

But I am going to raise some of the economic arguments for people who are not persuaded by that argument. Having said that, I know that everyone in this room today is persuaded by the compassion and dignity arguments.

The number of people with severe or profound disability is predicted to increase over the next 40 years from 1.4 million to 2.9 million Australians. The projected growth rate in the population with severe or profound disability will outstrip the general population growth rate by two to three times over the next 70 years. At the same time, the ratio of formal carers will decrease by more than half over the next 50 years. We should all recognise that wherever there is a person with a disability there is quite often a family that surrounds them who also, unless we can do much better than we are doing, will carry an overly large burden in many ways. Families and other carers play a significant role in supporting people with disability. In 2003, there were approximately 2.5 million people providing informal care to people with disability or old age. This is a phenomenal number. I commend the motion to the House.

The DEPUTY SPEAKER (Mr S Sidebottom)—Order! The time allotted for this debate has expired. The debate is adjourned and the resumption of the debate will be made an order of the day for the next sitting.

PRIVATE MEMBERS' BUSINESS

Humanitarian Issues During the War in Sri Lanka

Debate resumed, on motion by **Mr Laurie Ferguson**:

That this House notes that:

- (1) the Sri Lankan Government declared an end to the war in Sri Lanka in May 2009;
- (2) on 22 June 2010 the United Nations Secretary-General appointed a panel of experts to advise him on accountability concerning any alleged violations of international human rights and humanitarian law during the final stages of the conflict in Sri Lanka;
- (3) the panel:
 - (a) officially began its work on 16 September 2010; and
 - (b) is looking into the modalities, applicable international standards and comparative experience with regard to accountability processes, taking into account the nature and scope of any essential foundation for durable peace and reconciliation in Sri Lanka;
- (4) through the panel, the Secretary-General expects to enable the United Nations to make a constructive contribution in this regard;
- (5) on 18 October 2010 the panel invited individuals and organisations to make submissions in respect of its work, and will accept submissions until 15 December 2010;
- (6) in light of the panel's review, Australia's close ties with Sri Lanka and continuing reports by several reputable human rights organisations, such as the International Crisis Group, Amnesty International, Human Rights Watch and the Elders, as well as governments including in Britain, there has been a call for an international independent investigation into war crimes committed by all parties during the final stages of the war in Sri Lanka; and
- (7) Australia, as a respected and responsible member of the international community and Asian neighbourhood, can help accomplish better outcomes in Sri Lanka in the return towards a civil society, particularly for the Tamil minority, and that such actions:
 - (a) would further assist with the creation of durable solutions to what has been a humanitarian crisis on Australia's doorstep in Sri Lanka; and
 - (b) could also help partially alleviate the flow of asylum seekers from Sri Lanka.

Mr LAURIE FERGUSON (Werriwa—Parliamentary Secretary for Multicultural Affairs and Settlement Services) (11.52 am)—Last week I had approaches from the Sri Lankan acting high commissioner and from a number of people in my electorate. I will be meeting a delegation of Sinhalese tomorrow. I want to say at the outset that—if there is any need to make this clear—I am not an apologist for the Tamil Tigers. As the US Department of State noted:

The LTTE continued to control large sections of the north and east and engaged in politically motivated killings; ... disappearances; torture; arbitrary arrest and detention.

During that period they also forcibly enlisted young males predominantly—that was one of the reasons for the fallout within their group between the north and the east—and engaged in a number of murders that nobody would condone. This is all apart from the realities of the 1983 massacres of 3,000 Tamils, which precipitated part of this reaction. Some people defending the Sri Lankan regime say that anyone who is critical and questioning is an apologist, a stooge or a flunky for the Tamil Tigers. That is a superficial analysis and a simplistic position.

I believe there is a need for international oversight of the concluding period of the civil war in Sri Lanka. When I look at the phalanx of people around the world who see a need for this—and I do not agree with the Sri Lankan

government or the more chauvinistic Sinhalese elements—I do not think we can say that David Cameron is a fool or that he has not examined the issue when he talks about the need for an inquiry. I do not think we can accuse the European community of that either, when they have basically taken away Sri Lanka's trade advantages on the issue of human rights.

