

Senchcholai bombing – the legal dimension

Brian Senewiratne
Brisbane, Australia

Today is the first anniversary of the outrageous bombing of Senchcholai by the Sri Lankan Air Force. There are certain specific features of this massacre which sets it apart from all the other atrocities committed by the Government of Sri Lanka (GOSL). In addition to being a humanitarian outrage, there is a legal dimension which demands international action.

1. It is one of the few acts admitted to by the GOSL. After an initial denial, the GOSL freely admitted to the bombing, and even claimed it was 'precise and well targeted'.
2. There were credible international observers on the spot who documented that the claim by the GOSL (that those bombed were 'terrorists undergoing military training') was untrue.
3. The victims were all females entering their reproductive age, which raises the question of genocide.
4. The victims were the best students from several schools in the area. They were potential leaders of society. It is the potential leaders, be they Tamil Members of Parliament or school children, who are being taken out by the Sinhala regime.
5. They were reaching a level in their education which would have enabled them to gain employment and support their family. It was not just the children who were blasted, but the entire family an extended family.
6. Humanitarian Law (The Law of Armed Conflict, *jus in bello*) was breached, indeed flouted, by the GOSL. The GOSL can, and should, be charged in an international court, and the families compensated for violating Humanitarian Law..

The bombing

This has been extensively documented by many people, myself included. Only a synopsis is needed here.

On Monday, 14 August 2006, when some 400 female students in GCE (O level) and GCE (A Level) classes from different schools in Mullaitivu and Kilinochchi had gathered in the Senchcholai orphanage for a 10-day seminar on first-aid instruction and leadership skills, the Sri Lankan Air Force dropped 16 bombs, killing some 61 children and 4 staff members, and injuring 130, some seriously.

The Sri Lankan Government claims.

The Sri Lankan military immediately denied responsibility for the crime. The Defence establishment admitted to Reuters that the Air Force had attacked "*LTTE-held territory in Mullaitivu*", but refused to give details of the targets. With mounting international concerns, Group Captain Ajantha Silva told Associated Press that the military had proof that this place was an LTTE base.

Getting entangled in a web of lies, the Defence Ministry denied that the Air Force had attacked civilian targets, *“The Sri Lankan Air Force bombed pre-identified LTTE gun positions and LTTE camps in the Mullaitivu area this morning, Monday August 14”*, adding, *“Air Force personnel confirmed that the bombings were precise and well targeted”*¹.

Confronted with incontrovertible evidence of a slaughter, a spokesman for the GOSL, Chandrapala Liyanage, told AFP, *“It is a lie to say that schoolchildren were targeted. The Air Force bombed a LTTE training centre. We don’t know if they moved child soldiers there.”*

Moving from ‘small liars’ to ‘big liars’ who can face prosecution, Keheliya Rambukwella, an Australian citizen, who is the Sri Lankan Government Defence Spokesman and a Minister in President Rajapakse’s government, stated at a press conference in Colombo (Tuesday 15 August 2006), that the ‘former’ orphanage had been used as an LTTE training camp, and that *“children trained there had been involved in recent attacks on the Sri Lankan armed forces at Muhamalai over last weekend”*.

Brigadier Athula Jayawardena, a military spokesman, told the media, *“...the camp that was hit is a jungle area with a firing range.”* He said that the military had monitored the area for years and had only attacked the site after weeks of gathering intelligence, including from spies, and analyzing the target. carried away by his enthusiasm, the Brigadier admitted that the military had been planning this attack for weeks, if not longer.

Neither the Minister nor the Brigadier thought it necessary to offer the slightest proof for their claims.

As for the daggering statements issued by both UNICEF and the Nordic Sri Lanka Monitoring Mission (SLMM), (see below), the Brigadier thought it unnecessary to address this. The Minister, however, did. He said that if the SLMM and UNICEF had any doubts, the government would take them to the area. The government did not need to take these people to the area, they had already been there, and given their verdict.

The Minister issued some worrying threats, laying the foundations for further attacks. He said, *“Once trained with arms one cannot count them as normal children. If a child comes with a gun to shoot a soldier you cannot expect them to stand there and hug him. At a time like this we cannot look at their age but instead what they are aiming to do”*.

No, the children do not need to be hugged. If they ‘come with a gun’, they should be arrested. To claim that a professional soldier is unable to arrest a schoolgirl, is unacceptable.

Even if the bombed area was a Tamil Tiger weapons training facility (which it was not), the bombing was still completely illegal since the victims were unarmed.

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¹ I guess that was true. It was very well targeted in that it killed 51 children on the spot!

International observers

UNICEF, which has an office nearby, was on the spot in minutes. The following day, UNICEF representative, Joanna van Gerten, told the Media, *“At this time, we don’t have any evidence they are LTTE cadres”*.

