

Diaspora referenda on Tamil Eelam in Sri Lanka

Brian Senewiratne

MA, MD, FRCP, FRACP

Brisbane, Australia

I have been invited by Tamilnet to comment on the Referenda on Tamil Eelam conducted in half a dozen major countries across the world, with almost identical results – 99.4 % of a staggering 196,483 expatriate Tamils over the age of 18, voting for the establishment of a separate State, Tamil Eelam. That a Sinhalese from the majority community should be asked to do so is entirely appropriate. What has been happening to the Tamils in the North and East of Sri Lanka is not a ‘Tamil problem’ or a ‘Sinhalese problem’, but a major human rights problem which has global dimensions and a global fall-out. It therefore demands a global response.

Human Rights violations can no longer be claimed to be an ‘internal problem’. That is why the world acted against Apartheid, an ‘internal affair’ of South Africa. There are numerous other examples. Sri Lanka cannot claim to be the exception.

There is an international fall-out, as desperate people fleeing a barbaric regime, contact ‘people-smugglers’, pay money they can ill-afford, get into unseaworthy boats, risk their lives, and flee (to Australia, for one), get incarcerated in dreadful sub-human camps in Indonesia (Australian Prime Minister’s “Indonesian Solution” to the escalating problem of Tamil asylum-seekers, or sink to the bottom of the Indian Ocean (what I have called “Australia’s ‘Pacific Solution’”), arrive in Australia (and elsewhere) to be locked up in detention centres behind razor-wire fences – a blatant contravention of the UN Refugee Convention (signed by Australia and many other countries, but not Indonesia or Malaysia). It is creating major problems in these countries, (including those that have not signed the Convention), to say nothing of the gross violation of human rights of people whose only crime was that they were born Tamil.

In a recent publication by me on the Merak boat-people, I quoted Barack Obama who in his May 2009 Cairo speech said, “*There are some who advocate democracy only when they are out of power: once in power they are ruthless in suppressing the rights of others*”. There is no better example of this than the Sri Lankan President Mahinda Rajapakse, a former human rights advocate!

To the rest of the world, I repeated what Obama reminded us recently, but what has been known for centuries:

*“There is one rule that lies at the heart of every religion – **that we do unto others as we would have them do unto us.** This truth transcends nations and peoples – a belief that isn’t black or white or brown; that is not Christian, or Muslim, or Jew. It’s a belief that pulsed in the cradle of civilization, and still beats in the heart of billions”.*

It is this simple truth that has motivated and driven me all these years, since 1948, when I was just 16 years old, and decided to get involved in all this. This is what it means to be a human being, and share the world with other human beings. If this simple concept is grasped and the sentiment expressed implemented, the world we share will be a better place for all of us to live in.

This is not an irrelevant digression which has nothing to do with the subject under discussion. On the contrary, it has very much to do with the problems facing the Tamil people in Sri Lanka.

The Tamil Diaspora Referenda

These have been held (to date) in seven major countries - Norway (10 May 2009, at the height of the Mu'l'livaaykkal massacre of Tamils in the North East by the Sri Lankan Armed Forces), France (12-13 December 2009), Canada (19 December 2009), Switzerland (23 January 2010), Germany (24 January 2010), the Netherlands (24 January 2010), and Denmark (25 February 2010). Italy, Australia and others, are to follow.

The Referendum was to ascertain the current validity of the political fundamentals set out by the Vaddukoddai Resolution of 1976 (declared by all Tamil political parties), and overwhelmingly endorsed by the people in the North and the East in the 1977 General Election in Sri Lanka.

The voters in the Referendum had to be 18 years or more, and had to meet one of three criteria:-

- a) To be born in Sri Lanka and have Tamil as the mother tongue
- b) Have a spouse who was born in Sri Lanka and has Tamil as the mother tongue
- c) Descendents of (a) and (b), born outside Sri Lanka.

The question asked was straightforward:

“I aspire for the formation of the independent sovereign state of Tamil Eelam in the North and East in the island of Sri Lanka, make a distinct nation, have a traditional homeland and have the right of self-determination”

The voters had to tick one of two boxes, “Yes” or “No”.

The Referenda were organized by various expatriate Tamil groups but conducted/officiated by completely independent organizations. I have checked out all of them, and can find no evidence of bias or pressure having been exerted on the voters.

The Results

The results were astounding (see table). Overall, 196,483 voters, a staggering 195,308 (99.4%) voted “Yes”, and 561 (0.28%) voted “No”.

I have never seen such a result in any poll on any subject anywhere in the world. To say that the overwhelming number of expatriate Tamils want a separate State, Tamil Eelam, would be a gross understatement. Despite my involvement in this over many years, I was taken aback by the result.

Country	Yes		No		Rejected Votes		Total Polled	Eligible Voters (approx)
	Votes	%	Votes	%	Votes	%		
Norway	5,574	99.11%	50	0.89%	9	0.16%	5,633	8,500
France	30,936	99.86%	43	0.14%	169	0.54%	31,148	35,000
Canada	48,481	99.82%	85	0.18%	17	.03%	48,583	100,000
Switzerland	16,357	99.80%	32	0.20%	52	0.32%	16,441	25,000
Germany	22,904	99.41%	136	0.59%	49	0.21%	23,089	25,000
Netherlands	2,728	99.67%	9	0.33%	13	0.47%	2,750	4,000
UK	64,256	99.33%	185	0.29%	251	0.34%	64,692	
Denmark	4,072	98.20%	21	0.50%	54	1.30%	4,147	6,000
Total	195,308	99.40%	561	0.28%	614	0.31%	196,483	

My reaction

My reaction as a Sinhalese is unimportant. At the risk of being accused of conceit, I'd say ***"I told you so"*** - not yesterday, but many moons ago, 1945 to be precise, when, as a 13 year old schoolboy I first visited Jaffna with my (Sinhalese) parents.

My visit to Jaffna

I had never been to the Tamil areas. We entered the Northern Province, crossed 'Elephant Pass', and entered the Jaffna Peninsula. Over the next week, we toured the Peninsula.

Jaffna is not exactly a backwater. It is the cultural capital of the Tamils. The Jaffna Peninsula has produced more engineers, accountants, doctors, scientists, industrialists, teachers, lawyers, and others of their ilk, than any other area of comparable size anywhere in the world.

We then went to Jaffna town. We were now in the 'cultural capital' of the Tamils, with one of the best libraries in Asia (which fortunately I visited before it was burnt by Sinhalese hoodlums, sent by the then President (J.R.Jayawardene), and supervised by three of his Ministers). Here we were in the 'citadel of learning', where the people had given education such a high priority.

I am not going to give you a ball by ball commentary of this trip for lack of space. Suffice to say that was staggered by the gross developmental neglect of the area, when compared to Colombo and the surrounding area in the Sinhalese South. I told my parents:

"Until the Tamil areas are separated from the control in Colombo, these areas will never develop".

On the way back home, I repeated it for the tenth time. Questioned by my astounded parents, I said that what we had seen over the past week were the visible results of the Colebrooke-Cameron 'Reforms' of 1833, which I had just learnt in my history class.

I expanded on these so-called 'Reforms', introduced by the British, for their administrative convenience, which had resulted in a serious and disastrous developmental neglect of the periphery, and which had done more damage to the country than anything else the Colonial British did.

The rest of the trip back home was in silence. I was grappling with the problem of how on earth this well-entrenched Colonial construct could be reversed. My parents (presumably) were worrying about the 'crazy' idea in the head of their son and heir.

Some three decades later, then as a senior don in the Peradeniya (Kandy) Medical school, I went back to Jaffna to do a research project and I asked one of my assistants, a Tamil, what was most striking about Jaffna. With no response, I said that *to me*, it was the serious developmental neglect of the area, for which the British capitalists, and the Ceylonese capitalists to whom they had handed over the country, were responsible.

The Jaffna Peninsula is not just a tongue of land connected to the mainland by a narrow causeway used by elephants from the mainland to eat the luscious palmyra fruit (hence "Elephant Pass"), but a critically important area where the people had put education as a top priority, and whose (human) products should have been given the place they deserved, in the evolution of an Independent Ceylon, instead of being driven away from the country. Ceylon's loss was the gain of so many countries across the world. I know of no other country in the world that has lost so much talent and trainable manpower.

What I saw in Jaffna in the 1940s compared to what I saw in Colombo when I was growing up, has been recorded by me in a series of DVDs that I have released in the past two years. That is what the Colebrooke-Cameron 'Reforms' did to Ceylon in 1833.

I believed then (1945), even more so now, that until this irresponsible and disastrous British Colonial construct is dismantled, there will be neither peace nor prosperity in Sri Lanka. The product of this dissolution can be called “Eelam”, or anything else, but administrative power to run the Tamil areas, *must* be taken out of Sinhalese hands.

The Tamils have taken a long time to work that out. Even a Federal Tamil State was rejected by the Tamils. When proposed by S.J.V. Chelvanayagam in 1948, because of obvious discrimination against the Tamils (the disenfranchisement and decitizenisation of a million Plantation Tamils, then one seventh of the total population of Ceylon), the Tamils remained unconcerned. Chelvanayagam even lost his seat in the General Election (1952) that followed.

Then, slowly and painfully, they saw the reality of Sinhala political opportunism, discrimination against the Tamils in language, education, job opportunities, the developmental neglect of the Tamil areas taken even further, and blatant attempts to ‘Sinhalise’ the Tamil areas in the North and East, the electoral consequences being obvious.

Then followed the gross violation of human rights of the Tamils, and now their very right to exist. This constitutes Genocide of the Tamil people. I will deal with this in some detail later.

It interests me that what I, a young Sinhalese boy, on his way back from Jaffna in 1945, was grappling with some 65 years ago, has been supported by 195,308 expatriate Tamils who voted “yes” in the recent Referenda.

More importantly, some 300,000 Tamils in the North and East of Sri Lanka right now in 2010, continue to pay the price for this thoroughly irresponsible British administrative construct, and are grappling with life itself.

The reactions to the Referenda

Norway

A few days after the ballot in Norway (98.95% voted for a separate Tamil State), Erik Solheim, the Norwegian Minister, who had more than a little to do with the well-functioning *de-facto* State of Tamil Eelam (before it was smashed by the Sri Lankan ‘government’ in 2007-09), advocated a Federal solution to the crisis. The Honourable Minister is living in the past, as are some so-called ‘moderate Tamils’ in Sri Lanka and abroad. The time for Federation has long since gone.

I live in a Federation – Australia. For a Federal set-up to work, there must be some trust, even a little bit, in the ‘centre’. If the various States in Australia (New South Wales, Victoria, Queensland etc) had absolutely no confidence in the centre (Canberra), the Australian Federal set-up would collapse. For a Federal set-up to work in Sri Lanka, the Tamil (Federal) State must have some confidence in Colombo. Unless the Tamils are mad, I cannot see them having any confidence in Colombo.

Indeed, the opposite. What the Rajapakse regime has shown, and shown very clearly, is that anything built by the Tamils, will be destroyed.

If Hon Minister Solheim did not know how well the *de facto* Tamil State was functioning, all he had to do was to ask his countryman, Professor Kristian Stokke, right there in the town both of them live, Oslo. Stokke is the Professor, Sociology and Human Geography, University of Oslo. After working in the Vanni (in the Tamil North), he described what he saw in an outstanding paper:-

"Building the Tamil Eelam State: Emerging State Institutions and Forms of Governance in LTTE-controlled Areas in Sri Lanka. Stokke, K. (2006). Third World Quarterly. 27(6): 1021-1040.

That is what the Tamils, in the North and East of Sri Lanka, and outside that country, are capable of doing, and did. And what did the GoSL do? Destroy it. Why? Because it was Tamil. What hope would there be for a Federal Tamil State? Whatever is built will be destroyed, if there is any possibility, and there is every possibility, if it is a Federal set-up. However, if it is a separate state (nation), that is less likely to happen because it will be an act of war, which is likely to be frowned upon by foreign governments, unless, of course, they stand to benefit economically or geo-politically, by getting into bed with a blood-drenched regime.

UK

After the Referendum in Britain where 64,256 people (99.33%) voted for a separate Tamil state, Dr Rachel Joyce, the Conservative Parliamentary candidate for Harrow West was more realistic. Here she is:-

"It has been my long-standing view that the only true path to peace in Sri Lanka is with a political settlement with the creation of Eelam being the only solution that has a strong chance of long-term success".

Dr Joyce is not a Tamil, nor am I.

My interest in the Referendum

As I have said, the *result* is no surprise to me. My *interest* is to meet the 561 (0.28%) of Tamils who voted "No", and ask them what solution *they* had in mind. The options are limited.

1. To continue the status quo, and go on, as they have since Independence, being 2nd class citizens, now probably 3rd class citizens, to risk being arrested and detained without charge or trial, to risk the occasional (now frequent) massacre, not just in the Tamil North and East, but the Sinhala South too, to run the real risk of 'disappearing' (Sri Lanka has the 2nd highest rate of involuntary disappearances in the world (second only to Iraq), to risk mass deportation from Colombo to anywhere (as happened on 7 June 2007, on the orders of Gotabhaya Rajapakse, an American citizen, who seems to be running Sri Lanka), and not to open one's mouth except to eat.

Let me remind those who prefer not to remember, that on 7 June 2007, 375 Tamil civilians, living in Colombo (Pettah, Maradana, Kotahena and Wellawatte), were rounded up by the Police, loaded into busses, taken to the North and East, and dumped there. The 'Government', which is another word for the President's brother, Gotabhaya Rajapakse, stated that they were Tamils "*who had no business to be there*".

I challenge this assertion by a former member of the Armed Forces, and now a US citizen, who patriotically left his country for greener pastures, and whose knowledge of Sri Lanka, and of International Law and Sri Lanka's own Laws and Constitution, is pathetic. The Tamils had every right to be there, and their deportation was in open breach of the Constitution of Sri Lanka. If anyone has "*no business to be there*", it is this US citizen, not the Tamils.

Sri Lanka's Defence spokesman, Keheliya Rambukwella, who does not recognize the need for truth, said that there had been no forced evictions, and that all who had left Colombo had done so *voluntarily* – the Government had only provided transport *free*!