I do not think that the United States Department of State's ambassador, Patricia Butenis, quoted in WikiLeaks exposes, is necessarily a simpleton. She noted that there is no historical precedent for a government looking at the actions of its own troops and went on to say that the difficulty in Sri Lanka was exacerbated—this is her view; I am not necessarily her mouthpiece but I will just quote her view in WikiLeaks—by the involvement of President Rajapakse and the elite in Sri Lanka in the conclusion of the civil war, which made it even more difficult to avoid the need for outside oversight. Desmond Tutu talked of:

... a determined effort for accountability for past crimes by all parties to the conflict.

As we have seen, there has been a refusal by, amongst others, the International Crisis Group, Amnesty International and Human Rights Watch to participate in the government's own LLRC inquiry.

I say that this is not just an approach by a Tamil diaspora. I have always had the view that it is a lot easier for diasporas around the world to be very radical about events back in their homeland because they are not going to get a bullet in the head, but this is obviously not a campaign totally controlled or manipulated by the diaspora around the world. People have examined the issues and they have come to a conclusion that there is a need to look at abuses on both sides of this conflict.

I have also taken the opportunity to look at the government of Sri Lanka's response to the European Parliament's Subcommittee on Human Rights. I have to say that their own words are disconcerting and worrying and only add to the case as far as I am concerned. They go into an attack upon NGOs, saying simply that any NGOs are basically out there to 'perpetually keep themselves in business'. This is the Sri Lankan government's approach to NGOs that are critical of what is happening in the country. They also make the point that the expenditure is spent on overheads. If you are going to denigrate NGOs that are trying to help people, it really says something about your own case. When they look at the European Community, the Sri Lankan government's official response at Brussels talked about an attempt to 'achieve partisan political objectives'. They are saying that the European Community is motivated by those kinds of sentiments. They say that all of these groups that have refused to participate should come to Sri Lanka, come forward and give evidence to this committee. This is a committee which was appointed by the government and which gave thanks to the President for his 'directions', in their own words. That gives rise to real questioning of the degree of independence of the internal inquiry.

I note that there is talk there in criticism of the 18th amendment to the constitution, an amendment which centralises power in the government. There is talk about democracy and about how the President will have to recontest. There is this guarantee that, despite the concerns of people about centralisation of power and appointments in Sri Lanka, all is well because there is democracy. We know that the alternative candidate, General Fonseka, did not have a very nice outcome after that very disputed election. We know—this might be Tamil propaganda, but I think it is very close to the mark—that 27 members of the Rajapakse family have leading positions in the current regime.

I have to say that I also have read the submission of one group that went before this inquiry, the Catholic Church in the Diocese of Mannar. They have a very worrying list of concerns that they conveyed. They spoke of a lack of success in halting extrajudicial disappearances. They talked about continuing detention upon suspicion. I am not for a moment disputing that a significant number of the leadership of the Tigers should basically be brought before courts and tried for their activities, but equally we believe the international community should have the right to examine the actions of military authorities during the conflict. But should these people be held for this period of time, isolated from families and—realistically—from the international community? That church submission talked about the need for permanent housing, the occupation of large parts of the area by the military, the militarisation of the administration in the north and east and the interference in regard to memorial services.

A Sinhalese constituent spoke to me yesterday and I understand that his sentiments are genuine. He sees a need for intermarriage. He sees a need for communities to be together and live in the same areas. He feels that the language law that was passed by the predominantly Sinhala administration was wrong. He does not support the current government. I understand why he believes that it is not necessarily bad for there to be a degree of Sinhala migration to the north and east. I think his sentiments are genuine. However, whether it is transmigration in Irian Jaya or the movement of populations around the world, where you have a defeated minority, there can be problems. I know people will say that, technically, the Tamils were not defeated but the Tigers were defeated, but many Tamils, genuine people like my Sinhala friend, believe that the current migration of people, the renaming of

streets in the north with Sinhala names and the creation of Buddhist temples in places where there is not a significant Buddhist population—all these things—are a threat to their identity.

