

## *Briefing*

to participants of the UN Commission on Human Rights  
(Fiftieth Session)  
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### The right to self-determination The Sri Lankan Tamil national question

On 22 November, 1988, the United Nations General Assembly declared the 1990s to be the “International Decade for the Eradication of Colonialism”. The Assembly reaffirmed that colonialism “in all its forms and manifestations” was incompatible with the UN Charter and posed a serious threat to international peace and security. A consensus resolution commemorating the thirtieth anniversary of the Declaration on the Granting of Independence to Colonial Countries and Peoples (1960), G.A. Res. 15 14 (XV), was adopted at the General Assembly’s Special Committee on Decolonisation, 22 January - 20 August, 1990.

However, restricting the right to self-determination solely to colonial territories now seems to be obsolete, because in the context of the few colonial territories left, it does not impose any obligations for the rest of the States party to the 1960 Declaration. The events of the early 1990s, have signified that it is probable that the twenty-first century will indeed usher in a world free from traditional colonialism. Despite the virtual demise of Western colonialism, the principle of self-determination shows no sign of disappearing from the language of international relations. It is increasingly finding prime of place among minority groups within independent States, to legitimize their demands for greater regional autonomy, territorial separation and independence.

It is the principle of self-determination that the Tamil people of Sri Lanka are fighting for and the reason why more than 50,000 lives have been lost since 1983. The successive Sinhalese-dominated Sri Lankan governments however, have consistently rejected the principle of self-determination.

It is increasingly being recognised that there is a synthesis between the question of group rights as a human rights matter and the principle of self-determination. The principle of self-determination has accordingly been “updated” or “actualised”. In the discourse surrounding the right of peoples to self-determination, it has become popular to speak of the concept as having two component parts: an “internal” and an “external” aspect. The 1960 Declaration outlined only the “external” aspect of the principle: the right to independence of the colonised or non-self-governing countries and the establishment of their own separate States. Colonial and dependent peoples are the subject of the “external” right to self-determination and the exercise of that right relates to the liberation from external

dependence (from another State).

The principle of “internal” self-determination however, rests ultimately upon the doctrine of liberal democracy, and is therefore anti-imperialist in intent. The “internal” right to self-determination, postulates the right of a people organised in an established territory to determine its collective political, social, economic and cultural destiny. The international community is witnessing the right to self-determination at last becoming, in theory and increasingly in practice, one of universal application, as it merges with newer aspects of the “democratic entitlement”. To date, “internal” self-determination as a legal concept means that full guarantees are provided for a democratic process in which every citizen can participate under conditions of full equality. The centrepiece of “internal” self-determination is the accountability of governments before the people, according to the age-old maxim: Government for and by the people.

Moreover, it is no longer arguable that State governments can label a group’s claim to the right to self-determination an “internal” affair, based upon the assumption that as a “sovereign” State it can determine its domaine reserve, thereby ruling out the possibility of international mediation. Indeed, the international community can exert pressure against States that oppress their own peoples by denials of the right to self-determination.

Whilst the term “sovereignty” continues to be used in international legal practice, its referent in modern international law is quite different. International law still protects sovereignty, but it is the sovereignty of the people: popular sovereignty, rather than the sovereign’s sovereignty. The word “sovereignty” can no longer be used to shield the actual suppression of popular sovereignty from external rebuke and remedy.

Whilst the principle of self-determination has been subject to the process of “actualisation” in recent years, synthesising it with the human rights norms and the right to democracy, the nature of peace and of war, have also in an essential way been redefined, at least for Westerners, by the conflicts in the past year. The bloody intra-ethnic fighting in the former Yugoslavia, has brought to a definitive end a long period in which national liberation was widely regarded as one of the highest values, justifying violence and providing a rationale for war. Today, the national fight is more often than not, against one’s own neighbour rather than an imperial oppressor, and it is more generally regarded as senseless and destructive. The Tamil people are afraid that intra-State ethnic conflicts such as their own, are increasingly triggering, not concern and help, but abandonment by the international community.

