

UN PANEL REPORT

WAR CRIMES IN SRI LANKA

Ron Ridenour

FORTY-SEVEN GOVERNMENTS on the United Nations Human Rights Council (HRC) assembled for its 17th session between May 30 and June 17, 2011, to discuss and decide what to do about serious human rights violations in scores and scores of countries. Among the charges discussed or referred to was an unusually truthful report in the world of international politics.

The "Report of the Secretary-General's Panel of Experts on Accountability in Sri Lanka" was delivered to Secretary-General Ban Ki-moon on March 31 concerning: 1) alleged war crimes and crimes against humanity in the last phases of the 26-year-old civil war, September 2008 to May 19, 2009; 2) consequences for approximately 300,000 Internally Displaced Persons (IDP) and, by extension, for 2.7 million Sri Lankan Tamils, 13% of the 21 million population.

After receiving the report, which calls for investigations into these allegations, Ban Ki-moon stated that he did not have the power alone, but one of three UN bodies had to request such action, either the General Assembly or the Security Council or the Human Rights Council.

The panel consisting of chairman Marzuki Darusman (Indonesia), Steven Ratner (US), and Yasmin Sooka (South Africa) was commissioned by the Secretary General on June 22, 2010, after Sri Lanka's government had failed to rehabilitate or reconcile with the Tamils affected by the brutal war which, according to the Panel, caused up to 40,000 civilian deaths in those eight months, plus the deaths of several thousand combatants of the Liberation Tigers of Tamil Eelam (LTTE) and of government soldiers.

The Panel began work in September 2010 but had to conduct its research outside Sri Lanka as the government refused this United Nations body permission to enter its country. The Panel could interview many eye witnesses, however, who were eventually released or escaped from military camps after months of detention.

Of the dozens of recommendations proposed by the Panel, the last two concern the United Nations.

"A. The Human Rights Council should be invited to reconsider its May 2009 Special Session Resolution (A/HRC/8-11/L. 1/Rev. 2) regarding Sri Lanka, in light of this report."

The above cited resolution had been proposed by the Sri Lankan government to praise its behaviour in the war and condemn only the LTTE for war crimes and terrorism.

The Panel determined that, "the Human Rights Council may have been acting on incomplete information."

"B. The Secretary-General should conduct a comprehensive review of actions by the United Nations system during the war in Sri Lanka and the aftermath, regarding the implementation of its humanitarian and protection mandates."

The Panel criticized the UN's role in this conflict. "During the final stages of the war, the United Nations political organs and bodies failed to take actions that might have protected civilians."

The Panel recommended that the Government of Sri Lanka (GOSL) should "commence genuine investigations," and an independent international mechanism established by the UN Secretary-General should also investigate what did occur.

The Panel recommended that GOSL should also "issue a public, formal acknowledgement of its role in and responsibility for extensive civilian casualties."

In its summary, the Panel wrote:

"The Panel's determination of credible allegations reveals a very different version of the final stages of the war than that maintained to this day by the Government of Sri Lanka. The Government says it pursued a 'humanitarian rescue operation' with a policy of 'zero civilian casualties.' In stark contrast, the Panel found credible allegations, which if proven, indicate that a wide range of serious violations of international humanitarian law and international human rights law were committed both by the Government of Sri Lanka and the LTTE, some of which would *amount to war crimes and crimes against humanity* (author emphasis). Indeed, the conduct of the war represented a grave assault on the entire regime of international law designed to protect individual dignity during both war and peace.

"Especially the Panel found credible allegations associated with the final stages of the war. Between September 2008 and 19 May 2009 Sri Lanka Army advanced its military campaign into the Vanni using large-scale and widespread shelling causing large numbers of civilian deaths. This campaign constituted persecution of the population of the Vanni. Around 330,000 civilians were trapped into an ever decreasing area, fleeing the shelling but kept hostage by the LTTE. The Government sought to intimidate and silence the media and other critics of the war through a variety of threats and actions, including the use of white vans to abduct and to make people disappear.

"The Government shelled on a large scale in three consecutive No Fire Zones, where it had encouraged the civilian population to concentrate even after indicating that it would cease the use of heavy weapons. It shelled the United Nations hub, food distribution lines and near the International Committee of the Red Cross (ICRC) ships that were coming to pick up the wounded and their relatives from the beaches. It shelled in spite of its knowledge of the impact, provided by its own intelligence systems and through notification by the United Nations, the ICRC and others. Most civilian casualties in the final phases of the war were caused by Government shelling.