We have to be sensitive in any country, not just Sri Lanka. Where there is a minority and, historically, there have been rather extreme ethnic differences, to see what seems to be a government instigated movement of people to an area must cause alarm. I hear what the Sri Lankan government says about there being building opportunities there and people are going there for employment and Tamils live in Colombo. Maybe there is some truth in all of those things, but there has to be great sensitivity shown when people who have to establish their rights to language and a degree of say in their society face this kind of pressure.

I believe that the evidence is there that the Sri Lankan regime, unfortunately, cannot be trusted to engage in a genuine process of examination of military action that resulted in the killing of innocent civilians in the final period of the war. The report of this internal inquiry gives only two options: they were partisans of the Tigers or people trying to escape from them. This, again, is a judgment in advance; it is not an examination. Obviously some totally innocent civilians were murdered in those last few days. There needs to be an examination of these matters. (*Time expired*)

Mr RANDALL (Canning) (12.02 pm)—I am pleased to speak on this motion on humanitarian issues during the war in Sri Lanka. At the outset, I congratulate the member for Werriwa on bringing this motion to the parliament and for the measured way that he addressed it. I have always had high regard for the member for Werriwa's interest in human rights issues and migration issues. On this occasion he is quite passionate about his views as the issue stands now.

I come to this debate from a number of perspectives. One of them is the fact that I am the deputy chair of the Sri Lanka friendship group in this parliament and I have a keen interest in the issues. Like the member for Werriwa and others, I have had contact and lobbying from both sides of the Sri Lankan debate. This debate has been generated because for more than the past 26 years there has been a civil war in Sri Lanka. The Liberation Tigers of Tamil Eelam, or LTTE, fought a strong war under their leader, Prabhakaran, to have a separate state in the north of Sri Lanka for the largely Tamil population. It was a brutal war with many atrocities—by both sides, might I say. The collateral damage of any war is the civilians. I do not for one moment absolve anyone on either side of blame. As I said, in a brutal war like this there will be casualties.

In Sri Lanka, my best friend is a Tamil gentleman. Not every Tamil is a LTTE sympathiser and not every Tamil is a supporter of a free state, as the member opposite pointed out. I will expand on that. The largest population of Tamils anywhere Sri Lanka is in Colombo. This demonstrates that there is free movement for the Tamil population throughout Sri Lanka. The LTTE has been proscribed in many parts of the world and was re-proscribed in the European Union just recently. This is an outlawed group. People come to see me and say, 'Are you concerned about this and that?' I say, 'I am very concerned about the human rights and the issues with people in Sri Lanka, but if you are a supporter of the LTTE please do not try to raise that issue with me, because I think that when you come to Australia you've got to leave that behind. You come to Australia for a better life for you and your family, and we don't want any ethnic wars in Australia or continued hostilities. People from the Balkans—the Serbs, the Croatians, et cetera—come to Australia and, yes, there are passionate issues. But you move on and start a new life, and please don't have your children that you bring to Australia or that are born in Australia continue these hostilities from now to eternity. We are one of the most successful migration destinations in the world.'

The Sri Lankan Civil War finished in May 2009, when finally the remnants of the LTTE were cornered in the jungle and Prabhakaran and his remaining lieutenants were killed. Once that happened, something like 280,000 innocent civilians, who had been held captive largely because they were in the area under LTTE control, were liberated. Many of them were taken to camps. I sat in parliament here and listened to a number of speakers from the Tamil organisations who described these camps as concentration camps. That is in dispute; the fact is that most of these people—some 263,000 of those 280,000 people—have now been returned to their home areas. One of the reasons that some have not done so is that much of their land is still heavily mined. With the help of international groups, including some from Australia, they are gradually clearing the mines from the fields and the villages in those areas. When I went to Sri Lanka sometime ago, we went to the elephant orphanage, where there was an elephant which had had its leg blown off because it had trod on one of the mines. So the place is infested with mines still.

There is an argument that persecution has been a push factor for migration to Australia. An article in the Canadian newspaper the *Toronto Sun* by Brian Lilley from the parliamentary press bureau says:

To become a refugee, a claimant must prove they are in danger of torture, there is a risk to their life or meet other criteria showing they will face persecution in their home country.

