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**International Educational Development**

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His Excellency Dominick Chillcot  
High Commissioner of the United Kingdom to Sri Lanka  
By email to [Colombo.General@fco.gov.uk](mailto:Colombo.General@fco.gov.uk)

Re: Speech at the Bandaranaike Centre for International Studies

Dear Mr. Ambassador:

I am an attorney specializing in humanitarian (armed conflict) law and human rights. I have been monitoring the situation in Sri Lanka on behalf of first Disabled Peoples' International and now International Educational Development/Humanitarian Law Project IED/HLP) at the United Nations human rights forums since the massacre of Tamils by Sinhala mobs in 1983. IED/HLP is pleased that the United Kingdom now seeks to enlarge its role in Sri Lanka to assist in bringing about peace in the war that has engulfed the island since that 1983 massacre.

I read with great interest the transcript of the speech you gave on 15 June 2007 at the Bandaranaike Centre for International Studies in Colombo, Sri Lanka in which you set out the United Kingdom's rationale for this new policy, what your government hopes to contribute to resolving the conflict, and a vision of a possible future of the island. I would like to offer a few comments.

*Flawed Rationale*

In your first point regarding the rationale for enhanced involvement in the peace process, you mention two points -- the numbers of Tamils seeking asylum outside of Sri Lanka and the possibilities for what we assume to be mutually beneficial trade and investment between your two countries. Frankly, we would have assumed that the number one reason to becoming involved in the conflict is to save the lives of the civilians. In fact, over 90% of civilian casualties are Tamils, and the Tamil survivors in the Tamil areas face near starvation due to the governments use of food as a weapon of war. Instead of showing sympathy for the thousands of Tamil victims and perhaps as many as 500,000 internally displaced, you play on potentially racist fears of a Europe flooded with even more Tamils.

Also omitted from the rationale is the fact that the United Kingdom, as the last colonial power in the Island, played a major role in creating a unitary State out of what had clearly been separate ones. Rather than seek the guidance of the International Court of Justice as to what you should do in the de-colonization process, as did Spain in regards to the Spanish Sahara,<sup>1</sup> your government essentially turned over the island to the Sinhala, with only some rather imprecise assurances of the rights of the Tamil people. Your

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<sup>1</sup> The Western Sahara Case, 1975 I.C.J. 12.

government should have been alerted to what was to come, as were the Tamil people and their leaders with the rising of the new flag dominated by the Sinhala lion. Your government then proceeded to sit idly by as the Sinhala leadership began more and more Draconian measures against the Tamil people and Sinhala mobs carried out massacres of the Tamil people, incited by the Sinhala leadership of the day. In my twenty-five years at the UN human rights forums, I have never seen the UK assume any leadership regarding Sri Lanka, in marked contrast to the strong and persistent and ultimately victorious effort of Portugal regarding Timor Leste.

A third important omission is the failure to mention the international law obligation of the United Kingdom to ensure respect for humanitarian law in all circumstances in conformity with Article 1 common to the Geneva Conventions. Given the grave breaches committed against Tamil civilians, clergy, and international aid workers by the armed forces of the government of Sri Lanka, I would assume that the urgent need to respect humanitarian law would be an extremely high priority.<sup>2</sup>

### *Blurred vision*

In your second point in which you envision the future of the island you seem adamant that there should be one single nation, albeit with sufficient devolution of power to accommodate the Tamil people. This position is in marked contrast to the UK's position regarding Kosovo, where the Kosovan self-determination claim is far weaker than that of the Tamils and the Kosovan people have not suffered nearly as much by the Serbs as have the Tamils by the Sinhals. Frankly, I cannot see how anyone could assume that after successive Sinhala regimes have carried out the most atrocious of atrocities against the Tamil people and for so long, that Tamil people would ever trust a Sinhala government again, especially in the face of genocidal acts and when some of the major Sinhala political parties spew anti-Tamil diatribes almost daily and openly aver that their vision of the island is a Sinhala-Buddhist State. To stress a unitary State in these circumstances is tantamount to requiring a woman to continue to live with a husband who has raped and killed her children and repeatedly beaten her senseless.

Even if outsiders insist that the Tamil and Sinhala must stay together, what the Tamils see as their minimum demands to be able to live safely are far more than the Sinhala leadership will ever concede. The recent proposals by the current government to further dissect the traditional Tamil lands should have been ample warning that it is unreasonable to assume that an agreement for a two-Nation State is possible without a sea-change in the Sinhala leadership.

Your proposals for a British peace building strategy are on better footing, especially your suggestion to engage the parties to the conflict in training in humanitarian law and to better police the conflict. However, here also, much is required. For example, the war has gotten so "confused" with "terrorism/counter-terrorism," for which your government has to take some of the blame, that few are monitoring the conflict from the perspective of the actual rules of humanitarian law.<sup>3</sup> In this regard, the new UK manual should be dusted off and placed in the center of the table.<sup>4</sup> Involving civil society in peace building is also laudable, but the few individuals and groups in the South, including friends of mine, who have tried peace marches and the like have been attacked by angry mobs.

