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10 May 2006

Mr. Philip Alston
Special Rapporteur on Extra-judicial, summary or
arbitrary executions

Ms. Aida Nejad
Office of the United Nations High Commissioner
For Human Rights

By email to anejad@ohchr.org

RE: Sri Lanka

Dear Sir and Madam:

Our organizations write jointly due to mutual concern over the deteriorating situation in Sri Lanka.

We are aware that groups, especially the International Federation of Tamils, representing the Tamil people have presented you with evidence of a recent sharp escalation in killings of Tamil civilians by the military forces or those allied with the military forces of the government of Sri Lanka. We believe you may also have been provided with a copy of a document of the Liberation Tigers of Tamil Eelam (LTTE) that had been presented, *inter alia*, to the envoy from Japan during his visit to the Tamil-controlled area and that contains detailed information about the persons killed since 24 February 2006 by government forces and those allied with them. We are also aware that you are apprised of a number of high profile political killings of Tamil leaders, as evidenced in both the recent report by the Special Rapporteur on his mission to Sri Lanka and his recent press statement on this topic. We also assume that you are apprised of a recently released report of the Tamil Centre for Human Rights listing persons alleged to have been killed by the Sri Lanka forces or those associated with the. For this reason we will not duplicate this information, but use it to emphasize the seriousness of the current situation and the urgent necessity for the international community as a whole to assist re-establish a climate in which discussions on implementation of the cease-fire agreement can take place, and, hopefully, lead to discussions on how to resolve, by means of a just peace, the many problems in Sri Lanka.

Our organizations have been engaged together and separately in the situation in Sri Lanka for more than twenty years. In that time, we have insisted that the situation be looked at and evaluated from the perspective of humanitarian law, for the obvious reason that there is an armed conflict between government forces and the LTTE -- albeit now in a very shaky cease-fire stage. This does not mean that human rights law does not apply, but that in regards to the human rights issues arising in the context of the armed conflict, humanitarian law provides an overarching legal regime.

During the long years of this armed conflict, we have been distressed that the international community has not kept its focus on application of humanitarian law, and has allowed States with their own geopolitical interests at stake in the situation to reframe the discussion about it.¹ This has been to the great detriment to both unbiased and equal attention to both sides of the conflict, but has also led to a kind of international “demonization” of the Tamil people and the LTTE. From this perspective, military operations that are legal for combatant forces in an armed conflict carried out by the LTTE are widely discussed as “terrorist,” while aerial bombings of schools, hospitals, churches (many of them sheltering persons displaced by the armed conflict) by the Sri Lankan armed forces receive little or no condemnation, although these acts are identified in humanitarian law as violations, if not grave breaches.² Much of the widespread torture, admitted to but dismissed in a crudely cavalier fashion by government authorities interviewed by the Special Rapporteur, occurs in the context of the armed conflict and is hence a grave breach of the Geneva Convention, as is, of course, any death as a result of torture.³ But these grave breaches -- war crimes in international law -- receive almost no condemnation for what they actually represent.

Tamil civilians constitute the overwhelming majority of civilians killed in the course armed conflict: the number of these deaths far outweighs those of Sinhala civilians, and likely more than either Sinhala or Tamil combatants. The vast majority of these Tamil civilian deaths constitute “willful killing” within the meaning of Geneva Convention IV, Article 147. As is apparent in the events of the past few weeks, it is again largely Tamil civilians who are being killed.

The sheer numbers of the Tamil victims and the targeting of them by the government and its armed forces, is, of course the cause of the massive exodus of Tamils from Sri Lanka in the pursuit of safe havens abroad, as indicated in E/CN.4/2006/53/Add.3/ note 12, with figures that are five years old. Current estimates place the Tamil diaspora at more than

¹ We invite you to consult E/CN.4/2006/NGO/207, submitted by International Educational Development and fully endorsed by the Association of Humanitarian Lawyers, on some aspects of these geopolitical interests, which in our view have severely impeded the establishment of a just peace in Sri Lanka.