Gotabhaya Rajapakse, Defence Secretary, who issued the order, had a different 'explanation'. He claimed that the Tamils were a 'security threat' and since he could not lock them all up, he was removing them. That many of those deported to the North and East did not even come from that area, seems to have been of no importance.

The Sri Lankan Supreme Court brought this completely illegal act to a halt by issuing a 'stay' order in response to a fundamental rights case filed in Colombo.

2. The Tamils could, of course, throw it all in and 'become' Sinhalese. This will involve removing their 'pottu', abandoning Tamil and learning Sinhalese, becoming Buddhists (because it is a Sinhala-Buddhist country), flying the Lion flag, and, of course, adopting an anti-Tamil stance to prove they are *real* patriotic Sinhalese.

3. To crawl under the table and pick up what their Sinhala masters at the table will toss at them. It will not be much, since they (the Tamils) have been 'defeated' (a claim I will refute). They could, if they are lucky, be given the freedom to leave the Sinhala South and go back home (the North and East) – which is, in effect, the recognition of Tamil Eelam. I might remind those with a short memory (or ignorance), that during the July 1983 mass slaughter of Tamils in Colombo and the Sinhalese South, the Government decided to evacuate hundreds of Tamils to the North, It was a tacit admission that the only safe place for Tamils was in their homeland.

Even that is no longer so since there are now moves afoot, very much so, to relocate thousands of Sinhalese (ex-Armed Forces, at that), and establish them in the Tamil areas, and have two massive military bases in the North (staffed by Sinhalese military), just to keep an eye on the Tamils and see that they 'behave themselves'.

It will also be useful to have Tamils around for whatever 'purpose' the Armed Forces decide, whether it is legal or not, whether it is a violation of their fundamental human rights, or not. I do not need to spell this out.

3. Hope to get a Federal State from the generosity of the ruling Sinhalese, be they the Rajapakses, or Fonseka (if he is not executed by the 'Court martial' (a possibility if he is tried for 'treason')). As for the gutless UNP from the other side of the Sinhala political divide (if there is another side any longer), it could not even field a Presidential candidate but had to hang on to the uniform of a dreadful man who has been responsible for crimes against humanity, and even Genocide, of the Tamil people.

If those who suggest such 'solutions' think that the Sinhalese hoodlums in yellow robes (my mother was a Buddhist, and I went to Temple with her), think that these violent followers of one of the greatest teachers of peace and non-violence the world has ever known, Gautama Buddha, will permit, or even consider, a Federal State, they are not living in the real world. Just to remind you – my uncle, Prime Minister S.W.R.D. Bandaranaike was not assassinated by a Tamil Tiger, but by a Sinhalese Buddhist monk, sent by another, whose mistress was Bandaranaike's Health Minister. And what was Solomon West Ridgeway (so named after a British Governor by his servile father) Dias Bandaranaike's crime? That he even considered allowing the Tamils to use their language in the (Tamil) North and East.

So, a Federal solution exists only in the minds of the ignorant, such as some of those who voted "No" in the Referendum, some so-called Tamil 'moderates', and others such as Erik Solheim and many foreigners, who have no idea of Sri Lanka's disastrous political record.

That is why I have, for the past several decades, said that a Separate Tamil State is the *only* answer, and that is why I would like to meet the dissenters. Incidentally, I would add a minor correction to the outstanding comment of Dr Rachel Joyce after the Referendum in Britain, which I have quoted. She said that the establishment of a separate Tamil state "*has a strong chance of long-term success*". I'd correct that to "*is the ONLY chance of long-term success*".

The ray of hope – Tamil youths

The British Referendum, unsupported by the Tamil visual media establishment in the UK, relied on the youth.

"...the efforts of Tamil youths of the second generation diaspora, led by the Tamil Youth Organisation (TYO), played a major role in informing and mobilizing the masses through social media networking, and Tamil grass-roots throughout the UK rendered extensive support and infrastructure".

My reaction was "*Yes, I thought so, from my own experience in Australia*".

Some months ago, I had a call from Sydney. "*We are a group of Tamil youths. We have no idea of the Sri Lankan ethnic problem or the history. Do you think you can come here and take us through the problem? There will be about 50. Is that enough?*"

I said that I could not care less whether there were 50 or 5. I would come. In the event, some 300 turned up.

I was scheduled to speak for an hour, but when I tried to stop, there were howls of protest, so I went on for another hour. Then there was an hour of questions. The room had to be vacated. So the meeting ended, and I dragged myself to the car, only to find some 50 youths round the car, "*We have a few more questions. Do you think you can answer them?*"

THAT is enthusiasm, the same enthusiasm that resulted in 64,692 Tamils, who braved the dreadful weather in the UK at this time of the year (which I am more than familiar

with), turning up to vote. *That* is what I have decided to do for the time that I have left on this planet (I am 78) – to educate, motivate and inspire the youth.

Indeed, the Vaddukottai Resolution, about which this Referendum is all about, specifically addressed the youth in its closing paragraph:

“And this Convention calls upon the Tamil nation in general and the Tamil youth in particular, to come forward to throw themselves fully into the sacred fight for freedom and to flinch not till the goal of a sovereign state of TAMIL EELAM is reached”.

(Adopted at the 1st National Convention of the Tamil United Liberation Front, held at Pannakam (Vaddukoddai Constituency) on May 15 1976.)

President Obama got it right. Here is what he said in Ghana on July 11 2009:

“It will be the young people brimming with talent and energy and hope, who can claim the future that so many in previous generations never realized”. He went on:-

“And here is what you must know: The world will be what you make of it. You have the power to hold your leaders accountable, and to build institutions that serve the people. You can serve in your communities, and harness your energy and education to create new wealth and build new connections to the world. You can conquer disease, and end conflicts, and make change from the bottom up. You can do that. Yes you can, because in this moment, history is on the move.”

It is a message that must be conveyed, not just to expatriate Tamil youths, such as those who made such a major contribution to the UK Referendum, but to youths across the world, including and especially, those in Sri Lanka, in particular, the *Sinhalese* youths, before they are sucked into the whirlpool of Sinhala-Buddhist ethno-religious chauvinism, which, I am afraid, is already happening. It will be the end of Sri Lanka, if out of them another Gotabhaya Rajapakse or Sarath Fonseka emerges. This might well happen unless we act.

Some problems in the Referendum

Having worked with expatriate Tamils for some three decades, in fact longer, I did not, for a moment, believe that the Referendum, or even the *idea* of holding one, would go unchallenged. Their bourgeois capitalist interests simply would not permit it. I was not disappointed or surprised when I heard of the opposition. It was as I had expected.

In Canada, I was told that leading Tamil media carried out a vicious campaign against the Referendum. Their claim was that the information (presumably of a massive ‘yes’ vote) would reach the Sri Lankan Government and jeopardise any travel prospects of the voters to Sri Lanka.

What a calamity that would be. They would not be able to get back there to see how one’s investments are going, or sun themselves on the blood-stained beaches, stained with the blood of thousands of innocent Tamil men, women and children, to say nothing of some 20,000 Sinhalese youths slaughtered by the government in 1972 and again in 1988.

They would not be able to live the high-life in the 5-star hotels in Colombo, to hell with what is going on in the concentration camps in the North – which, may I remind you, still have nearly 100,000 Tamil men, women and children, held without charge or trial in contravention of several International Conventions signed by Sri Lanka, and Sri Lanka's own Constitution and Laws. The latter was clearly spelt out by the retiring Chief Justice Sanath Silva – a Sinhalese, who actually took the time and effort to visit the camps, and then committed absolute treason by publicly condemning what the Government was doing and pointing out that it was illegal. What he said, is in one of my DVDs.

Continuing with the Referendum in Canada (since I know that place so well – having just been nominated for the 2008 Award by the *Canadians for Genocide Education* and invited to deliver my acceptance speech, which I did, on *Genocide of the Tamil people of Sri Lanka. Its Causes and Solutions*, I was interested in the stance adopted by the Canadian Tamil Congress (CTC) – a group I have worked with for years.

The CTC, is the biggest establishment of Sri Lankan Tamils in Canada. As such, I would have expected them to be at the forefront of the Referendum. I gather this was not so. The report from those who conducted the Referendum stated that they (the CTC) “*sounded discouragement on the Referendum when it said that they will “watch it with ‘interest’”*”. I am not in Canada, and have no way of checking the veracity, the internal politics, or the reasoning behind this, but if true, I find it deeply disturbing, but not entirely unexpected.

Canada is not alone in this non-cooperation of the Tamil media. There was the same problem in the UK. A single sentence said it all:

“In the absence of adequate enthusiasm in the Tamil visual media establishments operating in the UK.....”

There we go again. The same problem, just a different location.

A secret meeting in Vienna

About the same time as the Canadian Referendum, there was a secret meeting in Vienna attended by sections of the Sri Lankan Tamil elite (many of whom I have met). Many of them are people who have no interest in what their own people in Sri Lanka think, feel or undergo, and most certainly have no idea of Tamil politics back home. Perhaps they prefer not to know. They discussed “Internal Self-determination, the Thimpu Principles” etc. The impression I get is that this charade is merely to accommodate the agenda of the (capitalist) powers, to hell with the reality of their fellow Tamils living under a dreadful, murderous, tyrannical regime, a fascist dictatorship – or even blacker than that – a totalitarian State.

I would advise those who have organized these Referenda, to retain their cool, and not be swayed, discouraged or threatened by these ‘spoilers’.

Some in Canada (and perhaps elsewhere), feel that these Referenda will offend the Sri Lankan Government. If they do, it is a huge achievement. Lord Reith, the first Director General of the BBC, and in whose honour the annual BBC Reith Lectures take place, said, “*There are some whom it is our duty to offend*”. “Some” are the likes of the dreadful

people running Sri Lanka, and the even more dreadful bunch who support this evil regime for their own geo-political/economic gain.

The other problems

Tamilnet wanted me to deal with some other problems, but this article is already getting too unwieldy, so I will do so in an insultingly brief way (insulting – because the problems raised are very important). Perhaps, I can publish them in a separate document, even as a booklet.

The legality of the unitary Sri Lankan Constitution of 1972 and also the previous ones.

It is not possible to discuss the legality/illegality of the 1972 Constitution without some background information of at least the Constitution that preceded it (and which it illegally replaced). This is the Independence (Soulbury) Constitution (1948), which was the basis on which Ceylon was given its Independence by Britain.

The Soulbury Constitution (1948)

There were some thoroughly irresponsible acts done by the British dating back to 1833, the Colebrooke-Cameron “Reforms”, followed in 1931 by the Donoughmore Constitution, which have cost the Tamils dearly. I will deal with this later when I discuss the loss of sovereignty of the Tamil people.

In the run-up to Independence, the British sent yet another, the Constitutional Commission, headed by a Conservative MP, Herwald Ramsbotham (Lord Soulbury),

“to consult with various interests, including the minority communities, concerned with the constitutional reform in Ceylon”.

They arrived on 20 September 1944 and immediately teamed up with the most scheming politician that Ceylon has ever had, D.S.Senanayake, the so-called “Father of the Nation”, whose anti-Tamil racism, especially against the Plantation Tamils, was not even thinly disguised.

The submissions to Soulbury by the Ceylon Tamils, included specific grievances of discrimination in appointments to the Public Service, settlement policies in newly opened colonisation schemes, discriminatory bias in education, medical services etc, all of them favouring the Sinhalese.

All of these were dismissed by the Commission which concluded that

“the evidence submitted to us provides no substantial indication of a general policy on the part of the Government of Ceylon of discrimination against minority communities”.

The main Tamil political party, the All Ceylon Tamil Congress (ACTC) asked for “balanced representation” or the “50-50 formula” (i.e. 50% of the seats for the Sinhalese

majority, and 50% for the ethnic minorities, including a mandatory representation of the minorities in Cabinet).

The Tamils did not ask for any form of regional autonomy (a Federal State, much less a Separate State). What they did articulate was a preference for power-sharing at the Centre as a means of safeguarding minority rights.

None of the completely reasonable Tamil requests were accepted. The Soulbury Commission took the completely nonsensical stance that “balanced representation” :

“is fatal to the emergence of that unquestioning sense of nationhood which is essential to the exercise of full self-government”.

What the Commission did instead, was to insert a “safeguard clause (Section 29(2)) which prohibited the passage of discriminatory legislation. It is important to state this in full, since it was the *only* safeguard that the Tamils (and other minorities) had from discrimination by the Sinhalese majority.

Section 29(1) Subject to the provisions of this Order, Parliament shall have power to make laws for the peace, order, and good governance of the island.

Section 29(2) No such law shall:-

- a) prohibit or restrict the free exercise of any religion; or*
- b) make persons of any community or religion liable to disabilities or restrictions in which persons of other communities or religions are not made liable to; or*
- c) confer on persons of any community or religion any privilege or advantage which is not conferred on other persons of other communities or religions; or*
- d) alter the constitution of any religious body except with the permission of the governing authority of that body.*

Section 29(3) Any law made in contravention of subsection (2)shall...be void.

Section 29(4) In the exercise of its power under this section, Parliament may amend or repeal any of the provisions of this Order or any other Order of Her Majesty in Council in its application to the island:

Provided that no Bill for the amendment or repeal of any of the provisions of this order shall be presented for the Royal Assent unless it is endorsed on it a certificate under the hand of the Speaker that the number of votes cast in favour thereof in the House of Representatives amounted to not less than two-thirds of the whole number of Members of the House (including those not present).

To put this in understandable language, the Independence Constitution could not be altered by the Ceylon Parliament without such alterations being first submitted to the British Parliament. In other words, there were significant restrictions on the legislative power of the Ceylon Parliament – it could not do as it wanted, and if it did, it was illegal,

In a famous Case *Bribery Commissioner v Ranasinghe* which was taken to the (British) Privy Council in 1964, (which I will not detail here), the Privy Council declared that Section 29(2), (a),(b),(c) and (d), which prohibit the making of any law discriminatory against any community or religion – was unalterable, entrenched, provisions in the Constitution i.e. it could not be altered.

The implication was that if Section 29(2) safeguards were unacceptable to the people of Ceylon (and those who later decided to drop this safeguard clause from the Constitution), there would have been no transfer of power from the British, and no Independence.

The 1972 Constitution of the Democratic Republic of Sri Lanka, dropped this safeguard clause. It was therefore *ultra vires* the Constitution and therefore illegal. I will deal with this later when I discuss the 1972 Constitution.