"The Government systematically shelled hospitals on the frontlines. All hospitals in the Vanni were hit by mortars and artillery; some of them were hit repeatedly, despite the fact that their locations were well-known to the Government. The Government also systematically deprived people in the conflict zone of humanitarian aid, in the form of food and medical supplies, particularly surgical supplies, adding to their suffering."

The Panel's full text of 214 pages lists details of possible war crimes and crimes against humanity on both contending sides in paragraphs 246-252:

- The government is accused of: murder, extermination, mutilation, arbitrary imprisonment, rape, torture, persecution founded on race, religion or politics, and disappearances.
- The LTTE is accused of: violence to life and person, torture, mutilation, forced labour and forced recruitment of children, and shooting civilians trying to flee the war zone.

The IDP Tamils were brutally confined and treated. Tamils in their traditional Northern and Eastern 'High Security Zones' are militarized, denied normal rights, intimidated and made victims of violence.

The Panel therefore recommended that GOSL end all state violence, release all displaced persons and facilitate their return to their homes or provide for resettlement. (Thousands of Tamil homes have been taken over by soldiers and other Sinhalese.) It should also repeal the Emergency Laws that deny democratic and civil rights.

The Mahinda Rajapaksa family regime continues to deny any wrong doing, contending that NO civilians were killed and were later well treated in IDP camps. It claims it only attacked the LTTE. If there were civilians killed, according to government logic, it is their own fault for being there. The Panel cites international law that "an attack remains unlawful if it is conducted simultaneously at a lawful military object and an unlawfully-targeted civilian population" (paragraph 199).

The GOSL says it has established a transparency process to address the past from the 2002 ceasefire agreement to the end of the conflict, the so-called Lessons Learnt and Reconciliation Commission (LLRC). While the Panel views this as a "potentially useful opportunity to begin a national dialogue," the "LLRC fails to satisfy key international standards of independence and impartiality, as it is compromised by its composition and deep-seated conflicts of interests of some of its members." The reference is to three government officials; one an Attorney-General.

The Panel also points to the history of conflict between the government and Tamils seeking full rights. For decades the Tamils used Gandhian civil disobedience, non-violent tactics before many took up arms in several groups. The Tamils have suffered half a dozen pogroms, with government backing, in which thousands were brutally murdered, including mutilation and being burned alive.

In the few instances in which Sri Lankan governments have set up commissions of inquiry to examine human rights abuses, they have "failed to produce a public report and recommendations have rarely been implemented."

The fact is, states the report (paragraph 28):

"After independence (from Great Britain in 1948), political elites tended to prioritize short-term political gains, appealing to communal and ethnic sentiments, over long-term policies, which could

have built an inclusive state that adequately represented the multicultural nature of the citizenry. Because of these dynamics and divisions, the formation of a unifying national identity has been greatly hampered. Meanwhile, Sinhala-Buddhist nationalism gained traction, asserting a privileged place for the Sinhalese as protectors of Sri Lanka, as the sacred home of Buddhism. These factors resulted in devastating and enduring consequences for the nature of the state, governance and inter-ethnic relations in Sri Lanka.”

This was the challenge that the countries on the HRC faced with the Panel’s recommendations for an international investigation into substantial alleged war crimes.

High Commissioner Navi Pillay spoke on human rights issues throughout the Arab-Muslim world, on migrants, on missions in several countries, on the capture of Ratko Mladic, and on Sri Lanka.

These are her remarks on the UN Panel of Experts report on Sri Lanka and its recommendations:

“Let me also refer to the report of the Secretary-General’s Panel of Experts on accountability in Sri Lanka, which concludes that there are credible allegations of a wide range of serious violations of international law committed by both the Sri Lankan Government forces and Tamil Tigers in the final stages of the conflict. It is incumbent on the Government to investigate these allegations and I also urge it to implement the measures recommended by the Panel.

“I fully support the recommendation to establish an international mechanism to monitor national investigations and undertake its own as necessary. It would be important for the Human Rights Council to reflect on the new information contained in this important report, in light of its previous consideration of Sri Lanka and efforts to combat impunity worldwide.”