The Tamil people welcomed the drafting of “An Agenda for Peace”, in June, 1992, by the Secretary General of the UN, which stressed the central role that ought to be played by the UN, in preventative diplomacy, peace-making, peace-keeping and post-conflict peace building. The UN Secretary General clearly recognised the necessity of balancing good internal governance, - whereby the legitimate rights of the majority population should be exercised in the context of effective participation by members of minorities in the larger society. The Tamil people have also welcomed the UN’s increasing involvement in the monitoring of elections in independent Member States. The UN Secretary General, in his final report to ONUVEH,- the mission established on October, 10, 1990, to oversee Haitian elections, - warned for the additional need for a longer-term international effort to create the grass-roots elements of democratic political institutions and processes in nations without that tradition.

There is a clearly stated duty on all UN member states to promote the realisation of self-determination, in conformity with the principles and purposes of the UN Charter. It is apparent that failure to do so, often results in violent ethnic conflict, which in turn can result in human rights abuse and threats to international peace and security. The end of the Cold War has brought about a new era of international relations and with it a new beginning in the work of the UN for peace. Clearly, there is growing opinion that the international community should pay less heed to the traditional principles of sovereignty, territorial integrity and non-intervention and more to the violation of human rights, and the prevention, management and resolution of protracted and violent ethnic conflicts, in particular, to those which are the result of denials of claims to the right to self-determination.

However, nowhere is there a procedure of arbitration, no definition of terms, no UN body which will entertain the complaints about self-determination as such. It continues to be a right which creates expectation without fulfilment. Thousands of people across the world continue to die for this right, which is known to exist, but is nowhere defined. Whilst the UN continues to fail to provide an alternative and effective mechanism, ethnic groups who are denied their claims to self-determination, will continue to have no prospect of achieving their aims by normal political means. Such ethnic conflicts will typically result in the abuse of human rights, armed conflict and civil war.

It is because the UN Human Rights Commission continues to function as one of the major lobbies for the international recognition of a group's claim to the right to self-determination, that the Tamil people's claim to the right to self-determination, is brought to the fore at this, the fiftieth session of the UN Human Rights Commission.

In their 1976 Resolution, the Tamil United Liberation Front (TULF), first advocated the "restoration and reconstruction" of the State of Eelam, based on the right of the Tamil-speaking people to self-determination. The resolution, declaring that on the eve of Sri Lanka's independence in 1947, the power was transferred to the Sinhalese nation over the entire country on the basis of a numerical majority, thereby reducing the Tamil nation to the position of a subject people, was adopted by the Tamil people. Since independence, the Sinhalese-led governments have encouraged and fostered the aggressive nationalism of the Sinhalese people and have used their political power to the detriment of the Tamil people by, inter alia: depriving one half of the Tamil people of their citizenship and franchise rights, thereby reducing Tamil representation in Parliament; making serious inroads into the territories of the majority Tamil-speaking people by a system of planned and State-aided Sinhalese colonisation, resulting in making the Tamil people a minority in their traditional Tamil-speaking "homeland"; making Sinhala the only official language throughout Sri Lanka, thereby reducing Tamil to a place of secondary importance and denying to Tamils equality of opportunity in the spheres of employment and education; and giving the foremost place to Buddhism under the Republican Constitution, thereby reducing Hinduism, Christianity and Islam to a second class status.

Whereas all attempts by the Tamil people to win their rights by co-operation with the government, by parliamentary and extra-parliamentary agitations, by entering into pacts and understandings with various successive governments, have proved to be futile, the Tamil people have taken up the armed struggle, as the only recourse left to win the freedom of the rights of the Tamil people on the basis of the right to self-determination.

