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ACCOUNTABILITY NOW: THE NEED FOR A WAR CRIMES TRIBUNAL REGARDING SRI LANKA

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ABOUT THE UNROW HUMAN RIGHTS IMPACT LITIGATION CLINIC

The UNROW Human Rights Impact Litigation Clinic is affiliated with American University Washington College of Law in Washington, D.C. The Clinic advocates for human rights by pursuing litigation in U.S. federal courts and international courts.

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INTRODUCTION

Justice and accountability are of utmost importance following mass atrocities such as those committed in Sri Lanka during its 25-year civil war. An estimated 80,000–100,000 people were killed during the war, and millions more are still displaced and living in diaspora around the world. Establishing an accurate account of the conflict, investigating allegations of human rights violations, and holding wrongdoers criminally accountable are all crucial to providing victims with justice and the nation and international community with vital answers. Effective accountability procedures help heal deep nation-wide wounds and restore people’s trust and security in their communities, their government, and the rule of law. Proper judicial accountability measures facilitate just resolution, peace, deterrence, and security, helping to transform a war-ravaged state into a reconciled society.

When national accountability efforts are inadequate in the face of ethical, legal, and political pressure, the United Nations often facilitates the implementation of effective judicial processes. Over the years, the international community has utilized a variety of accountability mechanisms, beginning with the precedent set by the Nuremberg trials and continuing to the more recent establishment of ad hoc tribunals and hybrid courts. When the need has arisen, the United Nations has assumed the burden of establishing an international tribunal that operates independent of the offending state. On occasion, the United Nations has incorporated a customized national legal system into the accountability process, consequently restoring the integrity of the state’s judiciary.

There is indisputable evidence that Sri Lankan security forces are responsible for war crimes, crimes against humanity, and genocide against its ethnic Tamil civilian population. Moreover, rather than fostering justice or accountability after the civil war, the Sri Lankan government has continuously impeded efforts to hold human rights violators accountable. As for its specious efforts, the Sri Lankan government has demonstrated an interest only in prosecuting members of the Liberation Tigers of Tamil Eelam, while failing to express any interest in holding its own state security forces responsible for the willful and deliberate targeted killing of tens of thousands of Tamil civilians. The Sri Lankan government’s Lessons Learnt and Reconciliation Commission (LLRC), established at the close of the civil war, does not provide any of the requisite safeguards to ensure a fair tribunal, resulting in a system that heavily favors the Sri Lankan military officials while marginalizing the rights of the Tamil population. Moreover, the Sri Lankan government has opposed and obstructed the efforts of a U.N.-appointed panel established to aid fair and impartial accountability.

The Tamil people, along with the other victims of the civil war, continue to wait for an accountability procedure that will restore justice and stability. As their recent conduct demonstrates, the Sri Lankan government has no intention to assist the affected Tamil people in seeking justice or accountability, or to respect fundamental international law principles. As the U.N. Security Council has previously recognized when establishing tribunals, the lack of accountability procedures following widespread atrocities threatens international peace and security.¹ We, therefore, urge

the United Nations to implement a tribunal to ensure justice for the victims of grave international crimes and to help restore access to the protection of law.

ACCOUNTABILITY MEASURES

Sri Lankan security forces committed grave violations of treaty law and international customary law during the course of the civil war.² The testimony and reports of victims, eyewitnesses, journalists, and non-governmental organizations establish the responsibility of Sri Lankan security forces in the willful and deliberate bombing of civilian hospitals, schools, and other non-military buildings; the bombing of government-proclaimed “safety” or “no-fire” zones in which civilians were known to have taken refuge; intentional attacks on civilians; rape and other acts of sexual violence; and deprivations of food and medical supplies.³

“UN AGENCIES, WORKING CLOSELY WITH OFFICIALS AND AID WORKERS LOCATED IN THE CONFLICT ZONE, DOCUMENTED NEARLY 7,000 CIVILIANS KILLED FROM JANUARY TO APRIL 2009.”

» International Crisis Group, *War Crimes in Sri Lanka*, Asia Report No. 191 5 (2010).

