessel to be shot and disposed of. One of the victims of this incident who was knocked down by a rifle butt for refusing to give out his identity, was able to give a detailed description of this horrible incident by pretending to be dead. The government, which normally ignores complaints about killings, was forced to order an investigation in this case. On May 16, 1985 army commandos raided three villages in Batticaloa District and shot a number of Tamils in their homes. Some forty men were driven to a cemetery and ordered to dig their own graves before they were shot. The killings continued during the Thimpu Peace Talks, but the most grisly massacre of Tamil civilians took place on August 16 and 17, 1985. Air force personnel, who escaped a land mine explosion in Vavuniya on August 16, went on a rampage killing 15 Tamil civilians and setting fire to several shops. On the following day, 250 Tamil civilians, including women and children, were murdered by government soldiers and Sinhalese thugs in Trincomalee. In another incident that occurred on September 20, 1985, Sri Lankan home guards entered a home in Amparai and shot 15 Tamils, including infants and women. On November 8, 1985, the LTTE is alleged to have killed 49 Sinhalese civilians in Trincomalee and this was followed by the shooting to death of 33 Tamils by the army.

In addition to these killings, civilians in the densely populated areas of the Jaffna Peninsula had to endure a series of aerial bombing that were carried by the air force after the peninsula came under the control of the LTTE from March 1986. On July 19, 1986, the Sri Lankan army massacred 25 Tamil civilians in Batticaloa. On January 1996, nearly 100 Tamil peasants working in paddy fields in the Amparai District were hacked to death by members of the armed forces. The indiscriminate killing of civilians from these aerial bombardments were halted and Indian Peacekeeping Forces (IPKF) were deployed under the terms of the India-Lanka Accord of 1987.

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In conclusion, it is appropriate to present Izath Hussein's opinion as to how the LTTE is regarded by the government and the Sinhalese people in Sri Lanka when he viewed the Costa-Gavras film, *State of Siege*. He explains that the,

LTTE became a redoubtable guerilla force because of the UNP's State terrorism. That may be disputed but it cannot be disputed that some Sinhalese engaged in the indiscriminate killing of defenseless non-combatant Tamils, which is certainly terrorism, on a genocide scale in 1983. It cannot be disputed either that the Sinhalese state has failed to punish the Sinhalese terrorists who were responsible, even when that was easily possible as in the case of the two Welikade Prison in 1983. A historical approach shows that it is absurd to speak only about LTTE terrorism when facts show that it was propelled really by the terrorism of some Sinhalese fascists and racists.⁸³

He also states that,

Sinhalese terrorism continued as shown by the Bandarawela massacre and other custodian killings (2000), over which the real culprits are not punished and part at least of the large number of Tamil disappearances that have taken place..... The way a substantial portion of the Sinhalese, both at the level of the state and outside it, view the LTTE guerillas is identical with the ways those guerillas of that Latin American dictators viewed the Tupamaros... But what might seem to be commonplaces help us to see the mainstream discourse on LTTE terrorism, for what it really is. It is a torrential outpouring of rot, with a markedly fascist and racial character.

⁸³See Izath Hussain, *Common-sense on Terrorism*, **The Week-end Express**, Dec. 28, 2000.

