

Text of speech by Professor Boyle at the seminar in Chennai organized by the  
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## **THE RIGHTS OF THE TAMILS LIVING ON THE ISLAND OF SRI LANKA UNDER INTERNATIONAL LAW AND PRACTICE**

### Introduction

There are two basic points I want to make: First, the Tamils living on Sri Lanka have been the victims of genocide. Second, the Tamils living on Sri Lanka have the right to self-determination under international law and practice, including the right to establish their own independent state if they so desire. And the fact that the Tamils living on Sri Lanka have been victims of genocide only strengthens and reinforces their right to self-determination, including establishing their own independent State if that is their desire.

### Genocide

Article I of the 1948 Genocide Convention requires all 140 states parties to immediately act in order “to prevent” the ongoing GOSL genocide against the Tamils. One of the most important steps the 140 contracting states parties to the Genocide Convention must take in order to fulfill their obligation under Article I is to sue Sri Lanka at the International Court of Justice in The Hague (the so-called World Court) for violating the 1948 Genocide Convention on the basis of Article IX thereto: “Disputes between the Contracting Parties relating to the interpretation, application or fulfillment of the present Convention, including those relating to the responsibility of a State for genocide or for any of the other acts enumerated in Article III, shall be submitted to the International Court of Justice at the request of any of the parties to the dispute.”

Any one or more of the 140 states parties to the Genocide Convention (1) must immediately sue Sri Lanka at the International Court of Justice in The Hague; (2) must demand an Emergency Hearing by the World Court; and (3) must request an Order indicating provisional measures of protection against Sri Lanka to cease and desist from committing all acts of genocide against the 300,000 Tamils in Vanni. Such a World Court Order is the international equivalent to a domestic temporary restraining order and permanent injunction.

Once issued by the World Court, this Order would be immediately transmitted to the United Nations Security Council for enforcement under U.N. Charter article 94(2). So far the member states of the United Nations Security Council have failed and refused to act in order to do anything to stop the GOSL’s genocide against the Tamils (1) despite the fact that the situation in Vanni constitutes a “threat to the peace” that requires Security Council action under article 39 of the United Nations Charter and (2) despite the fact that they are all obligated “to prevent” Sri Lanka’s genocide against the Tamils under article I of the Genocide Convention. This World Court Order will put the matter on the Agenda

of the Security Council and force the Security Council to take action in order “to prevent” the ongoing genocide against the Tamils by Sri Lanka.

Article II of the Genocide Convention defines the international crime of genocide in relevant part as follows:

In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group such as:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;

....

Certainly the Sinhala-Buddhist Sri Lanka and its legal predecessor Ceylon have committed genocide against the Hindu/Christian Tamils that actually started on or about 1948 and has continued apace until today and is now accelerating in Vanni in violation of Genocide Convention Articles II(a), (b), and (c).

For the past six decades, the Sinhala-Buddhist Ceylon/Sri Lanka has implemented a systematic and comprehensive military, political, and economic campaign with the intent to destroy in substantial part the different national, ethnical, racial, and religious group constituting the Hindu/Christian Tamils. This Sinhala-Buddhist Ceylon/Sri Lanka campaign has consisted of killing members of the Hindu/Christian Tamils in violation of Genocide Convention Article II(a). This Sinhala-Buddhist Ceylon/Sri Lanka campaign has also caused serious bodily and mental harm to the Hindu/Christian Tamils in violation of Genocide Convention Article II(b). This Sinhala-Buddhist Ceylon/Sri Lanka campaign has also deliberately inflicted on the Hindu/Christian Tamils conditions of life calculated to bring about their physical destruction in substantial part in violation of Article II(c) of the Genocide Convention.

Since 1983 the Sinhala-Buddhist Sri Lanka have exterminated approximately 100,000 Hindu/Christian Tamils. The Sinhala-Buddhist Sri Lanka have now added another 300,000 Hindu/Christian Tamils in Vanni to their genocidal death list. Humanity needs one state party to the Genocide Convention to fulfill its obligation under article I thereof to immediately sue Sri Lanka at the World Court in order to save the 300,000 Tamils in Vanni from further extermination. Time is of the essence!