Both through the statements and concerted actions of officials, the Sri Lankan government has demonstrated its unwillingness to address war crimes, crimes against humanity, and genocide, or to receive support in accountability initiatives. The government’s lack of cooperation despite international attention to human rights abuses in Sri Lanka has not abated since the end of the conflict.⁴ For example, the Foreign Minister has expressly refused to act upon recommendations of well-respected non-governmental organizations, such as Amnesty International, Human Rights Watch, and the International Crisis Group, regarding war

crimes investigations, stating that the government would only consider yielding to the United Nations.⁵ The United Nation’s efforts to assist Sri Lanka in addressing allegations of human rights violations have been similarly rebuffed.

LESSONS LEARNT & RECONCILIATION COMMISSION

In May 2009, the Sri Lankan government and the U.N. Secretary-General issued a joint statement wherein the Sri Lankan government committed to addressing alleged violations of international human rights and humanitarian law.⁶ The Sri Lankan government, however, has failed to investigate and has denied allegations that Sri Lankan troops committed war crimes, crimes against humanity, or genocide during the conflict.⁷ Government officials have unabashedly declared their opposition to international efforts supporting accountability.⁸ The Foreign Minister has stated that “[t]he position of the Sri Lankan government is abundantly clear—we will not have

[the U.N. panel] in this country.”⁹ In light of such statements, the Sri Lankan government has demonstrated a lack of political will necessary to effectively implement the recommendations of investigatory commissions and panels. President Mahinda Rajapaksa established the Lessons Learnt & Reconciliation Commission (LLRC) to support “national unity and reconciliation” in the aftermath of civil war.¹⁰ Numerous aspects of the LLRC, however, undermine its credibility as an adequate accountability measure.

To reliably and effectively establish a record of human rights abuses that occurred in Sri Lanka during the conflict, a commission of inquiry should be independent, impartial, and diverse in composition.¹¹ Unfortunately, the LLRC lacks all of these features. Notwithstanding the government’s representation that the LLRC is independent and composed of “individuals presenting all of Sri Lanka’s communities,” five of the eight individuals appointed to the commission are former government officials.¹² In particular, the appointment of former Attorney General Chitta Ranjan de Silva as the chairman of the LLRC has raised concerns not only about the impartiality of the LLRC, but also about the effectiveness of the inquiry.¹³ Mr. de Silva reportedly obstructed the work of an earlier commission tasked with investigating possible government involvement in violations committed by Sri Lankan security forces.¹⁴ In addition, the Sri Lankan government has failed to sufficiently extend protections to witnesses giving testimony before the LLRC.¹⁵ Thus, it is highly questionable whether the historical account to be developed by the LLRC will be based on the broad participation of all affected communities and whether the recommendations that emerge from the LLRC will respond to the entire nation’s needs.

Furthermore, the LLRC lacks a mandate to examine allegations of war crimes, including crimes Sinhalese security forces committed against Tamil civilians.¹⁶ Instead, the LLRC’s mandate limits its inquiry to the failure of the 2002 ceasefire through the events leading to the end of hostilities in May 2009.¹⁷ Although Sri Lankan officials have stated that the LLRC may investigate war crimes,¹⁸ the LLRC is not obliged to do so. The LLRC’s account of the conflict will incompletely address human rights abuses.

THE U.N. PANEL AND GOVERNMENT OPPOSITION

In June 2010, the U.N. Secretary-General established a three-person panel to advise him on the Sri Lankan government’s efforts to implement its May 2009 commitment to human rights accountability.¹⁹ The panel is expected to report on the “modalities, applicable international standards and comparative experience with regard to accountability processes” within a four-month period.²⁰ Although the U.N. Secretary-General has encouraged the Sri Lankan government to utilize the panel as a resource, the Sri Lankan government has consistently responded negatively to the U.N. panel.²¹ The Sri Lankan government has not only declared the U.N. panel unnecessary,²² but has claimed that the panel threatens its sovereignty²³ and that international criticism interferes with its sovereign right to fight terrorism.²⁴

Statements made by Defense Secretary Gotabhaya Rajapaksa reveal a persistent uncooperativeness, and even an open hostility, towards accountability measures. Amidst reports that former army chief General Sarath Fonseka would be willing to testify before an international commission about the security forces' role in international law violations, the Defense Secretary has threatened to execute the former army chief if he were to testify.²⁵