In the face-of continued socially and culturally discriminating Governmental policies,

and political and economic marginalisation, the demands of the Tamil-speaking people today, have crystallised into a venerable three-pronged formula: recognition of the Sri Lankan Tamils as a nation; recognition of the right to a homeland, and recognition of the right of self-determination. The Tamil people have confirmed that they will not accept anything short of these three main preconditions. The Tamil people believe that any permanent political solution to the ethnic conflict in Sri Lanka, has to take into consideration the legitimate aspirations of the Tamil-speaking people to determine their political, economic, social and cultural destiny, in a democratic fashion.

In 1987, the UN Commission on Human Rights adopted its first resolution on Sri Lanka, following extensive testimony regarding the alleged disappearances of Tamils, by the UN Working Group on Enforced or Involuntary Disappearances. Whilst there has been no official action by the UN Human Rights Commission on Sri Lanka since its adoption of Resolution 61/1987, various non-governmental organisations (NGOs) with UN consultative status, sympathetic governments and concerned individuals, have consistently exerted pressure on the UN Human Rights Commission to take measures to resolve the ethnic conflict in Sri Lanka, by initiating steps to satisfy the aspirations of the Tamil-speaking people within the framework of human rights and the right to self-determination.

On 8 February, 1993, fifteen NGOs made a joint statement under agenda item 8, which relates to “The rights of peoples to self-determination and its application to peoples under colonial or alien domination or foreign occupation,” requesting the delegates to the forty-ninth session of the UN Commission on Human Rights to:

(a) accord open recognition to the existence of the Tamil “homeland” in the North and East of the Island; and

(b) recognise that the Tamil population in the North and East of the island constitute a “people” with the right to self-determination.

Today, one of the major sticking points in the negotiations in Sri Lanka, is the issue of the merger of the Northern and Eastern Provinces.

On the 10th June, 1993, a “unanimous” decision was made by the widely-discredited Parliamentary Select Committee (P.S.C.), recommending that a referendum be held in the Eastern Province of Sri Lanka. The Tamil people believe that the very idea of a referendum negates the concept of the Tamil “homeland” in the North and East, and the fact that the North and East have historically been predominantly Tamil-speaking regions.

At the forty-ninth session of the UN Commission on Human Rights, the Permanent Mission of Sri Lanka submitted a Situation Report, which presented the measures initiated by the Government to deal with the current human rights situation in Sri Lanka. One year later however, and it is apparent that these State mechanisms are little more than a camouflage to dupe the international community into believing that the situation in Sri Lanka is improving. The Tamil people are concerned, that the proceedings of the fiftieth session of the UN Commission on Human Rights, will once again be manipulated by the Sri Lankan Government, who anticipating the annual meeting of the Paris Aid Donors Consortium, in the Spring of 1994, is even more keen to be seen as a country conscious of its human rights record, and by Western Governments, some of whom are actively engaged in proposals with the Sri Lankan Government to repatriate rejected Tamil asylum-seekers, and who are

therefore eager to hear that Sri Lanka is now safe for potential returnees.

It is not correct to say at this stage that the Sri Lankan authorities are able and willing to provide effective protection to all the citizens. Sri Lanka continues to be ruled for the twelfth successive year, under a State of Emergency under which many of the normal safeguards concerning democratic and human rights and fundamental freedoms have remained suspended. The continued intimidation and harassment of members of the opposition political parties as well as attacks on journalists, media personnel, printers and newspaper distributors have served as major constraints on freedom of expression and opinion.

Draconian provisions of the Prevention of Terrorism Act investing the executive and security forces with extraordinary powers, including those relating to arrest and detention, also remain in force.

The Permanent Mission of Sri Lanka's Situation Report, stated that on the 11th January, 1991, the Government appointed The Independent Commission on the Involuntary Removal of Persons. Human rights agencies are convinced that the Commission is merely a cosmetic exercise and suggest that the mechanism is clearly inadequate to deal with the number of cases brought before it.