Self-determination

This gets into the second point that I want to make concerning the Tamils as a group of

people living on the Island of Sri Lanka – their right to self-determination under international law and practice. And here I wanted to quote from an international treaty to which the government of Sri Lanka is a party, thus explicitly recognizing that the Tamils living on the Island of Sri Lanka have a right of self-determination. This is from the International Covenant on Civil and Political Rights, to which the government of Sri Lanka is a party. They are bound by their own treaty, which says quite clearly in Article One: “All peoples have the right of self-determination.”

And clearly, the Tamils living on the Island of Sri Lanka are a “people.” The Tamils on Sri Lanka have a separate language, race, ethnicity, and religions, from the GOSL. The Tamils see themselves as a separate group of “people” and they are perceived to be such by the GOSL. For that precise reason the GOSL has attempted to exterminate the Tamils and ethnically cleanse their Homeland. So no better proof is needed than that. Both the objective criteria and the subjective criteria for establishing a “people” with a right of self-determination under international law and practice have been fulfilled by the Tamils living on Sri Lanka.

Let me continue enumerating a few more of the most basic self-determination rights of the Tamils living on Sri Lanka under international law that are recognized by this International Covenant that the GOSL is a party to: “By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.” Those are rights that the Tamils living on Sri Lanka have today even as recognized by the government of Sri Lanka. Those are group rights and not just individual rights. And those are group rights that must be protected because the government of Sri Lanka has attacked the Tamils as a group, not just as individuals. So, since Tamils have been victims as a group, they must be protected as a group. And one of the most basic rights of all that the Tamils have to protect themselves is this right of self-determination including determining their political status and pursuing their own economic, social and cultural development, as well as the establishment of an independent state of their own if that is what the Tamils decide is required for them to accomplish these objectives.

Another component of this right of self-determination for the Tamils living on Sri Lanka is set forth in paragraph (2) of this Article One of the International Covenant on Civil and Political Rights, to which the government of Sri Lanka is a party. Notice here I am only using the treaties the GOSL itself is a party to, including the Genocide Convention. I am not citing any principles of international law that the GOSL has not already recognized and indeed violated grievously with respect to the Tamils living on Sri Lanka: “All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic cooperation, based upon the principle of mutual benefit, and international law. In no case may the people be deprived of its own means of subsistence.”

Yet we all know for a fact that the GOSL has done everything humanly possible to deprive the Tamil people of their own means of subsistence to a level that now constitutes genocide, in violation of that provision I quoted before from the Genocide

Convention prohibiting inflicting on a group conditions of life calculated to bring about their physical destruction in whole or in part. Notice these economic and political rights are related to each other. Both elements of the right to self-determination must protect the Tamils since they have been victims of genocide. We must protect their political rights as well as their economic rights, to freely dispose of their natural wealth and resources. The Tamil people, not the GOSL, must control their traditional Homeland in the North and the East of the Island, their farms, their mines, their plantations, their forests, their waters, their beaches etc. This is critical. Yet today we know that the GOSL is currently in the process of stealing, destroying and negating all these economic and political rights of the Tamils in their traditional Homeland in the North and the East of the Island of Sri Lanka. The GOSL is currently inflicting ethnic cleansing on the Tamils living there.

I have already established that the Tamil people living on Sri Lanka have a right of self-determination, even in accordance with the GOSL's own treaties themselves. What are some of the other political consequences of their right of self-determination? These are set forth in what is known as the Declaration on Principles of International Law Concerning Friendly Relations and Co-operation Among States in Accordance with the Charter of the United Nations (1971). The government of Sri Lanka approved this Declaration in the United Nations General Assembly -- so I am not quoting here any provision of law that the GOSL has not already approved. And from the Declaration let me state what are the political alternatives that are open to the Tamil people, and they are set forth as follows: “[1] The establishment of a sovereign and independent State, [2] the free association or integration with an independent State, or [3] the emergence into any other political status freely determined by a people constitute the modes of implementing the right of self-determination by that people.”

So again, it is not for the GOSL to determine what might be the ultimate political outcome here. It is for the Tamil people living on Sri Lanka to determine which of those three options they desire. I also want to make it clear that it is not for me to tell the Tamils on Sri Lanka which of these three options they should choose. Moreover, it is not for the Tamils of India to tell the Tamils on Sri Lanka which of these three options they should choose. This is for them to decide pursuant to their right of self-determination under international law and practice.