Despite the U.N. panel's best efforts, the Sri Lankan government has affirmatively frustrated the panel's work. In June 2010, the Foreign Minister G.L. Peiris adamantly stated that the U.N. panel would not be allowed to enter the country and would be denied travel visas.²⁶ The following month, Housing Minister Wimal Weerawansa, an ally of the President, staged a hunger strike to protest the U.N. panel.²⁷ With the support of the Defense Secretary, the Housing Minister led thousands of government supporters in a chaotic protest outside U.N. offices in Colombo, disrupting the U.N.'s work and holding U.N. staff hostage.²⁸ As a result of the protest, the U.N. Secretary-General called for the closing of the U.N. office in Colombo.²⁹

Although the panel's work is now officially under way,³⁰ early reports suggest that the U.N. panel has been forced to operate from a compromised position, far removed from the locus of their study, "mak[ing] it harder for the truth to be unearthed."³¹ To date, the Sri Lankan government has prevented the panel from carrying out its mandate. Even if the U.N. panel ultimately fulfills its duties to report and provide recommendations, the government's historical failure to investigate crimes and current opposition to any inquiry indicates that the Sri Lankan government lacks sufficient political will to effectively implement accountability measures.

TEMPORARY INTERNATIONAL TRIBUNALS

The U.N. Security Council has an opportunity to reaffirm its intolerance of serious human rights and humanitarian law violations by establishing a temporary international tribunal to investigate and try alleged Sri Lankan war criminals. Through the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR), the U.N. Security Council established an important precedent: those most responsible for war crimes will be held accountable by the international community. Violations of international humanitarian law are prohibited under numerous international treaties.³² Common Article 3 to the Geneva Conventions clearly enumerates the protection civilians must enjoy during internal armed conflict.³³ In addition, international customary law prohibits the violation of the laws of war.³⁴

In the past, the U.N. Security Council has found it necessary to establish accountability procedures in response to large-scale human rights and humanitarian law violations. Through its Chapter VII powers, the U.N. Security Council has created non-permanent international tribunals when governments are unwilling or unable to hold war criminals properly accountable.³⁵ By punishing the central architects of mass atrocities, tribunals help deter leaders from committing future

crimes.³⁶ Furthermore, tribunals disseminate evidence of war crimes, preventing “deniers and perpetrators . . . [from] hid[ing] behind the unknown.”³⁷ The U.N. Security Council is mandated to maintain international peace and security, and the lack of adequate accountability procedures condones violence and breeds instability. International tribunals uniquely tell victims and perpetrators that the international community will not stand for horrific violations.

The U.N. Security Council established two notable tribunals, the ICTY and ICTR, after it recognized the severity of crimes committed in the former Yugoslavia and Rwanda. Both tribunals were established after the United Nations, through several resolutions, called upon the warring parties to stop violating international peace and security.³⁸ The U.N. Security Council was well aware of the atrocities being committed in the former Yugoslavia and Rwanda and warned parties that it would act against them if the parties did not cease the violations. The U.N. Security Council classified the violations of international humanitarian law as threats to international peace and security, and accordingly passed resolutions requesting the U.N. General Assembly to establish a tribunal.³⁹

Tribunals are generally created shortly after prolonged hostilities weaken national judicial mechanisms. For example, the ICTR was established after devastating civil conflict that substantially diminished the judicial system.⁴⁰ Weakened national institutions inhibit thorough investigations and trials from taking place. The international community recognized that justice required external accountability forums to help ensure neutrality and alleviate the national system’s burden.

Using tribunals for accountability, rather than using national judicial systems, understandably raises concerns of national sovereignty. In creating a tribunal for the former Yugoslavia, the U.N. noted its unique sovereignty situation: the former Yugoslavia did not enjoy state rights because it no longer existed as it had prior to and during the conflict. In Rwanda, the government requested the creation of a Chapter VII tribunal, waiving its sovereignty.⁴¹ Furthermore, Rwanda and the warring factions in the former Yugoslavia were put on notice that their actions

“THE EXACT FORM OF ACCOUNTABILITY IS LESS IMPORTANT THAN THE EXISTENCE OF SOME PROCESS FOR STIGMATIZING THE OFFENDER, AIDING THE VICTIM, INFORMING THE SOCIETY, AND ENSURING THAT POLITICAL SETTLEMENTS AND TRANSITIONS TAKE ACCOUNT OF HUMAN RIGHTS ABUSES.”

» Steven R. Ratner & Jason S. Abrams, *Accountability for Human Rights Atrocities in International Law* 336 (2d ed. 2001).

violated fundamental international law principles.⁴² The need for accountability is even greater when a warring party remains in power and is unwilling to respect the rule of law.