The Swedish Head of the SLMM, Major General Ulf Henricsson and his team arrived at 11 am, made their observations, and spoke to eye-witnesses. Major Henricksson, appearing on Sisira TV in Colombo, said, *“We couldn’t find any sign of military installations or weapons. This was not a military installation; we can see (that).”* He said he had seen the bodies of children when he visited the scene on the day of the bombing, and saw no LTTE camps in the area. In an interview given to *The Nation* on 20 August 2006, Henricsson said, *“I think we counted 12 bombs which was confirmed. They were mostly fragmentation bombs which explode in the air and spread out a lot of pellets or fragments”*

UN spokeswoman Orla Clinton told the media, *“What we know at the moment is that these seem to have been students between 16 and 18, A-level students, from the Kilinochchi and Mullaitivu areas, who were on a training course in first-aid”*.

Comments by (a few) concerned Sinhalese.

Journalist Vilani Peiris, a Sinhalese like myself, reporting from Colombo, said,

“Stripped to its bare bones, Rambukwella’s argument runs as follows: the LTTE trains child soldiers, the orphanage contained children, therefore it was a legitimate target. In other words, the entire population - children, as well as men and women - is being treated as the enemy.

It is the same logic as employed by the Israeli government to justify its war crimes in southern Lebanon. On the basis of destroying “Hezbollah infrastructure”, the military levelled villages, towns and cities, killing hundreds of civilians. After bombing the town of Qana, killing at least 28 people including children, Israeli authorities continued to maintain that the building was used by Hezbollah to fire rockets, despite all evidence to the contrary (produced) by journalists and aid workers.”

He ended his outstanding article with, *“No one in the Colombo political and media establishment has called the Mullaitivu bombing by its right name: a war crime for which those responsible in the government and the military should be charged and prosecuted”*.

A war in Sri Lanka

If the full significance of Senchcholaï is to be appreciated, it must be looked at in the context in which it has occurred.

As I have detailed in all the updated and expanded DVDs I have recorded on the Sri Lankan conflict, it is crucial to appreciate that what is going on in Sri Lanka is a War. It is a **war** of national liberation of the Tamil people in the defence of their **right of self-determination**. Let us look at the component parts of this statement.

Self-determination

Self-determination is the collective right of a people to freely determine their own political status, and to pursue economic, social and cultural development. It is a fundamental right enshrined in the UN Constitution and in all major human rights Constitutions that have followed.

To qualify for self-determination, there must be

1. A history of Independence or self-rule, in identifiable territory
2. A distinct culture
3. A will and capability to regain self-governance.

The Tamil people have all of these. They have a history of self-rule in the North in an identifiable territory, (the Jaffna Kingdom), which functioned from the 13th – 17th century, perhaps longer. They have a distinct Tamil culture. They most certainly have the will to regain self-governance, as evidenced by the 1977 General Election where there was overwhelming support from the people in the North and East, for a separate State, Tamil Eelam. There is the capability to do so, as evidenced the establishment of a *de-facto* State of Tamil Eelam comprising 4 large districts in the North – the Wannu.

In achieving self-determination, there is a well-recognised path. First, peaceful negotiations. The Tamils have a very long history of peaceful negotiations with the Sinhala political leadership over some 50 years.

If these peaceful negotiations fail, then the next step is a liberation struggle. The UN Declaration of Human Rights, signed by Sri Lanka in 1948, recognises this right. Let me quote from the Preamble:

“Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law”.

The human rights of the Tamil people of Sri Lanka have not been protected by the ‘Rule of Law’ since 1956. The ‘Law’ (Constitution) has been deliberately and systematically altered to enable discrimination against the Tamil people (the Sinhala Only Act, Standardisation of University Entrance Marks, the omission of Section 29 of the Soulbury Constitution (specifically inserted to protect minorities in the Independence Constitution under which Sri Lanka got Independence) from the 1972 Constitution, the 6th Amendment to the Constitution which violated the rights of the Tamils in the North and East to be represented in Parliament, and more.

This has resulted in tyranny and oppression of the Tamil people which, in turn, has resulted in ‘rebellion’ of the Tamils in the North and East. This ‘rebellion’ is the ‘liberation struggle’.

A ‘liberation struggle’ becomes ‘war’, when the criteria of war are met. A ‘war’ is an action carried out by military forces, utilising the methods *and material* of war, to defeat by military means, the military forces of the opponents (enemy).

This is what has been going on in Sri Lanka for more than a two decades. The conflict is between the military forces of the Sri Lankan Government and the military forces of the Liberation Tigers of Tamil Eelam (LTTE, Tamil Tigers). The methods employed are those of a war. The material used (AK47, Kfir jet bombers, multi-barrel rocket launchers, helicopter gunships), are those that are used in war. In other words, if it looks like a war, and sounds like a war, it is a war. There is no denying that this is what has been going on in Sri Lanka for more than two decades.

