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HUMAN RIGHTS COUNCIL
Universal Periodic Review
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SRI LANKA

**Joint Submission of
International Educational Development, Inc.,
A non-governmental organization on the Roster and
Association of Humanitarian Lawyers¹**

SUMMARY

1. This submission focuses on compliance with treaty-based and customary humanitarian law in the course of the armed conflict in Sri Lanka between the military forces of the Liberation Tigers of Tamil Eelam (LTTE) and those of the Government of Sri Lanka, looking mainly at the period between 2006 to 4 February 2008. It focuses mainly on issues relating to the protection of the civilian population and possible application of the law of genocide.

NORMATIVE FRAMEWORK

2. Sri Lanka is a party to most major treaties relating to armed conflicts, with the exception of Protocols Additional I and II to the Geneva Conventions of 1949.² Sri Lanka is bound by the Convention for the Protection of Cultural Property (The Hague, 1954).

OVERVIEW OF WAR

3. There have been sufficient military operations to invoke humanitarian law since 1983. While there was a ceasefire agreement in force during the period under review, there continued

¹ Both International Educational Development and Association of Humanitarian Law specialize in the application of humanitarian law. Our attorneys average 25 years apiece as humanitarian law specialists, and in addition to the armed conflict in Sri Lanka, have worked on the armed conflicts in Burma, Kashmir, the Democratic Republic of the Congo, Rwanda, Iraq, Iran, Indonesia (Moluccas, Acheh), Nicaragua, El Salvador, Guatemala, Nepal, Western Sahara, and Turkey, and have visited on site published widely on these conflicts.

² In our view, much of Protocol Additional I and II are expressions of customary law. We mainly use Government of Canada, Office of the Judge Advocate General, *The Law of Armed Conflict at the Operational and Tactical Level* (1999 as updated)(Canadian Manual) as we consider this the most comprehensive and objective of manual s of this type.

to be almost daily military operations throughout the period. Both the LTTE and the government of Sri Lanka have armies, navies and air forces.

4. We consider that the armed conflict is one in the defense of the right to self determination because, as we have set out in numerous submissions to the UN human rights bodies and to national legislatures, the Tamil people (1) have a historic occupancy and pre-colonial governance of identifiable Tamil land in the North and East of the island of Ceylon; (2) have a culture, language and religion distinct from the Sinhala people, who have traditionally occupied territory in the South of the island of Ceylon; and (3) have the political will and capacity for self-governance. In addition, the Tamil people have suffered serious and continual human rights violations at the hands of successive Sinhala-dominated governments since the colonial power (UK) installed the first one in 1948. Violations have included disenfranchisement, marginalization, failing to protect Tamils from murderous Sinhala mobs,³ and discrimination in education and employment. Attempts at peaceful, political solutions to the violations failed, as did two “pacts” made by political leaders, the Senanayake-Chelvanayagam Pact and the Bandaranaike-Chelvanayagam Pact. Even if, for whatever reasons, States do not recognize the clear Tamil self-determination claim, the armed conflict far surpasses the minimum requirements for a civil war: the LTTE occupy considerable Tamil territory, have a chain of command, carry out sustained and concerted military operations, have uniforms and otherwise distinguish themselves from the civilian population, and use the instrumentalities and *matériel* of war.

5. With the onset of the war in 1983, violations directed at the Tamil people has involved thousands of disappearances; killings of civilians, including national and international aid workers; widespread and systematic torture; and large-scale arbitrary detention. As these violations targeting the Tamil people are almost all related to the armed conflict, they are violations of both humanitarian law and human rights law. Almost all of them qualify as grave breaches under Article 147 of Geneva Convention IV of 1949 and customary humanitarian law. Many of these violations have involved ordinary police or security personnel or military personnel acting as police, and have taken place in Sri Lankan government-controlled portions of the Tamil areas, or in the southern Sinhala areas. These have been the focus of investigations carried out by United Nations mandate holders largely from the perspective of human rights law.⁴

6. Less scrutinized by the international community, especially in the period under review, are the military operations and war-related government policies in respect to their conformity with humanitarian law norms and their impact on the realization of human rights in Sri Lanka. Violations of them affect both combatants and civilians as well as the provision of aid to the victims of armed conflict. As the military operations are taking place almost exclusively in the traditional Tamil areas in the North and East, almost all of these victims are also Tamil. Assessment of the situation in the period under review has been especially difficult because the

³ While most people are aware of the Sinhala mob massacre and maiming of thousands of Tamils and the ransacking and looting of Tamil properties -- the event that lead to the all-out war by the LTTE -- a 1956 anti-Tamil attack left more than 100 dead, and a 1958 one left 300-400 dead.