The Soulbury Constitution left enough loopholes to allow Senanayake to do as he pleased.

One was the glaring omission of who constituted a 'citizen'. This enabled Prime Minister D.S.Senanayake to decide who was, and who was not, a citizen, and enabled this dreadfully racist man to disenfranchise and decitizenise a million Plantation Tamils before the ink had dried on the Constitution.

Senenayake's anti-Tamil stance was no secret. As far back as 1935, then as the Minister of Agriculture, he drafted the Land Development Ordinance, excluding Indian Tamils from the benefits of land alienation by the government.

In 1940 he is on record as saying:-

"It is unthinkable that we should give...full rights of citizenshipto the vast majority of the Indians in Ceylon...If we do not stem the tide of the growing domination of Indians in Ceylon in our economic and social life, our extinction as a Ceylonese nation is inevitable"

Soulbury could not have been unaware of all this. His Report (on which Ceylon was granted Independence) was little more than what D.S.Senanayake and his racist Board of Ministers had drafted. The possibility that the scheming Senanayake promised Soulbury the position of Governor General of Ceylon (1949-1954), a welcome change from freezing Lancaster and London, cannot be discounted.

The State Council (Parliament) debated the new Constitution in November 1945. With Tamil support essential if Britain was to grant Independence, these are the reassuring lies D.S.Senanayake, the Ceylonese leader, gave the Tamils:-

"Do you want to be governed from London or do you want, as Ceylonese, to help to govern Ceylon?...On behalf of the Congress (the group about to take over the country) and on my own behalf, I give the minority communities the sincere assurance that no harm need you fear at our hands in a free Lanka"

As soon as he got what he wanted (Independence), this same man who gave his "sincere assurance", disenfranchised and decitizenised a million Plantation Tamils.

These are the Sinhalese 'leaders' that have plagued Sri Lanka. They have changed, for sure, going from bad, to worse, to dreadful. Are these the Sinhalese 'leaders' that those who voted "No" at the 2010 Referendum intend to negotiate with? If they are, they are in

for a shock. As has been rightly said, *those who do not learn from history are destined to repeat it.*

Independence – 1948

On 4 February 1948, at the appointed hour, the Rt Hon D.S.Senanayake, a school dropout, mounted the podium in a pin-striped suit and tail coat (as British as they come), to receive the transfer of power from the Duke of Gloucester, representing HM King George VI.

I was there, with my god-father, Sir James Obeyesekera, and only a few feet away from my father's uncle, Sir Solomon Dias Bandaranaike, two (of many) British stooges who were knighted for standing behind the thrones of a succession of British Governors, agreeing with whatever they did to the 'natives' ie the people of Ceylon).

While the crowd went hysterical with applause, I stood perfectly still, wondering about the future of the country, which had just been sold by the British, the price being that tea (plucked by Tamil slave labourers paid a pittance), continues to fill the British cup at absurdly low prices, and that Trincomalee, the much sought after naval base, remained a British 'possession'.

The transfer of power from the departing British was to the local ruling class, a tiny minority of English speaking people, whose mental make-up and way of life most closely related to the British.

As for the Tamils, they started off as equals with the Sinhalese in subordination to the British. Soon they became "junior partners" and, a decade later had been reduced to a subject people under the rule of Sinhalese masters.

Disenfranchisement of the Plantation "Indian" Tamils

I did not have to wait long for D.S.Senanayake's anti-Tamil racism to show its hand.

The Soulbury Constitution (1948) under which Ceylon got its Independence from Britain, was violated by the Sinhalese Government before the ink had dried on the meaningless scrap of paper called the "Constitution".

That very year (extending to the next), two totally illegal Acts were passed by the newly independent country. The first was the Ceylon Citizenship Act No 18 of 1948, which withdrew citizenship to all "Indian" Tamils, even those born in or were citizens of Ceylon. As far as I am aware, this is the only country in the world where Citizenship is not related to one's birth in the country, but the birth of one's ancestors (father, grandfather, and even great-grand father).

This crude legal formulation was designed to deny citizenship to the Plantation Tamils of Indian origin, not only those living, but still to be born.

One did not need to wait too long to see the *real* agenda of this outrageous decitizenisation of a million people who, by their sweat and toil in slave conditions on the tea estates, had put Ceylon on the map.

A few months later came the Ceylon (Parliamentary Elections) Amendment Act No 48 of 1949, which tied franchise to citizenship. It simply stated that:

“No person shall be qualified to have their names entered or retained in any register of electors in any year if such a person is not a citizen of Ceylon”.

These two Acts disenfranchised and decitizenised a *million* Plantation Tamils, at that time one seventh of the population, in one of the most brutal acts of political barbarism in the world. People who had a vote since 1931, lost it, and were made non-people (they ceased to exist, except that they had to continue plucking the tea leaves to enable the country to survive). The (Tamil) members of parliament elected by these people were thrown out of parliament, and the Tamils lost some 40% of their MPs.

This gross violation of human rights was done under the very nose of the British Governor General, Sir Henry Monck-Mason Moore, who was literally sitting only a few metres away in his mansion (then called ‘Queens House’, now, I think, “President’s House or Presidential Palace”). What did the gallant knight do at the flagrant violation of the Constitution under which his country gave Ceylon Independence? Nothing.

That was the time that I got stirred up, organized a protest in my school (I was 16 years old), and addressed my first public meeting – but I will leave that for another time.

The 1972 Republican Constitution

Sirima Bandaranaike’s Sri Lanka Freedom Party (SLFP) was a politically inexperienced bunch of novices. To address this, she ‘bribed’ the veteran Marxist politicians in the Lanka Sama Samaja Party(LSSP), Dr N.M.Perera, Dr Colvin.R.de Silva, and other old hands at the game, to abandon their eternal life on the Opposition benches, and join her as the United Front (UF).

The combination won a landslide victory in the 1970 General Election. Colvin R de Silva was appointed Minister of Constitutional Affairs, to do whatever manipulations (legal or illegal) that were necessary to address the ‘problem’ with the Constitution.

The ‘problem’ was that the Soulbury Constitution made it difficult, if not impossible, to discriminate against the minorities, in particular the Tamils, and any change in the Constitution (eg Section 29) had to be submitted to Britain, with unpredictable results. Such attempts could also be challenged in the Courts, both in Ceylon and in the Privy Council in Britain.

Mrs Bandaranaike’s UF government simply could not work within the existing Constitution, the laws and the power of the Courts, both in the country and in London (the Privy Council). So, as a matter of priority, appeals to the Privy Council were abolished in 1971.

The coast was (partly) clear, for any illegal activity – at least the Privy Council could not declare them null and void.

There was still the problem that Ceylon Parliament had no power to alter the Constitution, far less to replace it, and the possibility of an appeal to the local Courts (the

Supreme Court) and an adverse judgment from the local judiciary. Both problems had to be 'fixed', and if this had to be done illegally, the government could not care less.

S.W.R.D. Bandaranaike had (rightly) stressed that "*the independence of the judiciary was the last citadel of democracy*". His wife thought otherwise. To her, political power (however obtained, be it by bribery of Opposition MPs, or by weeping on election platforms – "the weeping widow") was supreme, not the Constitution or the Law.

She left the 'problem' in the hands of Dr Colvin R de Silva who came up with the 'bright' (but totally illegal) idea that the new Constitution did not have to be drawn up in Parliament, it could be done anywhere!

So it was, in a stadium, Navarangahala, some 5 km from Parliament. The MPs were invited to assemble there, and the illegal activity (the drafting of a Constitution) made respectable, by calling it a "Constituent Assembly". No one, except one man, asked Mrs Bandaranaike from where she had acquired the power to assemble such a body to draft a Constitution.

The one man was, "the Voice from Vavuniya", C. Sunderalingam, who filed a writ in the Supreme Court to prohibit the Constituent Assembly from functioning. The supine Supreme Court refused, claiming that it had no power to prevent the meeting of MPs (whatever they called themselves), until they produced an illegal result (which they did!).

Sunderalingam was prepared to appeal to the Privy Council, but the Government was one step ahead. Appeals to the Privy Council had been abolished by the 1971 Act.

There was still the possibility of an appeal to the Supreme Court, and that some 'unpatriotic' judge would declare that the new 'Constitution' was in violation of Section 29 of the existing (Soulbury) Constitution.

This was 'fixed' by Article 132 and 133 of the new 'Constitution', which required all judges to take an oath to uphold the Constitution, or lose their job.

This has not been done in any country in the world, because if there is a case that is brought up involving the Constitution, judges can decide whether it is legal or not. This was clearly not possible if the judges had taken an oath to uphold the Constitution.

There was a re-run of this in J.R. Jayawardene's 1978 Constitution, where judges had to swear, "*I will to the best of my ability uphold and defend the Constitution...*". Those who refused to do so were sacked, and/or had their homes attacked by Jayawardene's hoodlums, in a country that was changed from "The Democratic Republic of Sri Lanka", to "The Democratic *Socialist* Republic of Sri Lanka".

The coast was now clear for Mrs Bandaranaike's government to do whatever it wanted to do. It simply could not be challenged in the Sri Lanka Courts or the British Privy Council.

Section 29(2) which was the *only* safeguard clause in the Soulbury Constitution was dropped, Sinhalese was made the Official language and Buddhism given "pride of place".

With Section 29 (2) dropped, the Tamils lost what little protection they had.

The name of the country was changed (illegally – because the ‘Constitution’ itself was illegal), from “Ceylon” to the “Democratic Republic of Sri Lanka”. It was anything but ‘Democratic’. “Sri”, the Sanskrit for “Resplendent”, it certainly was not.

The makers of the new ‘Constitution’ had achieved their objectives:

1. To enable the government to do whatever they wanted to the minorities (discriminating against them in education, employment or whatever).
2. To make Sri Lanka into a Sinhala-Buddhist nation.

What of the Tamil MPs? Having had every suggestion they made to the Constituent Assembly tossed out, they withdrew. When the ‘Constitution’ (if you can call it that), was passed, there were no representatives of the Tamil people from the North and East. The ‘Constitution’ was simply thrust on them.

As soon as the so-called ‘Constitution of the Democratic Republic of Sri Lanka’ was passed on 22 May 1972, Professor S.A de Smith, a world authority on Commonwealth Constitutions, immediately condemned it as illegal.

So, from 1972 to 1977 (when J.R.Jayawardene made Sri Lanka into a Presidential dictatorship), Sri Lanka did not have a legal Constitution.

Sri Lanka’s Constitutions – some observations

Since Independence, I have ‘suffered’ three Constitutions, each trying to outdo the other in dreadfulness.

I am not a Constitutional lawyer, just a doctor of Medicine. The reason for even commenting on this is that I have had the misfortune of living through them all.

As a spectator of this comedy (the Constitutions of Ceylon and their blatant violations), I have come to some conclusions which might help the Tamils.

The Constitution is viewed by Sri Lankan politicians as a useful exhibit to be shown to the outside world as something that makes Sri Lanka a ‘Democracy’. In reality it is a play-thing for majoritarian politicians to ignore, bend, or break at will, to suit the political needs of the day. Tamils, not being ‘majoritarian politicians’, have no say. They can take it or leave it, the Government (which has been, is, and will be for ever, Sinhalese), could not care less.

As I have said, the 1972 “Republican’ Constitution of Sirima Bandaranaike and her United Front (UF), removed Section 29(2) of the Soulbury Constitution, the *only* Clause that safeguarded the minorities from discrimination by the majority. Prime Minister Sirima Bandaranaike, whom I knew (very) well, propelled from being a housewife, to the Prime Minister’s chair because a Buddhist monk decided to assassinate her husband, had limited education. Like Prime Minister D.S. Senanayake, she did not know the word, ‘Constitution’ – let alone draw up one. It was, in fact, drawn up by Dr Colvin R de Silva, I regret to say, from the Left party to which my mother’s brother belonged, but who (unlike my uncle) decided to join the capitalists (my uncle called him and his mates who did so, ‘political prostitutes’).

Then came that dreadful man, J.R.Jayawardene, Sri Lanka's first Dictator, who oversaw and 'cooperated' with the massacre of some 3,000 Tamils in July 1983. He decided that parliament was not really necessary, and decided on an Executive Presidency with sweeping powers, a post to which he promoted himself. He boasted that he could do anything, except change a man into a woman. This is the (current) 1978 Constitution of the Democratic *Socialist* Republic of Sri Lanka. It is neither Democratic, nor Socialist, but a Presidential Dictatorship.

The evidence (if this is really needed) that Sri Lanka is a Presidential Dictatorship, came just this past week.

On 16 March 2010 (just two days ago), the current Sri Lankan President, Mahinda Rajapakse, from the other side of political divide (SLFP) to Jayawardene (UNP), and who 'inherited' all the sweeping powers that Jayawardene had 'bestowed' on the Presidency, addressing an election rally in Kotte, a suburb of Colombo, said:

"Republican Constitution of 1978 brought by the then J.R.Jayawardene government places me above the Law. Accordingly judiciary cannot take action against me".

This Constitution has been Amended no less than 17 times, with more attempted amendments. The 6th Amendment (8.8.1983), made in the wake of the 1983 Tamil massacre by Jayawardene's hooligans, murderous Cabinet Ministers, and Buddhist monks, was the Prohibition Against Violation of Territorial Integrity. It means that you cannot advocate a Separate State in Sri Lanka, by acts within or outside Sri Lanka.

Just a friendly reminder to the 195,308 souls who have (so far) voted "Yes" in the Referendum, that you have violated the Sri Lankan Constitution, and can be arrested and jailed.

I have been specifically asked to deal with the legality or otherwise of the 1972 Constitution. My response is "Hang the 1972 Constitution. Let us focus on *this* 1978 Constitution, which is being blatantly violated".

What has been done to the Tamil people, citizens of that country, for the past several years, and in particular since the Rajapakses and Fonseka got into power, and decided to wipe out the Tamils, bomb hospitals, deny food and medicines, to rape, torture and kill innocent civilians, and much more, are *gross* violations of the *current* Sri Lankan Constitution.

So is the completely illegal detention of Tamil civilians in concentrations camps, and in prisons outside the normal prison system, and what goes on in the 4th floor of the so-called "Terrorism Investigation Department" of the Police (the dreaded "4th Floor" where torture takes place daily). These are violations of Sri Lanka's Laws and the Sri Lankan Constitution.