Although the Sri Lankan government has opposed the creation of an international tribunal, the international community is obliged to ensure accountability of war crimes, crimes against humanity, and genocide. The U.N. Security Council has shown it can act affirmatively to hold war criminals accountable and to thwart threats to international peace and security. The U.N. Security Council should similarly establish a tribunal to address the severe, grave, and widespread international crimes committed in Sri Lanka.

PROPOSAL: THE U.N. SHOULD ESTABLISH A WAR CRIMES TRIBUNAL

The United Nations can draw from a wealth of precedents to establish accountability mechanisms for Sri Lanka that satisfy the interests of international peace, stability, and justice. Currently, the Sri Lankan government is forcing the U.N. panel to work from a position of compromise. The Sri Lankan government's obstructionism is unacceptable. Furthermore, even if the U.N. panel is able to provide its advice, the painful reality is that the Sri Lankan government has no political will to implement the U.N. panel's recommendations.

The Tamil civilian population lacks the political capital and resources to remedy the situation. The Tamil community's need for truth, justice, and redress will continue to be marginalized without outside intervention. Marginalization and impunity for human rights violations may once again lead to unrest in the country and will impede justice and accountability.

True accountability will not emerge from yet another report illustrating the dearth of appropriate accountability proceedings in Sri Lanka. The Tamil people need and deserve far more. The U.N. panel has an opportunity to use its position to recuperate the fundamental principles of international human rights and humanitarian law.

In light of Sri Lanka's obligations under the Convention (IV) Relative to the Protection of Civilian Persons in Time of War and the Convention on the Prevention and Punishment of the Crime of Genocide, as well as the government's continued failure to implement accountability procedures, we urge the U.N. panel to strongly recommend the prompt establishment of an international tribunal, or an equally effective accountability mechanism, with the power to prosecute persons most responsible for perpetrating international crimes.

Among other things, the tribunal must have the following features:

1. An appropriate mandate to address grave breaches of the Geneva Conventions, violations of the laws or customs of war, genocide, and crimes

against humanity, with special attention to alleged violations occurring between January 2009 and May 2009.

2. Independent judges, prosecutors, and lawyers who have expertise in international law and who can ensure that the accountability process is fair, impartial, and divorced from lopsided politics favoring any one group or sheltering criminal state actors from prosecution.
3. Unimpeded access to evidence within the custody of the Sri Lankan government, including access to witnesses among security forces or the Sri Lankan government.
4. Special protections for witnesses, including measures to protect or obscure the identities of witnesses who fear for their safety and measures to facilitate travel to the forum. Most importantly, other U.N. member states should be approached to arrange for the safe travel and return of witnesses living in diasporas to ensure that they will be given re-entry into the country in which they are currently residing.
5. Access to independent counsel with resources to provide adequate representation.
6. An obligation to publish a record of all hearings, court proceedings, and decisions that will be available to the public.
7. An obligation to regularly report to the Secretary-General on the status of the tribunal.
8. An obligation to guarantee the access of U.N. monitors to ensure the transparency of all proceedings.
9. Rules of evidence and procedure developed in consultation with experts in international law and consistent with international norms of due process.

On behalf of the Tamil civilians who are victims of war crimes committed during the final phase of conflict, we urge the U.N. panel, as representatives of the international human rights community, to press both the U.N. Secretary-General and U.N. Security Council for accountability without concession. The panel can ensure that the U.N. Security Council fulfills its mandate to maintain international peace and security, while at the same time ensuring that the United Nations meets its broader commitment to upholding human rights.

ENDNOTES

¹ See S.C. Res. 827, U.N. Doc. S/RES/827 (May 25, 1993) (expressing the Security Council's conclusion that "the establishment as an ad hoc measure by the Council of an international tribunal and the prosecution of persons responsible for serious violations of international humanitarian law would enable [the Security Council to achieve the aim of putting an end to violations and bringing to justice the persons responsible for them] and would contribute to the restoration and maintenance of peace").

² INTERNATIONAL CRISIS GROUP, SRI LANKA'S RETURN TO WAR: LIMITING THE DAMAGE, ASIA REPORT NO° 146 15-16 (2008), *available at* http://www.crisisgroup.org/~media/Files/asia/south-asia/sri-lanka/146_sri_lanka_s_return_to_war___limiting_the_damage.ashx.