⁴ We note, of course, that there are human rights violations committed against Sinhala people. However, almost none of these take place in the context of the war, and as our organizations focus on the war, our observations are necessarily limited to war related violations. Further, as many, including the High Commissioner, have observed, there can be little done to address the non-war -related human rights issues until the war is over.

government of Sri Lanka has blocked most international access to the Tamil areas – denying even the High Commissioner’s request to visit the Tamil-controlled areas. The problem has drastically worsened as Sri Lanka unilaterally withdrew in January 2008 from the 2002 Cease-Fire Agreement and began more concerted military operations. While there were many military operations throughout the Cease-Fire period, the Sri Lanka Monitoring Mission (SLMM) had a team in the field to investigate alleged violations of humanitarian law. The withdrawal from the Cease-Fire Agreement forced the two remaining countries, Norway and Iceland, to leave the country, so except for the International Committee of the Red Cross (ICRC) there is no international presence in the war zone.⁵

ILLEGAL MILITARY OPERATIONS

7. Since 2006 there have been a number military operations carried out by Sri Lankan forces that are clearly in violation of humanitarian law. This submission cannot possible list all of them, but we do point out aerial bombardments by Sri Lankan armed forces against civilian targets, including a number of attacks on schools such as (1) Senocholai (14 August 2006); (2) Chundikulam Aaladitivu School (19 March 2007); (3) Alambil Roman Catholic Vidhilayam (17 July 2007); Vavuniya Katkulam Government Tamil Mixed School (13 August 2006); Vavuniya Olimadhu Governemnt Tamil Mixed School (14 August 2007). These resulted in many deaths and serious injuries to students and staff. In early January, Sri Lankan forces carried out an aerial bombardment of Uppukulam, a settlement of Tsunami survivors. There are credible reports of nearly daily aerial bombardments in the Tamil areas, including one in early February that damaged a United Nations facility in Kilinochchi. There have also been hundreds of ground attacks that have resulted in civilian deaths and injuries, which upon review of available evidence, we consider to have been either directly targeting civilians or sufficiently indiscriminate to violate humanitarian law.⁶ At present time, the reported numbers of Tamil civilians killed likely exceeds the combined numbers of LTTE and government troops killed, indicating violations of the rules relating to proportionality. There have also been a number of well-documented instances of military attacks against Tamil religious and cultural property.

BLOCKADES OR SEVERE RESTRICTIONS OF HUMANITARIAN AID AND BASIC SUBSISTENCE NEEDS

8. The first problem with basic subsistence needs of civilians in the North and East is the severe limitations on farming due to the scale and scope of the High Security Zones (HSZ) in the areas where Tamils farm. Needed agricultural supplies, such as seeds and fertilizers, cannot reach Tamil farmers. There have been severe general restrictions on post-Tsunami aid to the heavily affected Tamil areas. Further, there are also serious restrictions on coastal fishing, in violation of a basic rule of humanitarian law protecting coastal fishing. Finally, there are blockages of emergency food due to closures of highway A9 and other land routes into the Tamil areas. The

⁵ As the ICRC has a policy of confidentiality, there is no reliable non-Sri Lankan source of information about violations of humanitarian law. The International Independent Group of Eminent Persons (IIGEP), established to delay any meaningful, urgently- needed action by the Human Rights Council due to the drastic deterioration of the situation by September 2006, had an very limited mandate, which it has been unable to fulfill, and did not address the situation of the armed conflict.

⁶ See, especially, the discussion on proportionality in the Canadian Manual, 4-2, 4-3 or provisions in similar manuals.

Tamil communities had been still struggling to recover even modestly from the Tsunami when the government military forces began sustained military operations against them and further blocked food and medicine. While international pressure has resulted in some easing of the blockades from time to time, the situation remains very critical. For example, in late January 2008, the World Food Programme was unable to deliver food to more than 30,000 internally displaced persons in the Mullaitivu area. At best, the provision of adequate food and medical supplies is precarious, and there are a number of reports showing moderate to severe malnutrition in Tamil school children.