Constitutions

For those who are obsessed with Constitutions, let me point out that across the world there are some strong Constitutions, others that are not that strong but work reasonably

well, and others that are falling apart however much work goes into framing them. Sri Lanka is in this last group.

Constitutions can only achieve so much. They can specify a system of checks and balances, what you can do and should not do, and what Governments can and cannot do. Constitutions cannot do these things. That is left to the decency, integrity, sincerity and commitment of those who will wield power. If he or she is a tyrant, tyranny will be the result, Constitution or no Constitution.

Nor does the background, family upbringing or previous record, mean much. After all, J.R.Jayawardene, who allowed the Tamils in Colombo to be butchered, and did all manner of illegal things to them, was not only a lawyer but the son of a Supreme Court judge.

As I have already said, Mahinda Rajapakse was a human rights worker who has attended the UN Human Rights Council (Commission, till recently), many times. He now has enough evidence against him to be tried in the same Council on charges of Crimes against Humanity, if not Genocide.

There is nothing inherently wrong with Constitutions, even those that are collapsing. Blaming politicians for violating the Constitutions is a waste of time. They could not care less, until the next election, *unless*, and this is important, unless the citizens decide to act. It is apathy and indifference of the population that enables politicians to do what they do, and get away with it.

A final comment about democracy and governance. In a democracy, governance has to be by consent, not coercion. If it is by coercion, it is a tyranny, not a democracy, even if one sprinkles a General Election here and there. Governance with a gun is a Police State. Whether it is a Sinhalese gun or a Tamil gun, makes not the slightest difference.

Have the Tamils lost their sovereignty to a Sinhalese majoritarian State post-1948?

That is an easy one, which I can answer in a word, perhaps two – “Most certainly”.

For this, the blame has to be laid full square at the feet of the British Colonial masters, and the mediocrities they sent to sort out the mess in Ceylon, and who created a bigger mess - Colebrooke and Cameron, Donoughmore, Soulbury and a string of very mediocre people as Governors of Colonial Ceylon. They are the people who set the stage for the Sinhalese ‘leaders’ to do what they did.

To say they were incompetent is an understatement. Governor Robert Horton (1831- 37) state that only 14 of 31 (British) civil servants were competent.

Despite the possibility that this article will be unreadably long, it is important to trace the history of the country, if the problem of the loss of Tamil sovereignty is to be considered.

The British 1796-1948

Ceylon was successively colonized by the Portuguese (1505), Dutch (1656), and finally the British(1796). Dutch were invited by the Kandyan Sinhalese kings to liberate the

country from Portuguese aggression and forced conversions. However, things were no better under the Dutch. In 1766 the Dutch had forced the Kandyans to sign a treaty, which the Kandyans later considered so harsh that they immediately began searching for foreign assistance in expelling their foes.

Britain to the rescue! Britain had an interest in the excellent harbor at Trincomalee. The British interest in procuring an all-weather port was whetted when they almost lost the Indian port of Madras to the French in 1758. The Dutch refused to grant the British permission to dock ships at Trincomalee (after The Netherlands's decision to support the French in the American War of Independence), goading the British into action. After skirmishing with both the Dutch and French, the British took Trincomalee in 1796, and proceeded to expel the Dutch from the island.

In the early years of British colonization, Ceylon was not considered a great economic asset but was viewed entirely in terms of its strategic value. So, the newly captured country was handed over to the British East India Company, and the British Crown and the British Company had dual control over Ceylon. The Company retained a monopoly on the island's trade. Agents were put in charge of lucrative pearl fisheries, cotton plantations, salt, and tobacco monopolies.

The Dutch possessions in Sri Lanka were formally ceded to the British in the 1802 Treaty of Amiens (1802), when it became a British crown colony in 1802. I am not going into this Treaty which was signed to end hostilities between France and the United Kingdom in the French Revolutionary wars. (The French Republic had several 'sister republics', really client States, one of many being Holland – Batavia, hence its 'help' to Batavia in the negotiations with the British)).

Signed in the city of Amiens on 25 March 1802, by Joseph-Napoléon Bonaparte and the Marquess Cornwallis, it was a "*Definitive Treaty of Peace*", (which lasted just one year!) I am not going into the details here, but of relevance, the UK had to return most of its captured Dutch East Indies islands to the Batavian (Dutch) Republic). In return, Trinidad and Tobago (West Indies) *and Ceylon*, had to be ceded to Britain. So started nearly 150 years of British rule in Ceylon, some of its involvement beneficial to Ceylon, some of it disastrous.

Three separate Kingdoms (States)

Despite the claims of Sinhalese historians trying to conceal their anti-Tamil racism under the cloak of 'history', there is not the slightest doubt that there were three completely separate 'Kingdoms' (the notion of Statehood had not yet appeared), in Ceylon before the Westerners (Portuguese, Dutch and the British) arrived.

There was the Jaffna Kingdom (Tamil) in the North, the Kandyan Kingdom (Hill-country Sinhalese) in the centre, and the Kotte Kingdom (Low-country Sinhalese) in the South.

Despite racist claims by some Sinhalese, there is extensive documentation that the Jaffna Kingdom did exist from 1215-1619 AD until it was overpowered by the Portuguese. It was a flourishing Kingdom. Ibn Batuta, a Moroccan historian of note, during his visit to the island in 1344, observed that the Jaffna Kingdom was a major trading Kingdom with extensive overseas contacts. A pluristic socio-economy, broadly

based on agriculture, marine activities, commerce and handicraft products, was well established. (B.Pfaffenberger. *The Tamils of Sri Lanka* pages 30-31).

The existence of these separate settlements were clearly documented as early as 1799 by Sir Hugh Cleghorn, the first Colonial Secretary of Ceylon, in his famous "Cleghorn Minute":

"Two different nations, from very ancient period, have divided between them the possession of the island: the Sinhalese inhabiting the interior in the Southern and Western parts from the river Wallouve (now Walawe) to that of Chillow(now Chilaw), and the Malabars (another name for Tamils) who possess the North and Eastern Districts. These two nations differ entirely in their religions, language and manners."

Colebrooke-Cameron 'Reforms' -1833

So, when the British Colonial office sent a Royal Commission in 1829 (the Colebrooke-Cameron Commission), to assess the administration of the island, the essential background information was very much there.

Despite the crucial Minute sent to that same Colonial Office by Cleghorn, Colebrooke decided that the three separate "Kingdoms" should be abolished and power centralized in Colombo. He believed the arrant nonsense that the separate administrative systems had encouraged social and cultural divisions, and that the first step towards the creation of a "modern nation" (in reality, a capitalist nation acceptable to the British), was the administrative unification of the country. That these separate entities had existed for hundreds of years and were fully functional was of no concern to the British.

Thus, three separate states became 'one country', a British colonial construct. The Tamil nation lost its sovereignty.

It is a colonial construct that has failed, entirely due to the political opportunism and anti-Tamil racism of a succession of Sinhalese 'leaders' who have run (ruined) the country and prevented the evolution of a nation. Small wonder that a construct glued together by British colonial cement, is now falling apart, at a terrible cost, both in terms of human lives and the economy.

All that the Tamils are asking for, and what these current Referenda have endorsed overwhelmingly, is that this failed colonial construct be dismantled.

Before moving on to the next Constitution, I will deal with what the British did, not to the Tamils, but to the Kandyan Sinhalese. The reason for this is that there is almost an exact parallel between what the British government did to the Kandyan people in 1840 and what the Sinhalese government is doing to the Tamils in 2010.

As I have said, in the early years of British colonization, Ceylon was not considered a great economic asset but was viewed entirely in terms of its strategic value (as China and India do today).

It was only in the mid-1830s, that the British tried a variety of plantation crops and hit on coffee which 'took off' in the Kandyan hills. The snag was that there was no land for coffee plantations or capital. This was 'fixed' by the British, literally stealing land from the

Kandyan peasants and 'selling' the stolen land at absurdly low prices to British civilians and military officials resident in Kandy, who then provided the capital. *(Today, it is the Sinhala government giving away Tamil land to the Sinhalese military and foreign powers eg China at absurdly low prices, even free)*

In 1840 the British Government enacted the Crown *Land Encroachment Ordinance No. 12* to claim all land that had not been previously granted. *(In 2009, the GoSL's 'Special Economic Zones in the Tamil areas. If the Sinhalese are smiling, I might add that large chunks of the Sinhala South are also being sold, or just given away, particularly to China. I have the details).* The Crown Land Ordinance made it virtually impossible for a Kandyan peasant to prove that his land was his *(just as it might be impossible now, for the Tamils who have owned land in the militarized North to prove that they owned the land)*. If the Kandyan peasant could not prove ownership, the land was deemed "Crown land" and taken over. *(Even if the Tamils can prove ownership, it is still taken from them. With their possessions destroyed by the GoSL, they might not even be able to prove ownership).*

Thousands of acres of land were 'appropriated' ie stolen, from the Kandyan peasants and given to British civilians and the military resident in Kandy. The wry comment was made in the 1840s, that the recipients of this 'generosity' behaved like coffee planters than government servants. The extent of the robbery was such that coffee plantations increased from 196,000 acres in 1871 to 773,000 acres in 1878.

The understandable hostility of the Kandyan Sinhalese against the British Raj was intense (hence the Kandyan demand to the Donoughmore Commission, which is highly relevant to the Tamils of today and their dealings with the Sinhalese Raj) (see below).

The Donoughmore Constitution – 1931

The British had a chance to undo the damage done by the thoroughly irresponsible Colebrooke-Cameron 'Reforms'.

In 1927, the British sent another Commission chaired by the Earl of Donoughmore (a genial Liberal Peer, who had no particular experience in anything, and had done little other than champion women's rights to university education, and had a gourmet palate). With him were two mediocre London County Councillors. None of them had any experience with the complexities of colonial administration.

Their terms of reference were:-

"To visit Ceylon and report on the working of the existing constitution and on any difficulties in administration which may have arisen in connection with it..."

This they were certainly not competent to do. After 4 months, 34 sittings, and interviewing 140 people, they concluded that what Ceylon needed was universal franchise and the abolition of ethnic representation.

To take a step back, representation to the Legislative Council on ethnic lines had prevailed since political 'unification' in 1833 (the Colebrooke-Cameron 'Reforms'). In 1920, a measure of territorial representation was introduced. The hope was that the Legislative Council would address the diverse ethnic and community groups. The reality

was that although the ethnic entities had been brought together by the British, their separate loyalties as distinct nations prevailed and national integration had failed to take root.

By abolishing ethnic representation, the Commission removed the critical mechanism that had been built into the political system to cope with the national structure in the country.

The All Ceylon Tamil League rightly pointed out that abolition of communal representation coupled with universal franchise would mean “death to the minorities”.

The major mistake that the Commissioners, in their ignorance, made, was to assume that Ceylon was one nation. The reality was that it was one country (a geographic entity), with two nations (Sinhalese and Tamil), and five communities (Indian Tamils, Sri Lankan Muslims, Indian Muslims, Burghers and Malays).

The most accurate definition of a “nation”, comes from Joseph Stalin. In his *“Marxism and the National Question*, New York, 1942. He said:

“A nation is a historically evolved, stable community of language, territory, economic life, and psychological make-up manifested in a community of culture....”

Even those uncomfortable with Stalin, will admit that it is generally accepted that a nation has a common ethnic identity, a continuous linguistic and cultural tradition, a defined territory as a homeland, a common way of life, and a shared historical experience.

These the Sinhalese have; these the Tamils have. Therefore there are two separate vibrant nations in Sri Lanka – a Sinhalese Nation and a Tamil nation.

In most cases where two or more nations live together in a single state, the political structure is Federal, each nation having an autonomous state or regional government, with mutually-agreed degrees of centralization or devolution of power. It is this autonomy, and the inviolability of its territory, that a nation in a multi-ethnic state finds its security for the preservation of its separate identity, language and culture. It is this very basic point that the Donoughmore Commission failed to comprehend.

The most powerful case for a Federal set-up put to the Donoughmore Commission, came, not from the Tamils, but from the Kandyan Sinhalese. I refer to this because it applies in no small measure to the Tamils. Here is what the Kandyan National Assembly memorandum demanded:-

“Ours is....a claim of a nation to live its own life and realize its own destiny....We suggest the creation of a Federal State as in the United States of America....A Federal system....will enable the respective nationals of the several states to prevent further inroads into their territory and to build up their own nationality”.

(The Rights and Claims of the Kandyan People, Miller & Co, Kandy, Ceylon, 1927).

The responsibility of the British

Britain simply has to accept responsibility, at least some responsibility, for the mess in Sri Lanka, and has to **do** something about it. Getting into bed with a brutal, murderous and criminal regime, bent on committing Genocide of the Tamil people, is no way to accept responsibility for what Colonial Britain did, to say nothing of British support for a succession of Sinhalese governments that have been, and still are, even more so, patently anti-Tamil.

A start will be for Britain to apologise to the Tamil people. This has recently been done in Australia when the recently appointed Prime Minister, Kevin Rudd, publicly apologized to the Aboriginal people for what had been done to them over the past 200 years.

It has to be a sincere apology, not a bogus one such as what former Sri Lankan President Chandrika Kumaratunga made. At one of the anniversaries of the July 1983 massacre of Tamils, she was asked whether the Government should apologize to the Tamils. She said, "*We should all apologize to each other*".

I objected to this strongly. There is no reason why the Tamils (who are part of "we") should apologize to anyone for being massacred.

An apology alone is insufficient. Words must have a meaning, and if an apology is tendered, the British should then state clearly what they intend to **do** about it (so does the Australian government *vis a vis* the Aborigines).

Sri Lanka's responsibility

The accusing finger cannot simply be pointed at Britain. Sri Lankans have now had more than 60 years to undo the damage that Britain has done. They have done the opposite, and have done far more dreadful things to the Tamils than the British would ever have done. In fact, I often wonder whether from the human rights perspective, the Tamils would not have been better off if Sri Lanka had remained a British colony.

To get back to the question as to whether the Tamils have lost sovereignty post-1948, the answer beyond argument is "Yes", and for that, a succession of Sri Lankan (read Sinhala) governments are responsible.