According to human rights organisations, the reduction in disappearances in Sri Lanka in 1992, is directly linked to the reduction in the intensity of militarised conflict in certain areas and not to any conscious effort on the part of the State authorities to dismantle the mechanisms that permit disappearances to occur. In the Eastern Province alone, there were over 400 disappearances in 1992 and several persons in the South also disappeared. No action has been taken regarding the 40,000 persons who have disappeared in the South and over 5,000 who have disappeared in the East.

Another of the new mechanisms which the Sri Lankan Government has established ostensibly to deal with human rights concerns in Sri Lanka, is the Human Rights Task Force (HRTF), set up in August, 1991, to monitor the observance of fundamental rights of detainees taken into custody under Emergency Regulations or the Prevention of Terrorism Act. Concerned human rights agencies however, have stated that the HRTF has been unable to compile a complete list of either the detainees or the places of detention and thus has been unable to fulfil the primary function for which it was set up. In its first report of August, 1992, the HRTF admitted to the particular practice of "mobile detention", in which detainees are continually transferred from place to place. This has enabled security forces to prevent detection of a large number of Tamils taken into custody, particularly in the North-East, despite the regional offices of the HRTF set up with the assistance of Western nations. According to the HRTF report for 1992/1993 of the reported 2,351 missing persons, HRTF has been able to trace only 114.

The report by the Canada-Asia Working Group submitted to the UN Commission on Human Rights at its forty-ninth session, states clearly the inability of the HRTF to provide effective monitoring. It states: "the efforts of the government human rights bodies have been limited in their efficacy and have failed completely to remedy the root cause of the situation which gives rise to human rights violations".

Violations of the rights of persons in detention under the Prevention of Terrorism Act (PTA) and Emergency Regulations have continued unabated since the forty-ninth session of

the UN Human Rights Commission. According to the Bar Association of Sri Lanka, 2,975 cases alleging illegal detention and torture were filed in Courts in 1992. According to NGO reports, by January 1993, there were 3,208 persons still in detention, of them 982 were in the main detention centres at Boosa, Pelawatta and Weerawila, 1,166 were in prisons in Colombo and Kalutara (most of this number are Tamils), and a further 1,060 in rehabilitation centres. This figure excludes those in police cells and army camps. In its October, 1993, statement, (ASA 37/WU/04/93; 27 October 1993) Amnesty International stated: "Since June, there have been several waves of such arrests forming part of a pattern of human rights violations directed at the Tamil community, in which thousands of people appear to have been arrested solely on the basis of their ethnic origin."

The Permanent Mission of Sri Lanka's Situation Report, also stated what measures the Sri Lankan Government have taken to deal with human rights violations by the security forces. A Special Presidential Commission was accordingly set up to investigate into the Kokkaddicholai case. Captain Kudaligama, who was responsible for the massacre of 180 Tamils at Kokkaddicholai in June, 1991, was subsequently found guilty. Human rights agencies were distressed however, when Captain Kudaligama was found guilty only of failure to control his subordinates and of the disposal of dead bodies, and was only dismissed from service. The seventeen soldiers implicated in the massacre, were acquitted. The Tamil people feel that such events encourage the security forces to further violate human rights with impunity.

In regard to the ongoing conflict in Sri Lanka, the UN Commission on Human Rights, at its forty-ninth session, urged the Sri Lankan Government "to continue to pursue a negotiated political solution with all parties, based on principles of respect for human rights and fundamental freedoms leading to a durable peace in the north and east of the country". The Commission went on further to say that despite its expression of concern, and its urging and pleadings to the Sri Lankan Government, it has failed to establish a situation in which there is "full protection of human rights", or full respect for the universally accepted rules of humanitarian law and that the government has failed to take any concrete steps "to pursue a negotiated political solution with all parties".

In response to the statement by the Chairman of the UN Commission on Human Rights, Mr Tilak Marapana, leader of the Sri Lankan delegation agreed on 11 March, 1993 that as long as the conflict continues, it would create conditions in which the risk of human rights abuses can increase. The Tamil people share Mr. Marapana's concern.