² In this regard, I recall the controversy when LTTE combatants carried out military operations against the airplanes of the Sri Lankan forces and several unoccupied airplanes of Air Lanka. This was denounced by the Sri Lankan government and seconded by many as “terrorism,” although there is certainly no prohibition in armed conflict law against attacking the enemy’s military equipment or civilian, unoccupied, grounded airplanes that are not used for rescue or medical transport. There have been many, many such false accusations throughout the long conflict, heavily burdening both proper application of humanitarian law but also the Tamil people as a whole.

³ E/CN.4/2006/53/Add.5 at paras. 53-54.

one million, or more than 25% of the population. Another large number of Tamils are internally displaced, both due to the armed conflict and also the Tsunami, although accurate post-Tsunami figures are probably not available.

The latest large-scale escalation of belligerency stems from the operation at Army Headquarters in Colombo targeting the head of the Sri Lankan army. The circumstances of this event have not been investigated at this time, and therefore there is no way we can know what really happened and at whose command, if any. Even so, the LTTE are blamed for the attack, which again, is called a "terrorist" act. However, if the perpetrator was a member of the LTTE and carrying out an ordered attack, then it was a legitimate military operation: there is no prohibition in humanitarian law against suicide attacks, and, clearly, the enemy's military commander is a lawful military target.⁴ If the person who carried this out was NOT an LTTE combatant, then this act could be characterized as a terrorist act, but then, of course, the LTTE had nothing to do with it. Further, humanitarian law prohibits "reprisals" against the civilian population for acts of the enemy soldiers, such as the Sri Lankan government undertook following this incident. Of course, if this act were NOT an act of the enemy, reprisals against the civilian population make no sense, but, of course, still violate humanitarian law: in both cases, reprisals are characterized as wanton and willful in contravention of Article 147 of the Fourth Geneva Conventions and, hence, war crimes.

We are aware that the situation in Sri Lanka has been subject to review and investigation by nearly all the mandate holders and working groups of the Commission on Human Rights. We address Mr. Alston as violations of the right to life occur in the context of most of the other thematic topics: journalists, political leaders, children,⁵ members of the clergy, the disappeared, the detained and the tortured to name a few. In this regard we request Special Rapporteur Alston to take the lead in forming an emergency group drawn from the other mandate holders and representatives of working group, to address in a

⁴ There is no international humanitarian law rule against suicide attacks by combatants. Military operations are governed by the relationship of the possible gain versus the possible loss of one's own soldiers or *materiel* or undue incidental civilian casualties. There must be an acceptable gain to justify a great loss. An example of losses too great for the gain is illustrated by Iran's use of "human wave" soldiers -- usually comprised of martyrs, who ran in the front lines into the enemy as their own support troops tried to secure a few more feet in the sand. However, the loss of a single soldier for the gain of an attack on the enemy's military headquarters and the injuring of the enemy's military commander would not be viewed as unacceptable. The main issue in the Colombo event was that the alleged combatant was not in proper military uniform thus violating the principle of distinction. This might have resulted in a denial of POW status if captured alive. Throughout history many military forces have used similar tactics. For example, during World War II the French *Resistance* attempted many operations of this type, not always successful. Also in World War II, the US repeatedly tried to infiltrate soldiers behind enemy lines and carried out many missions that are referred to as "suicide" missions. During the Torino Olympics, American television aired a story of one such suicide mission in Italy. The issue is not the suicide -- the issue is the target of a suicide attack. A military operation can be carried out against the military personnel of the enemy, provided that it does not target a medical facility or other facilities or *materiel* protected by humanitarian law norms or combatants who are *hors de combat* for medical reason or because they are prisoners of war.

⁵ We invite you to consult our written statement, E/CN.4/2006/NGO/209 regarding some of our specific concerns regarding children in Sri Lanka.

coordinated and cohesive fashion the current crisis and, along with the Office of the High Commissioner, to assist the Sri Lanka Monitoring Mission in any way appropriate.

To conclude, we request that Ms. Nejad distribute this letter as well as our NGO written statements to the other mandate holders and working groups. We are happy to answer any questions or provide any further information or analysis requested at any time.

Sincerely,

Karen Parker, Esq.
Chief delegate, IED, to UN
President and Lead Counsel, AHL