Every Constitution, and several amendments to the Constitution, to say nothing of the Laws of the Land e.g. the Prevention of Terrorism Act, Emergency Regulations and the like, have been passed with the specific purpose of *denying* sovereignty to the Tamils.

This has now reached an absurd degree. There is now an attempt to even deny a historical fact –that there was ever a sovereign Tamil Nation. The logic is simple. If there was no sovereign State, then one cannot be accused of denying sovereignty!

Sri Lankans seem to be trying to perfect the "Big Lie" technique of that old Nazi, Joseph Goebbels, Nazi Minister of Propaganda, that a lie, if audacious enough and repeated enough times, will be believed by the masses (read: International community).

How the Tamil leadership has responded to the 1976 Vaddukkodai Resolution and the 1977 General election mandate of the Tamils in the North and East (to establish a Separate Tamil State, Eelam)?

In a word, “pathetic”. Had I been a Tamil, I would have used a stronger word.

As I have said in my DVDs, as a Sinhalese, I watched with absolute dismay, as protest after protest failed, as Pact after Pact between a succession of Sinhalese leaders and the Tamils, were either not implemented, diluted or simply torn up (the Bandaranaike-Chelvanayagam Pact was torn up in full view of the mob, led by the Buddhist clergy who demanded that it be torn up, right there. It was.

I have tried to sort this out in my own mind for years. I have come to the conclusion that the problem has been that from Independence in 1948, all the way to the mid 1970s, Tamil MPs were content to make fiery speeches in Parliament and feel satisfied that they have done their job, never mind that no one gave one hoot as to what they said.

What was worse, they made their fiery speech in parliament and then went to the same watering hole in the evening for a friendly chat and a drink. The problem is that most of them came from the same bourgeois capitalist class as their Sinhalese ‘opponents’. Indeed, many of the Tamil MPs were resident in Colombo, not in Jaffna, far less in the more remote parts of the Tamil areas. Small wonder they achieved nothing.

The Sinhalese are not stupid. They had worked this out a long while ago. The classic example was D.S. Senanayake, whom I knew (his niece was married to my mother’s eldest brother). A school drop-out he might have been, but he had worked out the Tamil leadership to perfection. All he had to do was to offer the Tamil leader of the day, a post as Minister of Industries, and the job was done. He was now part of the (Sinhala) clan. It was this that enabled Senanayake to take the second step in the Plantation Tamil outrage, their disenfranchisement.

The difference between the “old guard” and those who replaced them – the young Tamil militants was fundamental. They did not eat out of the same trough as the Sinhala politicians, they did not reside in Colombo, they were in their villages among their people, and were not readily bribed. They sure made mistakes, some of them serious (one serious mistake was expecting the expatriate Tamils to ‘deliver’), but that is a separate problem.

Another problem was that the “old guard” were not very enthusiastic about going to prison (unlike those in India such as Gandhi and others, for whom to be arrested and jailed was a huge ‘success’. That is precisely what they wanted. That was what completely foxed the British, who simply had no answer).

The Tamil youths, who took over, were not only prepared to go to jail, but to lay down their lives, which they did in thousands. Irrespective of what happened later, I doubt whether the Tamil people will forget this.

I might add one more point which I have made in my DVDs. It is the abysmal failure of the Tamil leadership to deliver the goods, which led to the Tamil militant uprising. That is not an opinion to be debated; it is a fact to be faced. Let me be clear on this. **I am *not* advocating a return to a *military confrontation*.** To do so would be suicidal, given the

barbarism of the Rajapakse regime, their willingness to shed as much Tamil blood as necessary, irrespective of what the world thinks, the geopolitics of the Indian Ocean, Chinese ambitions in Sri Lanka and for many other reasons. The Tamils simply cannot win a military battle. That is certain. Fight the dreadful regime in Colombo, the Tamils must, but not with weapons (see later).

There is a further factor that disturbs me greatly. Across the world, governments and the media lavish their time, attention, and funds on 'war-talk'. The message that is going out is deeply disturbing and thoroughly dangerous. This is, that if you seek to redress a grievance, violence is more effective than non-violence. If peaceful change is not given a chance, then violent change becomes inevitable.

What worries me is that the Rajapakse regime, intoxicated by their so-called 'victory' will feel that peaceful change is unnecessary. They are too stupid to see that this could well result in another armed uprising. The concentration camps, currently holding 100,000 Tamil civilians, some 10,000 of whom are alleged to be Tamil Tiger cadre, might turn out to be centres for the mass production of the next generation of suicide bombers and Tamil militants. Should this happen, Rajapakse and his band of 'patriots' must take full responsibility.

Have the Tamil lost their war?

Before I answer that, let me define a word "War". I am so glad that at last someone has used the correct word to describe what has been going on (and is still going on) in Sri Lanka. It is not an "ethnic conflict", "terrorism", "counter-terrorism" or any such 'convenient' term. *One* of them is a **war**. between the Sinhala State and the Tamil people.

There are, in fact, three separate, but inter-connected, 'activities':-

1. **A war** between the Armed Forces of the Sinhalese people (the so-called 'Sri Lankan Army' is 99% Sinhalese – a 'Sinhala Army'), and the Armed Forces of the Tamil people (the Liberation Tigers of Tamil Eelam – LTTE).
2. A series of **anti-Tamil pogroms** launched by a succession of Sri Lankan governments, to crush the Tamil people into submission – to accept multiethnic, multilingual, multireligious, multicultural Sri Lanka as a Sinhala-Buddhist nation.
3. **International manipulation** for the control of the Indian Ocean, for which there is no better place than Sri Lanka.

It is crucial that these separate entities be recognized and properly evaluated. Emotion, be it pro-Sinhalese, or pro-Tamil, must be set aside, and the legal aspects and International Conventions be looked at.

There is no place for the *use* of emotive language such as "terrorism", "patriotism", or the denial of well-documented facts. On the other hand, there is also no place for the *avoidance* of internationally defined terms, such as "genocide", or "pogroms", however 'inconvenient' or 'unacceptable' these terms might be.

It is also important not to be intimidated by being labeled “pro-Tamil”, “pro-terrorist”, or “unpatriotic”, simply because one takes a principled stance. I, for one, will not allow my own patriotism to be defined by how close I stand to the Sri Lankan flag, or to the blood-drenched people and ethno-religious political opportunists, some from my own family, who have run Sri Lanka.

I draw attention to the fact that Nelson Mandela was declared a “terrorist”, and banned from entering the USA. Despite winning the Nobel Peace Prize in 1993, the ban stood. He and members of the African National Congress (ANC) were unable to enter the US, except the UN headquarters in Manhattan, and that too, only after a special waiver from the US Secretary of State. This was lifted only in June 2008. I will get back to Mandela and the ANC later, since it is very relevant to problems facing the Tamils in Sri Lanka.

The War in Sri Lanka

A war is an armed conflict occurring between two parties. An armed conflict is the use of military material in an organized fashion by at least two groups, organized into military fighting forces, fighting each other.

The two ‘fighting forces’ have been the Sri Lankan Armed Forces and the Liberation Tigers of Tamil Eelam (LTTE).

There can be no dispute regarding the identity of the Sri Lanka Armed Forces. Whether they have committed acts of terrorism (which they have), is irrelevant. They are an Armed Force.

The contentious issue is the LTTE, declared by many countries (erroneously) as a “terrorist” organisation (as was the ANC in Apartheid South Africa).

International Humanitarian Law is largely codified by the 4 Geneva Conventions (1949) and the 2 Additional Protocols (1977).

These state that an “Armed Group” is an “Armed Force” (in contrast to a Terrorist Group) if it meets 4 criteria.

1. It has to be a Military operation eg wear military uniforms to distinguish them from civilians
2. Have an Organised Command
3. Have an Organisational capacity
4. Have control over a defined territory to carry out “sustained” and “concerted” military action and the practical capacity to fulfill humanitarian law obligations.

All of these the LTTE have had. Therefore, they are an “Armed Force” and not a “terrorist” group. Whether they have committed acts of terror (which they have), is irrelevant (as is the case with the Sri Lankan Armed Forces).

Karen Parker is an American attorney specializing in international law, humanitarian (armed conflict) and human rights law, who has NGO status at the UN Human Rights Council. When asked to comment on whether the LTTE is a “terrorist” organization, said:-

"I state categorically that the LTTE is not a "terrorist" organization, but rather an armed force in a war against the government of Sri Lanka. Characterization of the LTTE as a "terrorist" organization is politically motivated having no basis in law or fact."

She went on to provide a legal analysis to support this view. She said:

"The LTTE uses traditional, modern military weaponry in its combat against the military forces of the government of Sri Lanka. The LTTE uses a variety of military tactics, including open warfare, raids or guerrilla warfare. The government armed forces use similar military means against the armed forces of the LTTE. Most armies in the past 200 years have utilized essentially the same tactics"

In a comprehensive analysis on *Transnational Armed Groups and International Humanitarian Law*, Marco Sassoli, Professor of International Law, University of Geneva, Switzerland, said that the anti-government Armed Group to qualify as such in International Humanitarian Law, it must fulfil Article 1(1) of Additional Protocol 2 ie the group must be *under responsible command, exercise such control over territory as to enable (it) to carry out sustained and concerted military operations and implement this Protocol*". He added that *"armed groups will only exceptionally fulfil these criteria"*. However "exceptional" it was, the LTTE had fulfilled these criteria.

The Sri Lankan government branding the LTTE as a "terrorist organization" is irrelevant. As Professor Sassoli rightly states, *"in law, however, legal classifications depend on the facts themselves and not upon the views on the facts of those subject to the law"*.

The LTTE have committed terrorist acts, the Sri Lankan Armed Forces have committed terrorist acts that are qualitatively and quantitatively far greater. Either both are 'Terrorists' or neither. To brand one a 'terrorist' and the other "patriots" is absolutely unacceptable. It is not only absurd, but has no legal validity, and simply cannot be justified.

The nature of the war in Sri Lanka

The war in Sri Lanka is a war of national liberation of the Tamil people in the defence of their right of self-determination. Self-determination is the 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 Human Rights Convention and in all major Conventions.

To *exert* that right there must be,

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

All of these the Tamils have.

Whether the Tamils *chose* to exert this right depends on how they were treated (from 1948 onwards). If they were treated as equals, without the violation of their basic human rights, they might never have chosen to exert their unquestionable Right of Self-determination. It was because this was not done, that they chose to exert that right.

In *achieving* self-determination, there are usually two steps. Firstly, peaceful negotiations. Secondly, if they fail, a liberation struggle. A liberation struggle becomes war, if the criteria of war are met. When the parties involved get into using Kfir jets, multi-barrel rocket launchers, and helicopter gunships, then it is a war. If it looks like a war and sounds like a war, it is a war.

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

Humanitarian Law has two sections.

1) The conduct of combatants – 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 Convention of 1964. To bomb orphanages, hospitals, schools etc as the GoSL has done, is a violation of the Geneva Law, and hence, illegal.

It is important to stress that the *declaration* of war is unnecessary. The USA did not at any time declare war on Vietnam, but that there was a war, is beyond dispute. Many countries deny that a war is taking place to avoid the application of Humanitarian Law. Many donors restrict foreign aid during war. So, the terms “Terrorism” and “Counter-terrorism” are used, rather than what it is – a war.

It is of interest that the UN Declaration of Human Rights (1948), described as one of man’s greatest achievements, states, in 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”.

In Sri Lanka, since Independence, the human rights of Tamils have not been protected by the “Rule of Law”. As I have said, this began before the ink had dried on the Independence Constitution (and the disenfranchisement of the Plantation Tamils), and the numerous discriminatory legislations against the Sri Lankan Tamils since then. The result was a *“rebellion against tyranny and oppression”*, *“as a last resort”*, after years of non-violent protests.

This is precisely what happened in Apartheid South Africa. Nelson Mandela, at the opening of his trial on a charge of sabotage (20 April 1964), said:-

“All lawful modes of expressing opposition to the principle (of white supremacy) had been closed by legislation, and we were placed in a position in which we had either to accept a permanent state of inferiority, or defy the government. We chose to defy the law”.

He went on:-

“We fight against the features which are the hallmarks of African life in South Africa and which are entrenched in legislation. These features are poverty and lack of human dignity”.

I urge those who voted “No” at the Referenda, to read Mandela’s statement from the dock, <http://www.guardian.co.uk/world/2007/apr/23/nelsonmandela>

A war against the Tamil people – recurring anti-Tamil pogroms

A ‘pogrom’ has been defined as *“The planned killing of large numbers of people, usually due to reasons of race or religion”,* or *“Mob attacks, condoned by authorities, against persons or property of a religious, racial, or national minority”*. However defined, there is absolutely no doubt that this has occurred repeatedly in Sri Lanka from 1956 onwards.

There is a widely held misconception that there is a ‘civil war’ in Sri Lanka, or a ‘terrorism problem’. There has been no civil war in post-Independence Sri Lanka, or a terrorism problem (except Government terrorism). What there has been for 5 decades, is a series of increasingly virulent pogroms against the Tamil people by the Sinhalese State, assisted by Sinhalese political opportunists and ethno-religious chauvinists, especially the politically active Buddhist clergy, and conducted by the Sinhalese Armed Forces, with a degeneracy of Sinhala society and its rapid descent to barbarism.

The objective, seen now even more clearly than ever before, is to make a multiethnic (Sinhalese 74%, Tamils 18%, Muslims 8%), multicultural, multilingual (Sinhala and Tamil), multi-religious (Buddhists 70%, Hindus 15%, Christians 7%, Islamists 8%), country into a Sinhala-Buddhist nation.

If this is the objective, which is even enshrined in the Constitution, then there is no alternative to the establishment of a separate Tamil State, Eelam. Tamil Eelam is not the creation of the Tamils, but the creation by Sinhalese ethno-religious chauvinists, and the exclusion of Tamils from playing a meaningful role in the governance of the country dating back to Independence from Britain (1948).

The ‘problems’ facing the Sinhalese governments (over the years), in achieving this objective – was, **“What could be done with the Tamils, 18% of the country?”**

1. They can be driven out of the country.

1.3 million already have been, and others are fleeing (when this is possible). However, still are some ?2 million left. (No one knows because there has been no reliable census since 1981. The “2001 census” was a bogus deal since it was only done in 18 out of 25 districts. The entire Tamil area (North and East), was excluded.