³ Report of the Permanent People's Tribunal, Ireland (Jan. 14-16, 2010) (on file with the UNROW Human Rights Impact Litigation Clinic).

⁴ See generally INTERNATIONAL CRISIS GROUP, SRI LANKA'S RETURN TO WAR: LIMITING THE DAMAGE, ASIA REPORT NO° 146 15-16 (2008) (reporting the Sri Lankan government's intolerance towards international bodies and the media who have publicly questioned the government); *available at* http://www.crisisgroup.org/~media/Files/asia/south-asia/sri-lanka/146_sri_lanka_s_return_to_war___limiting_the_damage.ashx.

⁵ Official Website of the Government of Sri Lanka, *Amnesty International Can't Dictate Terms to Us, Says Lankan Minister*, June 1, 2010, http://www.priu.gov.lk/news_update/Current_Affairs/ca201006/20100601amesty_int_cant_dictate_terms_to_us_lankan_minister.htm.

⁶ See Joint Statement by U.N. Secretary-General, Government of Sri Lanka, ¶ 12, U.N. Doc. SG/2151 (May 26, 2009) *available at* <http://www.un.org/News/Press/docs/2009/sg2151.doc.htm> (stressing the importance of accountability for violations of international humanitarian law and stating that the Sri Lankan government would undertake "measures to address those grievances").

⁷ *Sri Lankans Besiege U.N. Office Over War Crimes Panel*, BBC.CO.UK, July 6, 2010, *available at* <http://www.bbc.co.uk/news/10519247>; Geneva Convention (IV) Relative to the Treatment of Civilian Persons in Time of War, art. 3, Aug. 12, 1949, 75 U.N.T.S. 287.

⁸ See *Sri Lanka Rules Out Visas for U.N. War Crimes Panel*, REUTERS, June 24, 2010, *available at* <http://www.alertnet.org/thenews/newsdesk/SGE65N0AJ.htm> (reporting that the U.N. panel would be denied visas and that there was "no need" for the panel).

⁹ See *Sri Lanka Says U.N. Panel "Will Not Be Allowed" to Enter*, BBC.CO.UK, June 24, 2010, *available at* <http://www.bbc.co.uk/news/10405996>.

¹⁰ Official Website of the Government of Sri Lanka, Commission on Lessons Learnt & Reconciliation (LLRC), Warrant Issued by President Mahinda Rajapaksa on May 15, 2010, http://www.priu.gov.lk/news_update/LLRC%20news/20100826warrent_issued.htm (last visited Sept. 3, 2010).

¹¹ See STEVEN R. RATNER & JASON S. ABRAMS, ACCOUNTABILITY FOR HUMAN RIGHTS ATROCITIES IN INTERNATIONAL LAW 231 (2d ed. 2001) (“[A] commission’s success will depend heavily on the independence, stature, and moral authority of its members. The nature and history of the abuses that the commission will be examining may also make diversity in composition . . . critical to establishing credibility.”); see also *id.* at 238 (explaining that an effective commission “can establish an official, authoritative record of abuses” and thus “educate the public, possibly deter future abuses, and strengthen the rule of law”).

¹² Official Website of the Government of Sri Lanka, Commission on Lessons Learnt & Reconciliation (LLRC), Context (Aug. 26, 2010), http://www.priu.gov.lk/news_update/LLRC%20news/llrc_home.htm; Official Website of the Government of Sri Lanka, Commission on Lessons Learnt & Reconciliation (LLRC), Commission Members (Aug. 31, 2010) http://www.priu.gov.lk/news_update/LLRC%20news/20100826commission_members.htm.

¹³ See U.S. DEP’T OF STATE, OFFICE OF WAR CRIMES ISSUES, REPORT TO CONGRESS ON MEASURES TAKEN BY THE GOVERNMENT OF SRI LANKA AND INTERNATIONAL BODIES TO INVESTIGATE INCIDENTS DURING THE RECENT CONFLICT IN SRI LANKA, AND EVALUATING THE EFFECTIVENESS OF SUCH EFFORTS ¶ IV.2 (2010), available at <http://www.state.gov/s/wci/srilanka/releases/145884.htm>.