9. In our view, the Government's blockages of humanitarian relief is genocidal in nature: restricting food and medicines for the civilian population is part of the crime of extermination. (See, International Criminal Court, Rome Statute, Articles 7 (1)(b) and 7(2)(b); ICC Elements, Article 7(1)(b).⁷ A number of experts in the field join us in identifying the situation in Sri Lanka as a "Responsibility to Protect" (R2P) one. Gareth Evans, a former Foreign Minister of Australia who had been part of the International Commission on Intervention and State Sovereignty, is but one of these.

10. The slide toward genocide is also fueled by harsh anti-Tamil rhetoric by many leading politicians both in and out of public office, including especially the leaders of the extremist Buddhist Party (the JHU). This carries beyond the island, and is having a negative effect on the hundreds of thousands of Tamil refugees and exiles in the diaspora. It has been, regrettably, so effective in demonizing of the Tamil people as a whole that it has interfered with international solidarity for the Tamil victims. In fact, as the situation slides more into genocide of the Tamils, the international community appears to have grown quieter.

HIDING BEHIND THE "TERRORISM" LABEL

11. The over-all failure of the international community to assess properly this armed conflict using applicable humanitarian laws is in large part due to the improper labeling of the armed conflict as "terrorism/counter-terrorism" by the United States to forward its goal of establishing both naval and air force bases in the Tamil areas. Unfortunately, the United States has been able to persuade others to also do so – in fact, the reason that the other Nordic members of the SLMM left was because the European Union bowed to the pressure. We have thought that one of the main reasons for pressuring the EU countries in this regard was to reduce the size and membership of the SLMM so as to reduce its effectiveness. Besides having a catastrophic result for the Tamils, such an obvious mislabeling of what is clearly an armed conflict has had an even more catastrophic effect on the Geneva Conventions and all treaty-based and customary rules of

⁷ In this regard, please see our written statement A/HRC/5/NGO/12: "We urge the Special Rapporteur on the Right to Food to investigate as a matter of the highest priority the use of food as weapon of war against Tamils. In addition to the serious disruption of fishing and farming in the Tamil areas, the government continues to block the land routes into the Tamil areas, especially Route 9 to the North. International aid providers are in a constant crisis mode, as supplies run low and it becomes increasingly difficult to provide even subsistence levels. The Tamil people are near starvation; their children are stunted and mal-nourished. . . . Providing humanitarian relief is further impeded due to the startling number of humanitarian aid providers have been killed by government actors in the past two years, with the current toll at more than 60. Many other aid providers have left due to safety considerations.

war. In fact, our organizations are not certain that humanitarian law will itself survive the onslaught.

CONCLUSIONS AND RECOMMENDATIONS

12. It is clear from the reports by many UN mandate holders that the government of Sri Lanka does not fully cooperate with the UN -- the government even kept Secretary-General Kofi Annan from visiting the Tamil areas affected by the Tsunami. The government has also succeeded in delaying urgently needed UN action with fruitless ventures into special commissions or committees that in reality barely function. The UN mandate holders obviously cannot carry out a meaningful investigation into the status of human rights and humanitarian law if not able to visit the affected areas. It is also clear that the situation has reached crisis proportions and without outside efforts, the Tamil people will face ever more genocidal policies, forcing even more to flee.

13. The government of Sri Lanka has shown that it will not improve the situation of human rights and humanitarian law on its own. In this regard, the Council must be realistic as to what is possible on the island, as it seems to us that it is unreasonable to suppose that people who have been bombed, tortured, starved, raped and discriminated against for 60 years will submit meekly to perpetual Sinhala control any more than the Kosovars will bow to Serbian rule. It is our view that the failure of the Council (and the former Commission) to act forcefully in the face of overwhelming evidence of violations has been a large factor in bringing the island to this point. Action by the Council may already be too late, but if its mechanisms and others under UN authority fail to act strongly now, it is almost certainly too late for meaningful reconciliation and mutually agreed upon power sharing. Rewarding the government of Sri Lanka at this point would not only encourage genocide, but would bring perhaps fatal disrepute to the Council.

14. In our view the Council, as a minimum, should censure Sri Lanka and send a fact-finding team to Sri Lanka as soon as possible, perhaps including Special Advisors Deng (genocide) and Egeland (conflicts) and with the insistence that the team be allowed access to all areas of the island, especially the North East. The Council should insist on a permanent office of the High Commissioner, with a mandate to look into all aspects of human rights and humanitarian law on an ongoing basis. The Council should encourage Mr. Egeland to assemble his group of technical experts to evaluate the possibility to reinstate negotiations between the parties and the possible outcomes if negotiations were to be reinstated.