However I do want to note that historically the only way a people that has been subjected to genocide like the Tamils on Sri Lanka have been able to protect themselves from further extermination has been the creation of an independent state of their own. Indeed as the world saw for the last several months the government of Sri Lanka wantonly, openly, shamelessly, and gratuitously exterminated over 50,000 Tamils in Vanni; yet not one state in the entire world rose to protect them or defend them or help them as required by Article I of the 1948 Genocide Convention. Hence the need for the Tamils on Sri Lanka to have their own independent state in order to protect themselves from further annihilation by the GOSL. International law and practice establish that an independent state of their own is the only effective remedy as well as the only appropriate reparation for a people who have been the victims of genocide.

Now the Indian government has basically argued that if it were to recognize the right of the Tamils on Sri Lanka to self-determination and an independent state of their own, then the 60 million Tamils in Tamil Nadu would also assert that same right and proceed to secede from India. I submit this is a false dichotomy under international law and practice. It must not be used as an excuse for inaction by the government of India when it comes to protecting the Tamils living on Sri Lanka.

In this regard, let me return to the Declaration on Principles of International Law Concerning Friendly Relations and Cooperation Among States that was approved by both India and Sri Lanka and sets forth rules of customary international law interpreting the terms of the United Nations Charter itself as determined by the International Court of Justice in the Nicaragua case (1986). In particular let me draw to your attention the following language: “Nothing in the foregoing paragraphs shall be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the principle of equal rights and self-determination of peoples as described above and thus possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or colour.”

This paragraph of the Declaration sets forth the rules of customary international law when it comes to the right of a people to secede from another state by means of exercising their right of self-determination. As you can see from the above language secession is permitted only when a government does not conduct itself “in compliance with the principle of equal rights and self-determination of peoples” and thus does not represent “the whole people belonging to the territory without distinction as to race, creed or colour.”

From its very foundation in 1948 the government of Ceylon/Sri Lanka has never conducted itself “in compliance with the principle of equal rights and self-determination of peoples” with respect to the Tamils. Furthermore, the government of Ceylon/Sri Lanka has never represented “the whole people belonging to the territory without distinction as to race, creed or colour” with respect to the Tamils. In fact the government of Ceylon/Sri Lanka has always discriminated against and persecuted the Tamils on grounds of race, creed, colour, and language. This endemic pattern of criminal behavior by the Sinhala has now culminated in wholesale acts of genocide against the Tamils being inflicted by the government of Sri Lanka. So of course the Tamils have the right to secede from Sri Lanka under international law and practice and especially under the terms of this Declaration.

Conversely, the government of India does conduct itself “in compliance with the principle of equal rights and self-determination of peoples” with respect to the Tamils in Tamil Nadu and is thus “possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or colour.” India just had elections where the Tamils in Tamil Nadu participated on a basis of full equality with everyone else. The Tamils in India have full legal equality with all other peoples in India

and indeed have their own state here in Tamil Nadu. Therefore in my opinion, the 60 million Tamils in Tamil Nadu do not have a right of secession under international law and practice according to this Declaration, which sets forth the basic rules of customary international law on this subject.

Conversely, however, the Tamils living on Sri Lanka do have a right of secession under international law and practice including this Declaration for which both India and Sri Lanka voted. So with all due respect to the position of the Indian government, it is a false dichotomy for it to assert that recognition of the right of self-determination with an independent state of their own for the Tamils living on Sri Lanka would lead to the same for the Tamils in Tamil Nadu. There is no basis in international law for this conclusion. Indeed, basic principles of international law including this Declaration would fully support the territorial integrity of India in the event the government of India were to recognize the right of the Tamils living on the Island of Sri Lanka to self-determination including an independent state of their own.

### Conclusion

Be that as it may, even if out of an excess of caution the government of India is not prepared to go that far at this time, nevertheless at a minimum, since it is the original homeland for the Tamils, the government of India has the right, the obligation, and the standing under international law and practice to act as *parens patriae* for the Tamils living on Sri Lanka. Therefore, India must immediately sue the GOSL for genocide at the International Court of Justice in The Hague, demand an Emergency Hearing of the Court, and request that the World Court issue a Temporary Restraining Order against the GOSL to cease and desist from committing all acts of genocide against the Tamils living on Sri Lanka. The ghosts of Dachau, Auschwitz, Cambodia, Sabra and Shatilla, Srebrenica, Rwanda, Kosovo, and now Vanni demand no less!