2. They can be made ‘non-people’ ie refugees.

This has been done. There are today some 500,000 ‘Internally displaced people’ ie refugees, almost all of them Tamil, in Sri Lanka, and another 70,000 in Tamilnadu.

3. They can be made to ‘Disappear’.

Sri Lanka today has the 2nd highest incidence of “involuntary disappearances” in the world, second only to Iraq. Most of them are Tamil men.

4. They can be killed.

That is Genocide. Some 80,000 (probably many more) Tamils have been killed.

The scale of the mass killing of Tamil civilians in the closing stages of the war (December 2008-May 2009), was difficult to ascertain since no one, other than the Armed Forces were allowed into the conflict zone, essentially “genocide without witnesses”. Not even after the slaughter was over, were observers allowed into the area – “mopping-up operations” – the Government claimed. It was, in reality, the removal of evidence (eg by incinerating the corpses).

However, evidence is now leaking out from those who escaped the slaughter, and from others. The most reliable report comes from Gordon Weiss, a United Nations’ spokesman in Colombo. He resigned from the UN after 14 years and returned to Australia. He says he is now free to speak openly about what happened and did so candidly and unflinchingly, to the ABC’s (Australian Broadcasting Corporation), highly reputed “Foreign Affairs” program (9 February 2010).

He said that between 10,000 and 40,000 civilians had died during the final stages of one of the world’s longest running and bloodiest wars. What he did not specifically say, was that most of the civilian deaths (almost all of them Tamils), were from indiscriminate bombing, shelling, and straightforward murder, by the Sri Lankan government troops, but It can be inferred from his comments:-

“About 300,000 civilians, plus the Tamil Tiger forces, were trapped in an area of territory about the size of Central Park in New York. They were within range of all the armaments that were being used, small and large, being used to smash the Tamil Tiger lines ... the end result was that many thousands lost their lives.”

He said that his information comes from reliable sources who had a presence inside the battle zone, not Tamil civilians or fighters.

“The Sri Lankan government said many things which were either intentionally misleading, or were lies”.

He said that after the war ended, a senior civil servant openly admitted that the authorities had deliberately underestimated the number of trapped civilians “as a ploy to allow the government to get on with its business.” That ‘business’ was genocide.

1. Driving them out of the country

That has been ‘successful’. 1.1 million, which include some of the best brains, the best trained and trainable, have left. Others are leaving. Former President Kumaratunga wrote me a letter that the greatest problem she faced as Head of State was that she could not find someone who could do a job. I did not make the obvious comment, “Thanks to your father, mother, and yourself, that this should be so.”

I could have added to the list the dreadful President J.R.Jayawardene who conducted the 1983 pogrom which cost that country hundreds of thousands of outstanding Tamils.

And now, the even more dreadful family junta of the Rajapakse clan, the most disastrous regime ever to run Sri Lanka.

Thousands have already fled, and thousands are trying to flee, in leaking boats, if no other means are available. Many of them are heading to the indescribable misery of concentration camps in Indonesia, Malaysia, and Australia, and are ending up in prisons in Australia or the Australian-owned Christmas Island. Many more are ending up at the bottom of the Indian Ocean, Australia's "Pacific Solution" to asylum seekers.

Australia's Prime Minister, Kevin Rudd, defended his record with right-wing, tub-thumping rhetoric.

"People smugglers are engaged in the world's most evil trade and they should all rot in jail because they represent the absolute scum of the earth," he declared. "People smugglers are the vilest form of human life... That's why this Government maintains its hard-line, tough, targeted approach to maintaining border protection for Australia."

What he prefers not to see is that people-smugglers' exist because there is a *need* for them. The real 'scum of the earth' are those whose actions compel these unfortunate people to take horrendous risks to get away from barbaric regimes.

Kevin Rudd, like his predecessor, John Howard, from the other side of the political divide in Australia, call themselves 'Christians'. In a recent publication by me, *"Sri Lankan Asylum Seekers in Indonesia. The Merak boat-people crisis. Australia's Disgrace"*, I pointed out that *"...it is a most 'un-Christlike Christian, who disregards the "When I was homeless you took me in", provision, when the people in need of a home have a brown skin.*

Rudd flew to Indonesia to ask the Indonesian President, Susilo Bambang Yudhoyono, a retired Indonesian Army General, whether he could intercept the boats with asylum seekers, heading for Australia. In this publication I pointed out to Mr Rudd, that the problem is not in Jakarta, it is in Colombo. I suggested that he flies to Colombo and asks the Sri Lankan President Mahinda Rajapakse, what he is doing to his people, citizens of the country, which makes them take horrendous risks to escape from the country, ending up in concentration camps, or at the bottom of the Indian Ocean.

The boats will keep coming, and coming, - that for sure. That is the international fall-out I referred to earlier.

If these countries cannot do something about the dreadful regime in Sri Lanka, they will have to clear the decks to receive all the Tamils in the North and East, and leave the country to what it wants to be, a Sinhala-Buddhist nation.

2. Refugees

The Sri Lankan Government is *currently* holding at least 100,000 Tamil civilians (down from 270,000), without charge or trial, in razor-wire fenced 'detention centres' in the Sri Lankan North. This is illegal as it contravenes international law and Sri Lanka's own Constitution and Laws.

Some 10,000 are allegedly former LTTE fighters. They are clearly *hors de combat* (Out of Combat). On international law, they are entitled to even *more* protection, and violation of *hors de Combat* is considered a serious war crime.

Whatever is written is out of date, or inaccurate, by the time it is written, because the scene is changing, or the GoSL is 'careless with the truth'.

Despite claims to the contrary by the GoSL, the situation is critical. There are at least 350,000 people (Tamils) roaming in the North and East, with no place to go, their homes having been destroyed by the GoSL.

The size of the problem will be detailed by me in a separate publication "*Concentration Camps for Tamils in Sri Lanka*". Here I will only summarise it, and draw attention to what is not widely known.

There were 268,704 in the Vavuniya camp alone. They were, and still are, being held, without charge or trial. This is a violation of important International conventions and Sri Lanka's own Laws and Constitution (as the retiring Chief Justice, a Sinhalese, pointed out). The important International Conventions and UN Principles that are being violated by the GoSL are:

1. The International Covenant of Civil and Political Rights (ICCPR)
2. The UN Guiding Principles on Internal Displacement (UNGPID)
3. The UN Convention on the Rights of the Child

Much has been made of the fact by the GoSL that many have been sent home. That is not only misleading but a lie. There are *today* (March 2010), some 100,000 still in the camps.

Those who have been sent 'home' have no home to go to, their homes having being destroyed by the GoSL, and some of the land they owned taken over by the government as "Special Economic Zones", and handed over to other countries eg China, India etc (as the colonial British did to the Kandyan peasants).

The area is being rapidly 'Sinhaleised' with the re-location of Sinhalese from the South, in what was Tamil property. There are plans to re-settle former members of the Sri Lankan Armed Forces in the area once occupied by Tamils.

The people simply have no way of earning a living, their farms and livestock having been destroyed. Tamil fishermen now find Sinhalese fishermen functioning where they once worked, and where they now cannot work since their boats have been destroyed.

For the Government to claim that the refugee problem has been 'settled' and the people 'rehabilitated' is an absolute lie. What is worse, there is no intention to do so. Indeed there seems to be every intention of seeing that they are 'permanent refugees'.

There is also the intention, now becoming reality, to flood the Tamil areas in the North and East with Sinhalese so that the concept of a "Tamil homeland" will be destroyed.

These are facts that those who voted "No" in the recent Referenda, should know.

3. “Disappearances”

As I have said, up to the beginning of this year (2010), Sri Lanka had the 2nd highest rate of ‘disappearances’ in the world, second only to Iraq. Most have been Tamil men.

In a 221 page Report release on 8 March 2008, Human Rights Watch, (the US equivalent of Amnesty International), documented this, “*Sri Lanka. “Disappearances” by Security Forces. A National Crisis. Recurring Nightmare: State Responsibility for ‘Disappearances’ and Abductions*”.

The Asian Legal Resource Centre (ALRC) is an independent regional non-governmental organisation holding general consultative status with the Economic and Social Council of the United Nations. It is the sister organisation of the Asian Human Rights Commission (AHRC), the Hong Kong-based group that seeks to strengthen and encourage positive action on legal and human rights issues at the local and national levels throughout Asia.

On 22 February 2010, ALRC made a written submission to the 13th session of the UN Human Rights Council. Agenda item 3, Interactive Dialogue with the Working Group on Enforced Disappearances. The Submission was:

“Asia: Council failing to address situations of widespread forced disappearances.

In a damning indictment, the ALRC stated that it was gravely concerned by the fact that, despite regularly receiving information concerning widespread and numerous cases of forced disappearance, including many in the Asian region, the Human Rights Council has failed to take effective action to have a tangible impact on the prevention of further abuses on the ground.

Referring to Sri Lanka, it said,

“In Sri Lanka, the government has admitted to having “removed” 10,000 internally displaced persons from IDP camps to question them about their links to the LTTE after the conflict concluded in May 2009. The military-run IDP camps have not issued any public records concerning the identities and number of persons being held there. This has provided an open invitation to either the security forces or those working for them to remove persons on the pretext of questioning without a trace. Disappearances have therefore been enabled by systemic lacuna on the part of the State. Custodial interrogations should have been conducted under investigation procedures defined by law. These have been deliberately ignored, and not for the first time in the country. This type of removal and disappearance was common during the JVP suppression campaigns between 1987 and 1991, which officially resulted in 30,000 disappeared persons.

The breakdown of the rule of law, the corruption of law enforcement agencies and the absence of effective protection mechanisms have combined to enable mass disappearances, carried out with impunity in Sri Lanka, accompanying such practices”.

This was followed on 2 March 2010, by a statement by the Asian Human Rights Commission, expressing concern about the Sri Lankan judiciary:-

SRI LANKA: Undermining of the judiciary and weakening of the Sri Lankan society.

The undermining of the judiciary is serious. I have already referred to what President Rajapakse said at an election rally in Colombo on 16 March 2010 (just two days ago), I will repeat it because it is so important. Here is what he said:-

“Republican Constitution of 1978 brought by the then J.R.Jayawardene government places me above the Law. Accordingly judiciary cannot take action against me”.

I will not go into the undermining of the judiciary here (for lack of space), although it is highly relevant to the Tamils, (and the Sinhalese too – as they will surely find out).

Despite enormous numbers of ‘disappearances’ on record from the South, North and East of Sri Lanka, the Sri Lankan government has consistently refused to become a signatory to the United Nations Convention against Forced Disappearances, and to have ‘disappearances’ declared as an offence.

Disappearances, intimidation and Elections

The government is now preparing for the parliamentary election, due 8 April 2010. The government’s declared aim is to acquire the votes of persons who have voted for the Opposition during the Presidential election. ‘Disappearances’ have been used for years to intimidate the political parties, as well as the voters of the Opposition. This has now become a serious problem.

Previous elections in Sri Lanka have been accompanied by waves of disappearances, particularly at times when the ruling political group faces difficulties in the elections. This has already started and is now affecting the Sinhalese too, in particular, the media workers. A recent study (soon to be published) conducted by two independent experts into 880 cases of *habeas corpus* which have come before Courts in Sri Lanka, clearly demonstrate that the writ of *habeas corpus* has become a very ineffective legal remedy due to many defects of its implementation. Most cases have been dismissed by courts on very flimsy grounds..

The Tamils in the North and East might well find that ‘disappearances’ will escalate if they do not vote for the Government. Tamils who have quit the LTTE, and Tamil parties, who are now in bed with the Rajapakse regime, will be expected ‘to do their duty’, and see that those who do not support the government ‘disappear’. This is now the ‘norm’.

There is already evidence that the General Election (due 8 April 2010) will be a sham, where the Tamil areas are concerned. I have reliable information from the Jaffna Peninsula, but I gather the situation is no different in the East (except that the pro-government thugs have a different leader).

In Jaffna, The Eelam People Democratic Party (EPDP) is a Tamil militant group, now in bed with the Rajapakse regime. Its notorious leader, Douglas Devananda, was appointed a Cabinet Minister (Minister for Social Service and Social Welfare), by President Rajapaksa. The EPDP has a paramilitary wing that works closely with the government’s armed forces in Jaffna, particularly in Kayts and other islands off the Jaffna peninsula. It is notorious for violent attacks and threats against political opponents and for intimidating local people with impunity.

EPDP operatives on Kayts Island drove round in vehicles, obstructing campaigners of opposition parties such as the United National Party (UNP) and the Socialist Equality Party (SEP). They regularly roam around unchallenged by the security forces, particularly in the islands off the Jaffna peninsula, but also in Jaffna town. The EPDP also has a motorcycle gang to intimidate people in Jaffna town.

In a particularly nasty attack on SEP campaigners on 19 March 2010, a EPDP thug said *"This is the area of Minister Douglas Devananda. You rascals can't be allowed to do [election] work here. I have a pistol with me. I could shoot you if I want."*

These are "Elections" – Sri Lankan style. It is worth noting that in the recently held Presidential Elections, 74 percent of voters in Northern Province did not vote because of genuine fear and intimidation by pro-government thugs.

4. Genocide

The UN *Convention on the Prevention and Punishment of the Crime of Genocide* defines Genocide as an act committed with intent to destroy, in whole or in part, a national, ethnic, racial or religious group. Where the Tamils in Sri Lanka are concerned, that 'part' is the part that lives in the North and the East

Genocide has nothing to do with numbers killed, it is the intention and the act(s) to achieve this intention that defines Genocide. It can be 50, 500, or, as Hitler decided, 6 million. It makes not the slightest difference. As long as there is the intention to eliminate in whole or in part, an ethnic national or religious group, it is, by definition, Genocide.

I have documented the evidence in half a dozen dvds which I have recorded and distributed (some are on the net, others are available with me).

I pointed out that bombing and shooting are not the only ways to kill people.. They could be starved, deprived of essential medicines, prevented from survival activities eg fishing and agriculture, have their homes, businesses, markets, homes, hospitals and schools destroyed. Once the **intention** is there, the **ways** to achieve genocide are endless.

There are also **different types** of genocide. 'Educational', 'Cultural', 'Economic', and 'Religious genocide', which is the intention, backed by the act, of "destroying in whole or part the education, culture, religion or economy of an ethnic group". The GOSL is guilty of all of these.