Thirty countries made comments on her report. About a dozen made reference to Sri Lanka.

FOR an independent investigation: Hungary (for Europe), France, Switzerland, Belgium and Ireland.

AGAINST: Pakistan (for itself and for the Islamic Conference), Nigeria, China, Russia, and Israel. Let Sri Lanka take care of its own internal problems was their message.

Although not a member, Sri Lanka was present to defend itself. The government spokesperson, with another doublespeak hyperbole title, “Human Rights Minister” Mahinda Samarasinghe, denounced the high omission and the UN report for not being ‘objective.’ The evidence of severe and constant human rights abuses presented in the report was not authentic, claimed the Human Rights Minister, who is also minister for plantation industries. His posture was unwavering. The government had not killed any civilians.

NEUTRAL: Norway was neutral but seemed pleased with Sri Lanka’s ‘progress.’ The US was “deeply concerned by findings” in the report, but only called upon Sri Lanka “to respond to the findings” and “to ensure the future of the people of Sri Lanka.”

Neither the Arab group nor the African group referred to the Sri Lanka matter.

INDIAN GOVERNMENT APPROACH

India, Sri Lanka's neighbour, could not muster the morality to speak on the UN report either, not at first anyway. But by the end of the 17th session, it was pressed to say something. During general debate, India's representative tried to belittle the High Commissioner's comments about the UN panel's report on Sri Lanka accountability. He tried to make an issue that she was "not independent" in her views, because she stated that the report made credible points that should be investigated. India obviously meant that the report was only for the General Secretary's information and should not be discussed at the Human Rights Council. What is the point in having a Human Rights High Commissioner if she is not to have any opinions about abuses of human rights?

Ramu Manivannan, a political professor at the University of Madras, analyzed what India is thinking regarding Sri Lanka in a recent paper, which could explain its silence.

"There is a kind of moral stagnation facing us in this country regarding India's foreign policy towards Sri Lanka," the professor began his paper, "Historical Shift: India, Sri Lanka and the Tamils." "There are major changes taking place in the geo-strategic environment of South Asia and in the politics of Indian Ocean. Both India and China are vying for a competitive edge over one another."

Manivannan points to the growing influence China has in Sri Lanka with abundant development aid, military supplies, road constructions and the "well anchored Hambantota Harbour project." And India must learn to live with this new reality of Chinese presence just across the Palk Straits.

India also shares the United States' worldview, which wishes India to be a check to the 'China factor.' India cannot thereby openly criticize Sri Lanka, or help its Tamil cousins there for fear that Sri Lanka would just drop India all together and go with China lock stock and barrel. This would also obviously hurt India's economy. Why would her business classes want to miss out on lucrative post-war reconstruction projects in tourism, fisheries and agricultural development in the North-East of Sri Lanka?

Another factor in India's current role is the "disappearance of an influential Tamil opinion in the island politics." The Tamil people on the island are decimated by the conclusion of the brutal war and the subsequent continued brutality against them and they are totally defenceless now. Even their own people in arms are para-militarists wilfully allowing themselves to be used by the genocidal government.

"The radical Sinhala elements have always dreamt of dismantling this Indian influence with the Tamils," Manivannan wrote. And so the Sri Lanka Sinhala government and its national chauvinism has completed that dream and the Rajapaksa family oligarchy is riding higher than

ever. - Although this oligarchy is considered 'democratic' because elections are held-albeit with frequent violence and fraud-there is no assurance that democracy prevails.

"Mahinda Rajapaksa had gone further to convert the Executive Presidency into a family fiefdom. There is a history before us that some of the worst dictatorial regimes in the world have been elected by the people and the appalling dictators have also come through the front gates of democracy," Manivannan writes in a telling concluding remark.

On the day that the Human Rights Council started its 17th session, the Rajapaksa family government inaugurated a three-day seminar in a luxury hotel in Colombo to celebrate "defeating terrorism" during its "humanitarian operation"-the military offensive that beat the Tigers and murdered many tens of thousands of Tamil civilians. Co-sponsoring the seminar was "its main arms supplier China," which had two weapons industry companies on hand to display their killer products.