If 'war' is what is going on, then Humanitarian Law (also called the Laws and Customs of War, Law of Armed Conflict, or the Latin words *jus in bello*), must apply.

Humanitarian Law has two Sections

1. Governing the conduct of combatants i.e what they can and cannot do - the Hague Law, based on the Hague Convention of 1899 and 1907
2. The treatment of persons affected by the war - the Geneva Law, based on the Geneva Conventio of 1964.

A 'Declaration of War' is unnecessary for there to be a 'War'. For example, in the US-Viet Nam War, there was never a formal declaration of War, but a very real War took place.. Many countries deny a war is taking place for at least three reasons. Firstly, admission of 'War' means that Humanitarian Law applies, and that restricts what can and cannot be done. Secondly, many donor countries restrict foreign aid to parties engaged in War. Thirdly, in a war situation, damage to property is not covered by insurance.

The result is that the terms "Terrorism" and "Counter-Terrorism" are used, rather than what it should be called - "War".

If 'War' is what is going on in Sri Lanka (and it most certainly is), the bombing of schools, hospitals, refugee camps, orphanages etc is not only a violation of human rights but is, in terms of Humanitarian Law, illegal. If it is 'illegal' the responsible party can, and must, be prosecuted, as Vilani Peiris, the Sinhalese journalist, stated.

I might add that if 'war' is what is taking place, the combatants have 'combatant-status'. To label one of the 'combatants' and call them 'terrorists' is not only unproductive (since one cannot negotiate with 'terrorists'), it contravenes Humanitarian Law i.e it is illegal.

These fundamental points must be appreciated when evaluating what is going on in Sri Lanka, if rational decisions and actions are to be taken.

Senchcholai bombing

There is not the slightest doubt that the deliberate, targetted bombing (admitted to by the GOSL), of unarmed civilians in Senchcholai, documented to be unarmed by credible people from the international community (SLMM, UNICEF etc), is a war crime for which the GOSL must be prosecuted. Simply crying out that it is an outrage (which it is) is not good enough. The prosecution and conviction of the criminals responsible and the payment of compensation to the victims and their families is essential. This is the responsibility of the International community.

Genocide

Genocide is defined by the UN Convention on the Prevention and Punishment of the Crime of Genocide, as an act committed with intent to destroy, in whole or in part, a national, ethnic, racial or religious group. Genocide has nothing to do with numbers killed, it is the intention and the act(s) to achieve this intention that are important in defining Genocide.

Here is evidence. The number of Tamil Children killed *before* the recent fighting have been,

- under the age of 5 years, 365,
- 6-10 years, 494,
- 11-17 years, a staggering 4,094.

.. To these can be added those killed in Senchcholaï and in many of massacres that have occurred after President Rajapakse came into power.

Why would they want to kill children? The answer is 'Genocide'

Methods of achieving Genocide.

There are several ways to achieve genocide. One can murder them in large or small numbers, as has been occurring in the Tamil areas for two decades. One could starve them - by blocking the A9 Highway, the only land access to the Jaffna Peninsula with some 600,000 civilians, 150,000 of them children. One could block the survival-activities of the population by bombing fishing villages and boats, banning fishing, and imposing serious constraints on agriculture by declaring some of the most fertile areas of Jaffna as 'High Security Zones', blocking the supply of fertilizer and agricultural equipment and imposing endless curfews which prevent the population from leaving their homes. One could bomb and shell markets, businesses, homes and hospitals, and prevent essential medicines from reaching the people. The GOSL has done all of these (and much more) to make sure that the Tamil people in the North and East do not survive. Once the intention is there to commit genocide, the methods that can be adopted to achieve the desired goal are endless

Different types of genocide.

In addition to 'conventional Genocide', one must recognise 'Educational genocide', 'Cultural genocide', and 'Economic genocide'. These I define as *'the intention, backed by the act, of "destroying in whole or part the education, culture or economy of a national, ethnic, racial or geographic group"*. The GOSL is guilty of all of these

If the charge is Genocide in all its different forms, the bombing of Senchcholaï is powerful evidence for the prosecution. This one act has features of 'conventional' genocide, educational genocide, cultural genocide, and economic genocide (the girls were of an age capable of becoming the bread-winner of the family). It is also significant that the girls were entering the child-bearing age.

Action

If Genocide of the Tamil people is what is going on in Sri Lanka, those responsible must be charged. The post-World War2 trials have shown that it is not just the person committing the act who has to be charged. The entire 'line of command', all the way to the very top can, and should be charged. It is up to the international community to take the necessary steps to bring those responsible to justice and, what is equally important, to compensate the families who have lost so much.

It is of critical importance to appreciate that it is only by prosecuting those who are responsible for these acts that would introduce some degree of accountability to a situation where none exists. If we take no action, we become part of the problem, rather than part of the solution.

Brisbane Australia

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