As I have said, International humanitarian workers, including UN agencies, were asked to leave the area (12.9.08), so that Genocide could be carried out without witnesses. No other country in the world has done this.

What is the world, including many of those who voted in the recent referendum doing? Nothing, other than watching Genocide, and 'expressing Concern'. Is that enough? What if the world 'expressed concern' at what Hitler did to the Jews – slaughtering more Jews than the entire population in Israel today? I have already alluded to the report from those who conducted the Referendum in Canada. I was told that Canada's largest Sri Lankan expatriate body *"sounded discouragement on the Referendum when it said that they will watch it with 'interest'"*. Is watching Genocide "with interest", acceptable?

Here in Australia, a new body, the Australian Tamil Congress (ATC) has been formed. I was nominated as the Head of the “Queensland Chapter” until formal elections were held. I resigned, because I was told that those who advise the ATC on such matters (an unidentifiable group called the “helpers”), had decided that to use the word “Genocide” was “not helpful”. So have other so-called ‘moderate’ Sri Lankans.

What they fail to see is that it is not a question of whether the term, “Genocide” is “helpful” or not, but whether what is going in Sri Lanka fits the internationally accepted definition of the word. I resigned because I do not need to work with such people, I can, and will, do what I have done for the past 4 decades, fight for the rights of the Tamil people to live with equality, dignity and safety (and now live at all), where they have a right to be, the Tamil North and East of Sri Lanka, and, for that matter, in the Central Hills and the South, as is specified in the Constitution of the “Democratic Socialist Republic of Sri Lanka”, as it likes to call itself. Words must mean something, and if they do not, it is for us to challenge it.

Destruction of Tamil people and Tamil areas

The destruction of the Tamil areas has been extensive. Nothing has been spared. Schools, hospitals, churches (with hundreds inside), Hindu temples, markets, the Jaffna Public Library, homes, businesses, it is all ‘fair game’ as long as is Tamil. The destruction of property and Tamil civilians since Rajapakse became President (November 2005) has been extensive. There has been shelling and bombing of refugee camps in the Government so-called ‘safe areas’ with thousands killed and many more injured. Gotabaya Rajapakse, Defence Secretary and the President’s brother, has said that even hospitals in Tamil areas are legitimate targets. This violates the Geneva Conventions 1 and 4, signed by the GoSL, that in no circumstances can civilian medical facilities be destroyed.

KFir jets, bombers, multi-barrel rocket launchers, helicopter gun-ships, firing banned weapons such as cluster bombs, fire bombs and even bombs with white phosphorus indiscriminately, have been unleashed on Tamil civilians. All of these bombs are illegal internationally, but have been used by the GoSL with no repercussions. It is not only the Armed Forces that have no accountability; the Sri Lankan *government* is able to commit any atrocity, without the international community or foreign powers, holding it accountable. The UN Secretary-General has just woke up to this! It has not been branded as a rogue State, far less a pariah State for what it has done to its *civilian* population.

Loss of hope

Tamilnet says that it is “*confronted with several questions, especially from within the Tamil community by those who have lost hope*”. Would I comment?

The loss of hope is nothing new. I am not sure what exactly those who suffer this common malady expected. Did they think that a Separate State would drop like manna from Heaven? No country will willingly part with territory. It has to be forced to do so. If this was not the case, a number of other conflicts, the Israeli-Palestine problem, the Kerens of upper Burma, Kashmir, the Basque people in Spain, the Moro people in the Philippines, and numerous other conflicts, would have been settled years ago.

In the annals of history, the loss of hope has achieved nothing. If the black South Africans had lost hope, the apartheid regime would still be thriving.

I would have thought that the current 'reversals' would have the **opposite** effect, and make the Tamils even more determined to see that an evil regime, the new "Axis of Evil" in Sri Lanka (Rajapakse and his cronies, Fonseka etc), do not succeed. The loss of hope of the tremendously powerful expatriate Tamil community, is just what this evil regime hopes for, and to do so is to play right into their hands.

As a Sinhalese, I find this 'loss of hope', this 'its-all-over', 'let us pack it all in', 'let us genuflect', 'let us pick up what crumbs we can', attitudes, incomprehensible. When I say that, I really do mean it. *I cannot understand this attitude.*

This must surely be the *beginning*, not the end, of the struggle for justice. Permit me to take you back to 4 June 1940, with Hitler's forces at Britain's doorstep. It followed the 26 May 1940, evacuation of 339,000 Allied troops to the British shores in Dunkirk. May I ask those who have lost hope to read Churchill's speech to the British Parliament?

I am *not* asking you, as Churchill did, to "*fight on the beaches. fight in the fields, and in the streets*" etc. I *am* asking you not to adopt a defeatist attitude since it will get the Tamil people nowhere.

I am *not* asking you to start another fight in a military sense. But there are, today, more ways than one to skin a cat. This I will spell out at the end of this article.

The International Community has no taste for Tamil Eelam and they have advised on several occasions to drop that demand.

I am not trying to be frivolous, but the so-called "International community" does not have to live under a tyrannical regime, which is what Rajapakse's regime is. Our people, Tamils, Sinhalese and Muslims, do.

The "International community" (IC), could not care less, whether 270,000 innocent Tamils are locked up behind barbed-wire fences, their only crime being that they are Tamils. Rajapakse could lock the whole lot up, all 2 million (or whatever numbers are left), they could not care less.

What exactly has the IC done about Zimbabwe and that dreadful mad man Mugabe? Sudan, Afghanistan, and the list goes on. Nothing.

With this track record, are we seriously going to put the future of our people in the hands of the IC? If we do, we are just mad.

This is *our* problem, not a problem for the IC, many of whom still think that the LTTE was the 'problem'. The LTTE was not the 'problem'; it was the '*result*' of the problem. The 'problem' was Sinhala ethno-religious chauvinism, to make Sri Lanka into a Sinhala-Buddhist nation. *That* is the problem; it must be exposed, challenged, and addressed. This simply cannot be done by those who have "lost hope". Instead of being a solution to the problem, they are becoming part of it.

I have been down this road before. When the question of dismantling the apartheid regime was being considered, Mandela, the ANC leader in jail, and not one country prepared to take a stand, the feeling was rampant that the (white) South African government was simply too powerful to 'give in'. I remember pointing out that we did not have to suffer apartheid, the black South Africans did.

Mandela assessed the economic situation correctly, certainly better than we did. Here is what he said from the dock:

"The initial plan was based on a careful analysis of the political and economic situation of our country. We believed that South Africa depended to a large extent on foreign capital and foreign trade..... We would tend to scare away capital from the country, make it more difficult for goods from the industrial areas to reach the seaports on schedule, and would in the long run be a heavy drain on the economic life of the country, thus compelling the voters of the country to reconsider their position".

I discussed this with those who had been through the darkest days, when I went to South Africa two years ago. They said that only two things worked, the economic boycott, and stopping playing cricket. So, I am not trying to reinvent the wheel, but only drawing attention to what has worked, when taking on dreadful regimes.

The division of Sri Lanka

Let me deal with the claim, made, and repeated many times – that Sri Lanka is too small to be divided. This is arrant nonsense. Aside from the documented fact that for hundreds of years the island was essentially divided into three separate 'Kingdoms' (the equivalent of separate States), let us look at the facts, right now.

Sri Lanka is 25,300 sq miles. If divided, the Sinhalese State will be 18,000 sq m - larger than 63 UN nations. The Tamil State will be 7,300 sq m - larger than 38 UN nations, and 30 times larger than Singapore. So, to claim that Sri Lanka is "too small to be divided" is nonsense based on Sinhala ethno-religious chauvinism and not on reality, or facts. If the Tamil State is too small to survive, and collapses, that is a problem for the Tamils.

Barack Obama in his Cairo speech on 4 June 2009, dealing with the situation in Israel and Palestine said:-

"... the only resolution is for the aspirations of both sides to be met through two states, where Israelis and Palestinians each live in peace and security".

So, division of Israel and Palestine is acceptable, the *only* solution, but the division of Sri Lanka is not. Let me put some figures to this. Israel-Palestine is 10,343 sq miles (compared with Sri Lanka, 25,300 sq miles). After division, Israel will be 8,019 sq miles (compare the Sinhala State of 18,000 sq miles). Palestine will be 2,324 sq miles (the Tamil State will be 7,300 sq miles). Obama says that division of Israel/Palestine is the *"only resolution...where ...each live in peace and security"*, presumably luxuries that are not necessary in Sri Lanka. That is blatant hypocrisy.

20 million people in Australia are divided into 6 virtually separate 'States', each with a Parliament and Premier. However, the same number of people, 20 million, in Sri Lanka cannot be divide even into two States. (The claim that Australia is much larger than Sri

Lanka is arrant nonsense. Governance is for people, not large areas of desert – which most of Australia is).

Let us look at this problem in the eye. The resistance to division has *nothing* to do with size, but has to do with Sinhalese ethnoreligious chauvinism in Sri Lanka. The opposition to division by the major international powers has to do with geopolitics – the much sought after Trincomalee Harbour, the fourth largest natural harbour in the world, and a crucial asset for the control of the geopolitically crucial Indian Ocean falling into Tamil hands after division. A far ‘safer’ option is to ensure that Trincomalee remains in the hands of a corrupt, dishonest, bribable, and manipulatable Sinhalese regime in Colombo.

THAT is why “the International Community has no taste for Tamil Eelam and they have advised on several occasions to drop that demand”.

If we conduct such ballots now, we will lose support from them and can't engage them.

I guess that ‘them’ means the International Community. “We will lose support”. And precisely what ‘support’ have we had all these years, even while genocide was being committed?

The UN cannot claim ignorance. The UN spokesman in Colombo, Gordon Weiss, said that in the 3 months since 20 January 2009, 6,432 civilians had been killed and 13,048 wounded. He added that the fighting was now expected to intensify, and with it, the inevitable civilian casualties. What did the UN do? Nothing.

UN Secretary General, Ban-Ki-Moon, thought it sufficient to express “*deep concern*”. Is that an adequate response in a situation where the GoSL had expelled all observers, *including UN agencies*, before committing mass murder?

He then said, (23 April 2009, Brussels) that he is dispatching a humanitarian team to monitor the situation because “*so many lives have been sacrificed. There is to time to lose*”. And what did his team do? Nothing – and far more lives were lost.

On 9 March 2010, Mr Ban suddenly woke up to the fact that there was a need for accountability in Sri Lanka (which, of course, there had been for several years and which he personally saw when he visited the Tamil North and East in May 2010 – and said that he had not seen anything as terrible as that in his career. I might add that he refused to go there *before* These ‘terrible things’ happened, saying that he would not go unless he was able to do something (which, of course, he was able to do, but did not).

He was now sending a group of experts to advise him on “*The accountability concerns, possible breaches of international humanitarian law or abuses of human rights carried out during the conflict,*”

Under-Secretary-General for Political Affairs B. Lynn Pascoe will head the group, to have talks with the GoSL. Mr Ban said, “*The panel I am establishing will advise me on the standards, benchmarks and parameters, based on international experience, that must guide any accountability process such as the one mentioned in the joint statement. Now this panel will report to me directly and not to another body.*”

The Sri Lanka's Foreign Minister responded with typical arrogance to the proposed UN measure, saying that it can only be construed as an *"intrusive unilateral initiative" by the UN Secretary General, and that "if not resolved taking into consideration Sri Lanka's unique context and rising public anger against the UN Chief's proposed move, it has the potential to dent or sour the excellent partnership with Sri Lanka."*

The more intelligent Sri Lankan Minister, Professor G.L.Peiris, Minister of Export Development & International Trade, at the Cabinet meeting on 18 March 2010, said,

"The threats mounting among the International community against Sri Lanka are grave as signaled by the recent developments. The latest measures taken by the UN Gen. Secretary to appoint a three member expert panel to seek advice in regard to SL is the most grave and portentous".

Stating the obvious, Mr Ban said, *"I am convinced that it is well within my power as Secretary-General of the United Nations to ask such a body to furnish me with their advice of this nature"*. Then, apparently, to calm down Rajapakse, he added *"This does not in any way infringe on the sovereignty of Sri Lanka."*

We can only hold our breath as to what, if anything, Mr Ban and the UN will do. If the 'Report' is a wishy-washy one, then he will do nothing. If it is not, and he acts, Mr Rajapakse could well tell him and the UN 'to go to hell'.

Professor Francis Boyle, Professor of Law, Illinois, USA, an authority on International Law, commented on this:

"Materially, there is no difference between apartheid South Africa and the genocidal rump Yugoslavia,.... United Nations General Assembly suspended from participation in the activities of the United Nations for their criminal behavior. In fact and in law, the same principles should apply here.... For that reason, Sri Lanka deserves to be treated as a pariah state by the United Nations Organization itself and by its 192 member states.

He added, *"The United Nations General Assembly should also suspend Sri Lanka from participation in the activities of the entirety of the United Nations Organization and its Subsidiary Bodies and Affiliated Organizations because of the genocide, war crimes and crimes against humanity that the GOSL inflicted on the Tamils in Vanni a year ago....."*

Whether any of this will materialize, with China holding the power it does in the UN Security Council, only time will tell. I am not holding my breath. The reality is that the UN is a 'tea-club'/ talk-shop. Let us hope I am wrong.

What did Barack Obama's team do? With massacres of Tamil civilians on an unprecedented scale, here is what Hillary Clinton told lawmakers in Washington on 22 April 2009, *"I think that the Sri Lankan government knows that the entire world is very disappointed that in its efforts to end what it sees as 25 years of conflict, it is causing such untold suffering."* Is being *"very disappointed"* an adequate response to Genocide / Crimes against Humanity? To put this into its proper context, this was said 48 hours after the worst massacre of Tamil civilians in a single day.

Robert Templer of the International Crisis Group said:

“Barack Obama’s administration has said it is committed to the principles of international law and humanitarian protection. Sri Lanka is the perfect opportunity for the new U.S. President to show that this is not empty rhetoric’. It is empty rhetoric. It always is, when human rights are pitted against commercial gains and geo-politics. That is politics in practice.