¹⁴ *Id.*

¹⁵ See Paikiasothy Saravanamuttu, From Post-war to Post-conflict, Global Peace Support Group (Aug. 6, 2010), <http://www.globalpeacesupport.com/globalpeacesupport.com/post/2010/08/06/From-post-war-to-post-conflict.aspx> (noting the absence of “a witness or victim protection scheme”).

¹⁶ U.S. DEP’T OF STATE, OFFICE OF WAR CRIMES ISSUES, REPORT TO CONGRESS ON MEASURES TAKEN BY THE GOVERNMENT OF SRI LANKA AND INTERNATIONAL BODIES TO INVESTIGATE INCIDENTS DURING THE RECENT CONFLICT IN SRI LANKA, AND EVALUATING THE EFFECTIVENESS OF SUCH EFFORTS ¶ IV.2 (2010), available at <http://www.state.gov/s/wci/srilanka/releases/145884.htm>.

¹⁷ See *War Crimes Commission ‘Not Addressing’ Final Days of War*, BBC RADIO, Aug. 14, 2010, http://news.bbc.co.uk/today/hi/today/newsid_8913000/8913864.stm (noting that the major focus has been on why a 2002 ceasefire did not last, even though international critics have called for an inquiry to focus on the casualties committed in final months of the war).

¹⁸ See Elizabeth Dickinson, *Sri Lanka Rejects War Crimes Accusations*, FOREIGN POLICY, May 25, 2010, http://www.foreignpolicy.com/articles/2010/05/25/sri_lankas_government_rejects_war_crimes_accusations (reporting Foreign Minister G.L. Peiris’s view that the LLRC can investigate war crimes).

¹⁹ Secretary-General Office of the Spokesperson, Statement Attributable to the Spokesperson for the Secretary-General on Sri Lanka, June 22, 2010, <http://www.un.org/apps/sg/sgstats.asp?nid=4627>.

²⁰ *Id.*

²¹ Press Release, Secretary-General, Secretary-General Names Panel of Experts to Advise on Accountability for Possible Rights Violations During Sri Lanka Conflict,

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- U.N. Doc SG/SM/12967 (June 22, 2010), *available at* <http://www.un.org/News/Press/docs/2010/sgsm12967.doc.htm>.
- ²² *Sri Lanka Says U.N. Panel “Will Not Be Allowed” to Enter*, BBC.CO.UK, June 24, 2010, <http://www.bbc.co.uk/news/10405996>.
- ²³ *Sri Lanka Civil War Commission Begins Hearings*, GUARDIAN.CO.UK, Aug. 11, 2010, <http://www.guardian.co.uk/world/2010/aug/11/sri-lanka-civil-war-commission>.
- ²⁴ Official Website of the Government of Sri Lanka, *International Community Cannot Punish Sri Lanka for Defeating Terrorism—President*, May 28, 2010, http://www.priu.gov.lk/news_update/Current_Affairs/ca201005/20100528following_is_the_full_tex.htm.
- ²⁵ U.S. DEP’T OF STATE, OFFICE OF WAR CRIMES ISSUES, REPORT TO CONGRESS ON MEASURES TAKEN BY THE GOVERNMENT OF SRI LANKA AND INTERNATIONAL BODIES TO INVESTIGATE INCIDENTS DURING THE RECENT CONFLICT IN SRI LANKA, AND EVALUATING THE EFFECTIVENESS OF SUCH EFFORTS ¶ IV.2 (2010), *available at* <http://www.state.gov/s/wci/srilanka/releases/145884.htm>.
- ²⁶ *Sri Lanka Rules Out Visas for U.N. War Crimes Panel*, REUTERS, June 24, 2010, <http://www.alertnet.org/thenews/newsdesk/SGE65N0AJ.htm>; *Sri Lanka Says U.N. Panel “Will Not Be Allowed” to Enter*, BBC NEWS, June 24, 2010, <http://www.bbc.co.uk/news/10405996>.
- ²⁷ *Office Closed in Sri Lanka After Protests*, N.Y. TIMES, July 8, 2010, <http://www.nytimes.com/2010/07/09/world/asia/09briefs-001.html>.
- ²⁸ *Sri Lankans Besiege U.N. Office over War Crimes Panel*, BBC NEWS, July 6, 2010, <http://www.bbc.co.uk/news/10519247>.
- ²⁹ Secretary-General Office of the Spokesperson, Statement Attributable to the Spokesperson for the Secretary-General on Sri Lanka, July 8, 2010, <http://www.un.org/apps/sg/sgstats.asp?nid=4668>; *Ban urges Sri Lanka to normalize conditions around UN office in Colombo*, U.N. NEWS CENTRE, July 9, 2010, [http://www.un.org/apps/news/story.asp?NewsID=35286&Cr=sri+lanka&Cr1=](http://www.un.org/apps/news/story.asp?NewsID=35286&Cr=sri+lanka&Cr1=;); *UN Chief Ban Ki-moon Recalls Sri Lanka Envoy*, BBC NEWS, July 8, 2010, <http://www.bbc.co.uk/news/10562681>.
- ³⁰ *Ban Meets Panel of Experts on Human Rights Issues in Sri Lankan Conflict*, U.N. NEWS CENTRE, Sept. 17, 2010, <http://www.un.org/apps/news/story.asp?NewsID=35966&Cr=SRI+LANKA&Cr1.>
- ³¹ *Sri Lanka Says U.N. Panel “Will Not Be Allowed” to Enter*, BBC NEWS, June 24, 2010, <http://www.bbc.co.uk/news/10405996> (quoting Marzuki Darusman).
- ³² See Convention on the Prevention and Punishment of the Crime of Genocide, Dec. 9, 1948, 78 U.N.T.S. 277; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10 1984, 1465 U.N.T.S. 85; Rome Statute of the International Criminal Court, July 1, 2002, 2187 U.N.T.S. 3.
- ³³ Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, art. 3, Aug. 12, 1949, 75 U.N.T.S. 31; Geneva Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, art. 3, Aug. 12, 1949, 75 U.N.T.S. 85; Geneva Convention (III) Relative to the Treatment of Prisoners of War, art. 3, Aug. 12, 1949, 75 U.N.T.S. 135; Geneva Convention (IV) Relative to the Treatment of Civilian Persons in Time of War, art. 3, Aug. 12, 1949, 75 U.N.T.S. 287; Protocol

Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol 1), June 8, 1977, 1125 U.N.T.S. 3; Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts, June 8, 1977, 1125 U.N.T.S. 609.

³⁴ The International Committee of the Red Cross has compiled multi-volume publications outlining areas of humanitarian law that are considered international customary law, including the protection of civilians. *See* Jean-Marie Henckaerts, et. al, CUSTOMARY INTERNATIONAL HUMANITARIAN LAW: VOLUME II: PRACTICE (Cambridge 2005).

³⁵ U.N. Charter art. 39.

³⁶ *Id.*

³⁷ Richard Goldstone, *International Criminal Court and Ad Hoc Tribunals*, in THE OXFORD HANDBOOK ON THE UNITED NATIONS (Thomas G. Weiss and Sam Daws eds., 2007).

³⁸ *See* S.C. Res. 912, U.N. Doc. S/RES/912 (April 21, 1994); S.C. Res. U.N. Doc. S/RES/918 (May 17, 1994); S.C. Res. U.N. Doc. S/RES/925 (June 8, 1994); S.C. Res. U.N. Doc. S/RES/780 (October 6, 1992).

³⁹ *See* S.C. Res. 827, U.N. Doc. S/RES/827 (May 25, 1993).

⁴⁰ THE NORWEGIAN HELSINKI COMMITTEE, PROSECUTING GENOCIDE IN RWANDA: THE GACACA SYSTEM AND THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA 13-15 (2002), *available at* <http://www.nhc.no/php/files/documents/Publikasjoner/Rapporter/Landogtema/wandarap.pdf>.

⁴¹ Although Rwanda voted against the creation of the tribunal during the U.N. Security Council vote, Rwanda specifically opposed the exclusion of the death penalty, the use of non-Rwandan judges, and the location of the trials outside of Rwanda, rather than maintaining national sovereignty objections. *See* Melissa Gordon, Comment, *Justice on Trial: The Efficacy of the International Criminal Tribunal for Rwanda*, 1 ILSA J. INT'L & COMP. L. 221 (1995).

⁴² *See* S.C. Res. 912, U.N. Doc. S/RES/912 (April 21, 1994); S.C. Res. U.N. Doc. S/RES/918 (May 17, 1994); S.C. Res. U.N. Doc. S/RES/925 (June 8, 1994); S.C. Res. U.N. Doc. S/RES/780 (October 6, 1992).