The government invited 54 nations' military forces to learn how it emerged victorious. The government sought to mock the United Nations Human Rights laws. It said it was showcasing its victory over terrorism to much of the world's military forces two years following its victory over terrorism. But it had announced its victory on May 19, 2009. Why wait until May 30?

Human rights groups, including Tamils in the Diaspora, organised a campaign targeting government switchboards in 48 countries to convince them to boycott this bloodthirsty seminar. Within 12 hours, Canada announced it would pull out. In the end, only 41 government military forces were represented by 80 delegates instead of what Sri Lanka had earlier announced would be 300 delegates from 54 nations. Most delegates were not key officers. Only Senegal sent its army chief. The attendance was such a disappointment that the planned visit by the president was cancelled.

The United States and India appeared, however.

Sri Lanka's defence ministry wrote on its website: "Delegates from US, USSR, China, India, Pakistan and Maldives during sessions did not mince words to heap praise on the Sri Lanka Army's...successful conduct of the Humanitarian Operations that witnessed the world's biggest rescue operation, turned to be one of the widely debated topics (sic) since the Army, contrary to vicious expectations, secured this achievement with a zero casualty figure."

SRI LANKA'S KILLING FIELDS

A Channel 4 UK television documentary, "Sri Lanka's Killing Fields," was premiered in June before Human Rights Council delegates who wished to see it. A participating NGO organization, Amnesty International, stood for the viewing. The 50-minute gruesome exercise in horror was an extension of the original two footages that Channel 4 had shown some months after the war.

"It is some of the worst you can use 50 minutes for, but it is also some of the most important." This is how Channel 4 itself presented the documentary, which its director recommended its viewers not to watch.

Much of the footage came from photos taken with mobile cameras by Sinhalese soldiers and Tamil civilians. There is also satellite photography taken by governments and UN bodies. There is no doubt that the Sri Lankan Army targeted civilians and especially hospitals. The documentary shows some of this bombing and its results.

One example: After 64 bombing attacks on various hospitals, local doctors who survived the attacks begged the International Red Cross not to give the government any more information about where hospitals were. The IRC has GPS coordinators showing where hospitals are, which it gives to the government so they won't bomb there. One hour after this request, the SLA bombed more hospitals.

In contrast to the oft repeated one-liner "zero civilian casualties," the documentary shows scores of civilian cadavers piled up on the ground and on trucks. It shows prisoners stripped naked and shot in the head and bodies of dead women with signs of having been raped.

Among those watching the documentary in the HRC audience was Sri Lanka's representative. He did not wish to be interviewed, but he and other Sri Lankan government leaders continue to repeat the Big Lie: zero civilian casualties.

While the UN panel report was referred to during at least two sessions, it was never tabled for decision-making.

Too many governments on and not on the HRC are war criminals themselves and/or have been doing business as usual with war criminal governments, including Sri Lanka's. If Sri Lanka did get accused of human rights violations, in its defence it could show how all the major powers assisted it with weaponry, intelligence information, technical and military training. If pressed enough, it could show that the United States and NATO conduct war illegally against Afghanistan and Iraq, that they are responsible for killing over one million Iraqis and committing cultural genocide in Iraq very similar to Sri Lanka's destruction, in 1981, of the Tamil cultural history library.

Clearly, victims of US permanent war aggression, such as Cuba, react against its hypocritical 'support' for 'human rights,' and side with the 'victim' Sri Lanka. Not in all cases, however, is the 'victim' innocent. Imperialist governments are not the only offenders of human lives and civil rights. The Buddhist supremacist clergy and every Sinhalese-led government in Sri Lanka are also such offenders of human rights when they whip up Sinhalese nationalist chauvinism and mercilessly murder Tamils simply because they have a different language or religion.

The United Nations is comprised of 192 nations, only three in the world are not in it: Kosovo- a separatist state creation of the US-EU and led by a terrorist government; Taiwan, a separated part of China; and 771 people in the state of the Vatican City.

Members on the HRC, with China, Russia, the USA and other large countries, represent more than half the world's citizens. Third World countries comprise the majority on the HRC. They have many ethnic peoples long oppressed and brutalized by other ethnic peoples as well as by national and international governments. Remember Rwanda, and how the UN failed to intervene and prevent genocide of one million people? The UN has once again failed in a similar debacle in Sri Lanka.

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