After the mass slaughter, the UN Human Rights Council held a special session on May 26 and 27, 2009, and failed to even demand an Inquire, despite an unequivocal statement from the Head of the UN Human Rights Council, Navaneetham Pillay. Instead it passed, what Geoffrey Robertson Q.C calls a “self- congratulatory” motion, tabled by, of all countries, Sri Lanka (the accused)! Here is what Human Rights Watch thought of this:

“Sri Lanka: UN Rights Council Fails Victims. Member States Ignore Need for Inquiry Into Wartime Violations”:-

“The United Nations Human Rights Council on May 27 (2009) passed a deeply flawed resolution on Sri Lanka that ignores calls for an international investigation into alleged abuses during recent fighting and other pressing human rights concerns”.

Geoffrey Robertson QC, who has more experience than anyone else in these matters (he is the author of ‘Crimes against Humanity – The Struggle for Global Justice’), interviewed by a BBC reporter (31 May 2009), got it right, when asked for his comment on the Human Rights Council:

“Well, the Human Rights Council is a highly politicised body. It is made up not of experts on human rights, but of paltering diplomats. Europe only has seven seats ... We have countries like Russia and China obviously concerned to keep their own internal problems down and away from international oversight. So the decision [on Sri Lanka] is not really surprising.”

(Mr Robertson’s full interview, which covers the crucial information as to where this problem should be taken up, is in one of my dvds).

Such is the ‘support’ the Tamils have had from the International Community, indeed the premier UN Human Rights body that replaced the even more politicised body, the UN Human Rights Committee. The names changed, but the games remain the same.

Are these the people whose ‘support’, the expatriate Tamils are afraid of losing?

“We can’t engage them”

So what? How ‘engaged’ have they been all these long years (since 1948) when there was overwhelming evidence that a large section of Tamils were disenfranchised and decitizenised, and discriminated against in the use of the language, education, employment, and extensively documented evidence of escalating violation of their basic human rights, and even the right to exist?

I would say, perhaps with arrogance, that the loss of support nor engagement, is no big deal. I would go on to say that whether there were ballots or not, this will not alter.

Perhaps it will, in a different way. Let us consider an (unlikely) scenario – of 1.1 million expatriate Sri Lankan Tamils, voting ‘Yes, we want a Separate State?’ Do you think that this will be ignored? I doubt it.

Let us throw in the 70 million Tamils in Tamil Nadu, conduct a ballot there and let us say they all voted “Yes”. Do you think Delhi would remain impotent? I doubt it. Delhi will duck for cover, the Research and Analysis Wing (RAW) – the ‘Indian CIA’, notwithstanding.

What is the purpose of seeking a mandate (or re-mandate) from the diaspora, for something that has been done 33 years ago in the homeland?

That is just absurd. A wrong is a wrong, an injustice is an injustice, whether it has been done 30 years ago or 300 years ago. *That is why the Australian Prime Minister, Kevin Rudd, apologized to the Aboriginal people in Australia, for what was done to them 200 years ago. It was, or was hoped to be, the start of the ‘healing process’.*

What about Apartheid? It is claimed that the system was introduced after the 1948 General Election by the National party. That is arrant nonsense. *Institutionalised racism and white dominance was established in 1948, but Apartheid was very much there, centuries before that. The ‘Pass Laws’ were introduced on 27 June 1797 by Earl Macartney in an attempt to exclude all natives from the Cape Colony in South Africa.*

The African National Congress was formed in 1912 to defend the rights of the African people which had been seriously curtailed. Definitive action was not taken till 1961. If the question is why seek a mandate to address an injustice done in Sri Lanka 33 years ago, it is not unreasonable to ask why the black Africans waited more than 250 years to address the gross injustice.

The conventional war is over

The ‘conventional war’, if you want to put it that way, might be over, but the ‘problem’ that led to the war has not been settled.

Indeed the opposite. As I have said, the *real* ‘war’ is just beginning. As Obama said in Cairo, **suppressing an idea never makes it go away**. Suppressing the idea of a separate Tamil State, the 561 souls (0.28% of the expatriate Tamil people who voted “No”, notwithstanding, will not make the demand for a Separate State go away.

It was Victor Hugo, widely recognized as the most influential French writer of the 19th Century, who said that *‘Nothing is as powerful as an idea whose time has come’*. The literal translation of his original quote was *“One resists the invasion of armies: one does not resist the invasion of ideas”*.

I firmly believe, as I have done since 1945, that the time has come for Tamil Eelam. The “invasion of Rajapakse’s armies” will only solidify resistance, as so often happens, when Dictators and Tyrants impose their will on people. Rajapakse and company have yet to learn that violence achieves nothing, and that the mass slaughter of Tamils is no way to address their concerns, or their feelings. It only makes them worse.

I would love to see a Referendum done where it matters – the Tamil areas in the North and East. Not a ‘Referendum’ with Rajapakse’s hoodlums, in uniform or not in uniform, or his Tamil ‘helpers’ standing around to note who votes ‘yes’ and who votes ‘No’ to report back to their ‘Master’. I mean a genuine Referendum, with the Sri Lankan Armed Forces out of the area, and Rajapakse’s henchmen such as Devanada, Karuna, Pillayan and others of their ilk, removed from the area. The ‘yes’ vote might well be 100%.

We are after all in exile, what is the point in doing this in exile when we are unable to do it or have no power and even lost the de-facto state which we had?

Let me take this slowly. “**We are after all in exile**”. So was Charles de Gaulle when the Nazis invaded France. He fled to Britain and organized the entire French resistance from there. He certainly was in exile when he did all that.

So was Nelson Mandela. He fled South Africa and was roaming all over other countries in Africa, very much in exile, getting their help (including, I might add, military help) to overthrow the Apartheid regime. If you read his opening statement from the dock, you will see that he was very much into an armed conflict, and he thoroughly justified it.

I might add that it is *because* you are in exile that the responsibility to do something is even greater. The Tamils in the North and East are unable to open their mouths except to eat, and that too, not that often (from what I hear). The ‘Voice’ has to be heard, can be heard, and must be heard, from outside the Democratic Socialist Republic. The voice in the country with supposed ‘Freedom of Speech’ guaranteed in the Constitution, is Freedom to say what the Masters want to hear.

“We are unable to do it”

What arrant nonsense. If more than a million people living in the most powerful countries in the world are unable to do something, then there is something radically wrong with them, or the methods they use – perhaps both.

I must draw attention to the fact that such an ‘excuse’ might be acceptable in a country such as East Timor, where the expatriate East Timorese are few and not that well educated. But the situation with the Sri Lankan Tamils is entirely different. I know of no liberation struggle anywhere in the world where those struggling for justice have such a powerful expatriate community.

How could these referenda help to go to the next stage? How can it be useful.

They are *very* useful. The very fact that unprecedented numbers have gone to vote and the result is so extraordinary, *must* send a message, that it is not just a couple of cranks such as myself, who are jumping up and down.

Referenda will not address the problem. Those who voted “yes” will have to put their money and energy where their vote went, and join the struggle for justice.

The “next stage”

There must be a clear objective, a definite plan, meticulously executed. There must be a very clear identification of the ‘enemy’ and its weaknesses. As Arundati Roy puts it, the monster has a soft underbelly. That is where the assault has to be, not on the thick hide (military might) which is impenetrable.

I simply cannot go into all the details of what has to be done, nor have I been asked to. All I can do is to give some guidelines as to what the road ahead should be.

A) Serve notice on the Government of Sri Lanka to:

1. Close the camps in Vavuniya and other parts of the North and East, and hand back the land to the rightful owners.
2. Issue the necessary identification papers to those who do not have them.
3. Pay compensation to those who were civilians, so that they can rebuild their lives.
4. Admit international rehabilitation organizations and workers to the area.
5. Charge those who are alleged to have committed a crime, and do so in a civil court, with international observers. Release those against whom no evidence can be found, and do so immediately. The same for those held (illegally) in detentions centres outside the normal judicial system – charge or release them, now.
6. Stop the relocation of Sinhalese into the North and East, to land that they do not own.
7. Give international human rights monitors and the media unrestricted access to all parts of Sri Lanka.

Until these are done, there will be a total international boycott of goods and services to Sri Lanka, and goods out of Sri Lanka. Servicing tourists is included.

2) Contract people with a proven track record, to look at compensation for affected civilians.

I do not need to suggest the names of all such people, but I draw attention to the fact that Karen Parker J.D, a San Francisco based attorney who practises human rights and humanitarian law, has an impressive track record. I am sure there are others, but I suggest that you look at what they have achieved rather than what they have *promised* to do eg have the LTTE de-banned, hold a referendum in the North and East etc.

Tamils have a pathetic weakness of being sucked in by all sorts of con-men. I guess this is partly because of the current crisis, and the ‘need to do something’, ie clutching at straws.

3) Contract Geoffrey Robertson QC in London, and Prof Francis Boyle, University of Illinois to file action, in whatever International court they think fit, against the Sri Lankan regime on a charge of crimes against humanity.

To *win* such a Case is not important, but to *charge* them in an International Tribunal or Court, is important. Even if nothing legal is achieved, the international publicity will most certainly be worth the effort and expense.

4) Contact the Left in Sri Lankan South, the likes of Wije Dias, Dr Vickremabahu Karunaratne, and Siritunga Jayasuriya, to grind Colombo to a halt.

This can be done, it must be done. It has been done in Indonesia, and the Philippines, and is being done, as I write, in Thailand (where thousands of people have brought Bangkok to a halt). I have not the slightest doubt that the people I have mentioned can do the same in the Sri Lankan South. They even have contacts and influence, in the crucial tea estates, where a strike will bring the regime to its senses in a very short time.

B) Action we have to take

1. Organise a total boycott internationally, and isolate the Sri Lankan regime (as was done with Apartheid South Africa).

The boycott must be carefully planned, goods and services going to Sri Lanka identified (as the Palestinians have done with Israel), and goods coming out of Sri Lanka. This *must* include tourists and cricketers.

I cannot overstate the importance of getting the Trade Unions on board. Their help is crucial (as it was with Apartheid). Individuals simply not buying Sri Lankan products, might not be sufficient. It has to be on a much larger scale.

The oft-heard argument that this will hurt the people, already suffering, is something we have heard for years eg during the apartheid boycott. People who already have little to lose (the majority of Tamils in the North and East, and the Sinhala poor), cannot lose any more – they have nothing to lose. I discussed this at length during my recent visit to South Africa.

The people who will be hurt, are not the poor people but those at the top, in particular, those who run the country. Indeed, if the people at the bottom are hurt, the pressure they will exert on their rulers, will increase, and bring them to their senses.

It is not widely appreciated that there is a 'fire-sale' going on in Sri Lanka. The Government is flat broke. This was inadvertently admitted by a 'patriotic' Sinhalese recently when he stated (29 June, 2009) that "*Massive investment is needed in the North and the East to allow these war-torn regions to catch up with the progress they missed because of the LTTE. The likelihood of obtaining these funds from Sri Lankan tax-payers or from foreign donors is not very good. The former because we spend all government revenues on salaries and debt repayments and the latter because the success of Eelam War IV on the ground was not matched by success in the external propaganda war.*

So what remains is private investment, domestic or foreign, beyond a few loans like the 24 million US dollars the government recently obtained from the World Bank for healthcare in the North.

Just to give a sense of proportion, the healthcare loan is less than one percent of the 4.5 billion US dollars pledged at the 2003 Tokyo Donors' Meeting".

Like a true patriot, he suggests selling off the (Tamil) North and East, since the paper is entitled, *Make Sri Lanka's North and the East special economic zones*.

Presumably, having killed off the Tamils or driven them away, there are no human beings, and the land could be sold, or even given away for free, to international commercial enterprises.

Be that as it may, the fact is that the regime is nearly bankrupt, and *that* is the 'soft underbelly' of the monster, and that is what should be targeted.

2. List out all international companies that provide goods and services to Sri Lanka, and target them.

They will have to be informed that unless they stop keeping this dreadful regime, or rather, the dreadful policies of the regime, afloat, the boycott and protests will extend to them and their products. This will quite definitely need some 'homework', as I know well, when I watched with interest, what was done to the apartheid regime.

Today, with all the internet facilities available, this tedious work has been made so much simpler.

The same holds for asylum seekers. The target should be Australia, Indonesia and Malaysia, where asylum-seekers are treated as criminals and locked up. To seek asylum is not a crime. I know of no country where it is.

3. Raise the necessary funds.

Just remember, we are not challenging the local hoodlum, pressuring him to change. We are taking on a regime with extensive backing (for various geopolitical reasons), by some very powerful countries. This cannot be achieved with peanuts. There is a need for some real money. Knowing how much was raised for the purchase of weapons to fight the Sri Lankan government for more than three decades, I am certain that the money is there. It is just a question of getting people to part with it. This they will do, if they can see that the campaign is well-organised and makes sense (which, of course, it does), and since there is no alternative.

4. Collect data from everyone who has got out, especially from the camps and the North-East.

It is essential to guarantee anonymity. What is needed is not their identity, but their story. If the stories add up, it is unlikely that they are all lying.

I have already recorded and released a dozen dvds, the last few have enormous amounts of information, enough to hang Gotabhaya Rajapakse and Sarath Fonseka, if no other. If I, a single individual, can do all this, I simply cannot believe that the thousands of others outside Sri Lanka, especially those who can speak the language of the asylum seekers (which I cannot), are unable to produce far more information than I ever could.

This data has to be submitted to whoever is contracted to take this to Court. I already have contacted Geoffrey Robertson's office in London. Mr Robertson has done what he

could, and even assigned a lawyer for this. It embarrasses me that we, yes we whose folk are affected, have not done what we should have done, despite Mr Robertson publicly that he is prepared to act. What he said is on my dvds. We are simply throwing away a golden opportunity, replacing 'action' with "no hope".

5. Get involved

More than all, get involved, even if this means moving some chairs and tables for a meeting. Tell your friends and neighbours what the Government of Sri Lanka is doing. Blow apart the dis-information campaign of the Sri Lankan regime.

Edmund Burke, the Irish politician and philosopher, said: "The only thing necessary for the triumph of evil is that good men do nothing". I am asking, you, good men and women, to do something, and not allow "evil", the likes of Gotabhaya Rajapakse, his brother, the President, and General (now ex-) Sarath Fonseka, to triumph.

Brian Senewiratne Brisbane, Australia.

18 March 2010