That is the definition of a refugee. Migration by Tamils fleeing Sri Lanka ceased more than 12 months ago. The Australian ambassador to Sri Lanka, Kathy Klugman, congratulated the Sri Lankan navy for its success in stopping any further departures. But they continue to monitor this, because the latest successful apprehension was as recently as 19 February this year—the odd boat is still trying to leave. It is interesting that an article from the *Australian*, similar to the one I referred to before from the *Toronto Sun*, says that something like 70 per cent of those who came to this country, once they got their protection visa—surprise, surprise!—returned Sri Lanka within 12 months. That says to me that there is quite an issue here. I have a letter sent to the Department of Foreign Affairs on 2 February this year. In it are the names of Mr Libasudeen Ibralebbe, who was after a renewal visa, Mrs Sivaanujah Sivaharan, who wanted a new passport, and Mrs Rageswary Somasundaram, who wanted a renewal of her passport. The letter also says, ‘These people, who have received protection visas, want to return to Sri Lanka.’ So much for their fleeing from persecution in fear for their lives!

This is where we have a problem in this country: we have to be very careful because there is evidence of people being arrested for trying to collect money here on behalf of the LTTE diaspora. Even though they have been defeated on their own shores, they continue offshore with this program of an independent homeland. Australia must not be allowed to support it. This is also happening in Canada and Europe. There was a request that the contents of the letter that I have here be made available to the foreign minister, the Hon. Kevin Rudd, and to the immigration minister, Chris Bowen. I hope it has been made available, because at the next estimates there will certainly be questions about their response to these people who claimed protection visas and who then, quite clearly within 12 months of receiving a protection visa, sought to renew their Sri Lankan passports to go home. That says to me that there could be a bit of a rort going on here.

Putting it again into context, the member opposite said that we need the UN involved. The UN is involved. Professor GL Peris has been at the United Nations over the last few weeks, seeking meetings with Ban Ki Moon on this issue. He has been explaining the government’s involvement in seeking the truth on this matter. In fact, in May 2010 the Lessons Learned and Reconciliation Commission was established in Sri Lanka, and it has already had over 200 sittings. If Desmond Tutu is asking for this to happen—and it is no different from the Truth and Reconciliation Commission held in South Africa after the apartheid regime—all I can say to him is that he is correct: this should happen and it is happening. But we cannot in some patronising way say, ‘Well, you’d better send in the UN to take over the monitoring.’ That would be like us agreeing to the UN to come here to monitor our issues with Aboriginals following international criticism. If Mr Tutu is so passionate about that, why isn’t he insisting that Mr Mugabe in Zimbabwe has the same treatment? Do not go for the easy targets. This is a democratically elected country. They had a recent election where Mr Rajapaksa was re-elected. I had some issues, like the member for Werriwa, with the fact that General Fonseka ended up on a sticky wicket after the elections. But a bad democracy is better than any other choice. It is about time that we moved on. Australia is a great friend of Sri Lanka, and we want to see Sri Lanka re-establish itself in the world from a human rights and also an economic point of view because they have the opportunity to do so.

I seek leave to table my documents.

Leave granted.

Mr BANDT (Melbourne) (12.12 pm)—I rise to speak in support of the motion. The long-running civil war in Sri Lanka, which has its roots in the colonial subjugation of that country by the British Empire, has been ongoing and has consumed the country for over 26 years. Estimates vary on the number of people killed during that war but the United Nations says that up to 100,000 people may have lost their lives. That is an incredible figure and represents only the worst end of the terrible misery and suffering that has been experienced by the people of this island nation.

While the Sri Lankan government declared an end to the civil war in May 2009 and the LTTE, or Tamil Tigers, acceded defeat, this conflict cannot be said to be over yet. In fact, it is a reasonable prediction that some form of conflict will continue until the legitimate aspirations of the Tamil people to self-determination are addressed in some form or another. Self-determination is an inalienable right recognised in the UN charter and elaborated in article 1 of both the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). Article 1 states:

All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

While we Greens support the work of the United Nations panel which, as this motion outlines, was established on 22 June 2010 by the United Nations Secretary-General, it is clear that there still needs to be an independent international investigation into the human rights abuses and war crimes, in particular in the final stages of the war. According to reports, the final months and years of this war were the most bloody and involved terrible human rights

abuses. Such abuses must be properly investigated and a process towards justice must be achieved. The member for Werriwa in moving this motion made a very important point, and that is that independent observers, whether from the United Nations or elsewhere, must be granted full access to Sri Lanka to be able to investigate all alleged crimes and abuses fully.