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<sup>2</sup> Of course, one must recognize that the Liberation Tiger of Tamil Eelam (LTTE) have also violated humanitarian law, as do all warring parties, but the fact remains that Tamil civilian casualties of government military operations far outnumber civilian casualties alleged (some not proven) to have been at the hands of the LTTE.

<sup>3</sup> The most renown of the experts on terrorism has lamented the new tendency to label what are clearly wars as "terrorism" -- of course depending on who the participants are and the interests at stake. See, W. Laquer, *No End to War: Terrorism in the Twenty-First Century* (New York, 2003)

<sup>4</sup> United Kingdom, Ministry of Defense, *The Manual of the Law of Armed Conflict* (2005).

## *Armed conflict versus terrorism*

Regarding the “added value” of the British experience in Northern Ireland, you comment that one has to communicate with “terrorists,” which again blurs the distinction between armed conflict and war. A situation of armed violence may be either armed conflict or terrorism but legally cannot be both.<sup>5</sup> Armed conflict automatically invokes the Geneva Conventions. Terrorism invokes criminal law. The Liberation Tigers of Tamil Eelam are an actual combat group, fully uniformed, occupying territory, engaging in sustained and concerted military operations with an identifiable chain of command and using the methods and *materiel* of armed conflict. Whether the war is viewed as one in the defense of the right to self-determination (I think it is) or a civil war, the minimum test for a war is clearly met.<sup>6</sup> The LTTE have an army, a navy and an air force -- which they are entitled to have -- and can engage in any military operation not specifically prohibited by the laws and customs of war. In my view, the situation in Northern Ireland was not the same, and may, perhaps, be likened to terrorism and counter-terrorism. I recall that the Irish groups never occupied much (if any) territory, clearly did not engage in “normal” military operations, did not openly wear uniforms, and were essentially clandestine.

Using the “terrorism” label against the LTTE, of course, creates a huge problem if one wishes to “negotiate,” and has, of course, resulted in world-wide demonizing of the Tamil people, interference with both post-Tsunami and war related humanitarian aid to the Tamils, “criminalizing” humanitarian aid and a whole array of other problems that severely jeopardize any hope for a solution to this protracted conflict or help to its victims.

## *Strengthen United Nations mechanisms*

Your fifth point addresses human rights and the role of the international group headed by Justice Bagwati in monitoring human rights compliance. Of course, this group is essentially hand picked by the Sri Lankan authorities, and has its mandate so severely restricted that the group has publicly protested. More importantly, as most of the human rights violations occur in the context of the armed conflict, they are, of course, also war crimes. It should be apparent that this “eminent persons” group cannot substitute for full review of the armed conflict and human rights by existing UN mechanisms -- to date barely “allowed” by the Sri Lanka authorities, with visits by rapporteurs and representatives on internal displacement, torture, and food that are urgently needed hopelessly delayed. Sri Lanka authorities should not be allowed to dictate the terms of human rights and humanitarian law monitoring. Of course, the government prevents almost everyone from actually visiting the Tamil areas, and perhaps has denied you as well. It is difficult to understand how one can hope to monitor a situation that one is not able to visit.

Your last point relates to potential criticism that the UK would be viewed as “hypocritical” or “interventionist” by engaging in monitoring or in undertaking efforts to achieve peace. This, of course, belies the obligation mentioned above that all States have an affirmative duty to ensure respect for humanitarian law. The obligation to monitor compliance is universally understood to be an obligation *erga omnes*. What would be hypocritical, however, would be to unfairly apply the laws and customs of war, accusing, for example, the LTTE of “violations” that are in fact legal military operations, or unduly ignoring violations of the government forces.

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<sup>5</sup> There can, of course, be terrorism *in* armed conflict, described by the Geneva Conventions as acts whose “primary purpose . . . is to spread terror among the civilian population.” Protocol Additional I to the Geneva Convention of 12 August 1949, Article 51, which augments the statement about terrorism in Article 33 of Geneva Convention IV.

<sup>6</sup> Note the LTTE does not seek to overthrow the government of Sri Lanka, but seeks, *inter alia*, to oust the government’s armed forces from the historic Tamil territory.

I conclude with my observation that this conflict, like several others, has suffered both by the interests of third party States and long-time failure to monitor it effectively. As in all armed conflict situations, our organization encourages monitoring of this one by all actors: the UN, non-governmental organizations, the media, humanitarian aid providers, and third party States. Unfortunately, so many members of the media and aid groups have been assassinated in Sri Lanka that the main burden to act must fall on the UN and third party States.

Our organization welcomes an expanded participation by the UK in this regard, and hope the UK will use its good offices to ensure that the government of Sri Lanka allows full and proper monitoring of all areas by third party States, UN mandate holders (including the Special Advisor to the Secretary-General on the Prevention of Genocide) and other international experts on humanitarian law. We see this as a minimum first step to establish conditions for reinstating the Cease Fire Agreement and, ultimately, achieving a just peace.

Sincerely yours,

Karen Parker, JD  
Chief UN delegate, IED/HLP

Cc  
United Nations High Commissioner for Human Rights  
Special Advisor to the Secretary-General on the Prevention of Genocide