One year later however, no tangible steps have been taken by the Sri Lankan Government to solve the conflict. The new Government is continuing with its military operations in the North-East. Hundreds of civilians are being killed in airforce bombings. In the six months since the killing of President Premadasa, over 10,000 Tamils have been arrested in Colombo alone. Following the passing of the Emergency regulations under the public Security Ordinance in August, 1991, forty-eight essential items, including fuel, medicine and fertilisers continue to be banned from being transported into the North. Only a fraction of the food requirement of the population is allowed. The lack of food and medicine has caused thousands of deaths in the North-East.

Furthermore, the new Government, has maintained that there is no "ethnic" problem in the Island, only a "terrorist" problem. The Government has stressed that the conflict is an "internal terrorist" problem, thereby refusing all international mediation. The Tamil people

believe that the Government is not making any efforts to solve the problem politically and say that the Government is purposefully aborting all international efforts at mediation.

In early August, 1993, the Sri Lankan Government rejected a new peace plan presented by four Nobel laureates on behalf of the Canada-based World Council for Global Cooperation (W.C.G.C.). The peace plan called for: a ceasefire verified by the U.N.; the establishment of buffer zones; the adoption of federalism; and U.N.-observed elections in the North and Eastern Provinces. In a letter to the W.C.G.C. however, the Sri Lankan Government has stressed that the conflict is an “internal terrorist” problem and maintained that peace efforts were continuing through the P.S.C., which is now generally believed to have become defunct.

Delegates attending an international conference on “Democracy and Displacement” in Colombo, Sri Lanka, in mid-August, 1993, also urged the Government to resolve the basic problems of the ethnic conflict and seek UN mediation. The UN saga continued, when Sri Lankan diplomats panicked over a hard-hitting resolution planned to be tabled before the UN Sub-Commission on the Prevention of Discrimination and Protection of Minorities, by four Western nations calling upon the Sri Lankan Government and other parties to seek a cessation of hostilities and obtain the assistance of the UN Secretary General. After frantic diplomatic efforts the resolution was withdrawn. The Tamil people feel that such hostility on the part of the Sri Lankan Government to U.N. mediation on the basis of “sovereignty” is shortsighted, given the marked lack of internal initiatives that could work towards peace.

While the international community has increasingly put pressure on the Sri Lankan Government to curb its human rights abuses, and has begun to link Sri Lanka’s human rights standards to the receipt of development aid, the Tamil people feel that increased monitoring of the use to which the Sri Lankan Government puts imported military arms and increased monitoring of the diversion of development aid in Sri Lanka, would potentially put an end to the military impasse, restore the Tamil-speaking peoples’ hope in the international community, and demonstrate to the Sri Lankan Government that its policies are not acceptable to the international community.

Last year, Sri Lanka’s Defence levy was raised from one percent to three percent, due to heightened defence expenditure. In 1992, some Rs. 16 billion was spent on defence. The initial defence allocation for 1993 was Rs. 19.8 billion, but the Defence Ministry has now asked for an additional Rs.8 billion. At the Aid Donors Consortium on 19 June, 1993, Sri Lanka’s aid was increased by U.S.\$15 million, from the aid pledge for 1992, to Rs.40.3 billion (U.S. \$847 million). The military expenditure for 1993 represented 65% of the aid granted by the Paris Aid consortium, for 1993/94.

In the light of such “double standards, the initiative for peace must come from the international community. Despite Sri Lanka’s improved relations with the Indian Government, recent events point to the fact that the Indian government will not play a mediatory role. Therefore, help to arrange an understanding between the two warring parties will have to come from the international community.

**The Tamil people will not give up their demand for the right to self-determination. The Tamil people believe that any permanent political solution to the ethnic conflict in Sri Lanka, whether it is brought about by international mediation, or through political negotiation between the Sri Lankan Government and the Tamil parties, has to take into consideration the legitimate aspirations of the Tamil-speaking people to determine their own political, economic, social and cultural destiny.**