According to Amnesty International's most recent written statement to the 16th session of the UN Human Rights Council released just last week:

Impunity persists for past violations and abuses of international human rights and humanitarian law, and new and serious violations of human rights continue to be reported. In the two years since fighting ended in Sri Lanka evidence of serious violations and abuses by parties to the conflict has continued to mount, but the Sri Lankan Government has refused to acknowledge credible allegations of war crimes and other crimes under international law by its armed forces in the course of the conflict that ended in May 2009. It continues to subject people to enforced disappearances and torture and other ill-treatment. Thousands of people suspected of ties with the ... (LTTE) remain in detention without charge.

Some officials still claim publicly that there were no civilian casualties at all.

Australia must take some responsibility for this situation in Sri Lanka, one of our nearest neighbours, because we have failed to put any substantial pressure on Sri Lanka, either directly or in international forums. The Australian government's failure so far to reject the former head of Sri Lanka's navy, Thisara Samarasinghe, as a possible new ambassador to Australia is symptomatic of the weak way in which our country has historically responded to the Sri Lankan government's violation of human rights. Thisara Samarasinghe was in charge of the Sri Lankan navy when their ships were reported to have shelled civilian areas. Surely this makes him unfit to be ambassador. Australia needs to do more to stand up to the Sri Lankan government and protect the human rights of all peoples living in Sri Lanka, including the Tamil people. There needs to be a real independent war crimes investigation with teeth and Australia needs to get behind it.

In conclusion, it has been my privilege to have dealt with people who identify as Tamils living in Australia, in Victoria, from a variety of political and other perspectives, including the Australian Tamil Congress. One thing that certainly does unite the approach they take now that they are living here in this country is their desire to see a peaceful Sri Lanka. Certainly the sense that I get is that they feel that for many years they have been seeking to draw attention, perhaps unsuccessfully, to what has been happening in their country. At the very least, we owe them now a full and independent investigation into the allegations. (*Time expired*)

Mr ALEXANDER (Bennelong) (12.18 pm)—The people of Sri Lanka have endured the pain and suffering of conflict for over 26 years, with estimates that more than 70,000 people have been killed and nearly half a million people have been displaced. The world breathed a collective sigh of relief when the fighting finally concluded in May 2009. As with all conflict, it is only when the shelling ceases and the bullets stop raining down from the rooftops and across the tea fields that accusations of inappropriate conduct during war can be analysed. However, there are dangers in such a process. The victims deserve to have their memories protected. The victors are often victims themselves. In an island as small as Sri Lanka, every member of the population will have friends and relatives who are civilian casualties of war. All will carry scars of the conflict, whether they are physical or emotional. All will embrace the virtue of justice but will understand the need for reconciliation—for bringing a divided people back together to embrace common goals, to live together in peace and security, to reach their full potential as individuals and as a united community, and to have the will of the majority represented and the needs of the minority protected.

It is with this backdrop that we have been witness over the past 20 months to claim and counterclaim of human rights abuses. United Nations Secretary-General, Ban Ki-Moon, has established a panel of experts to investigate accountability processes with a view towards a durable peace and reconciliation. The Secretary-General is on record during the final stages of the conflict condemning the:

... reckless disrespect shown by the Liberation Tigers of Tamil Eelam (LTTE) for the safety of civilians.

As we have seen in ethnic based conflicts around the world from Rwanda to Spain to Kosovo, the only positive end result is a strong peace. The coalition agrees with the US Secretary of State, Hillary Clinton, who said through a spokesman that a durable and lasting peace will only be achieved through a political solution that addresses the legitimate aspirations of all of Sri Lankan communities.

The Sri Lankan government is a democratically elected institution that deserves our diplomatic cooperation and respect. The Sri Lankan government must engage with those Tamils who do not promote violence or terrorism to further their agenda. It is important that discussions on legitimate power-sharing arrangements and the strengthening of the workability of the 13th amendment are pursued in the hope of achieving a lasting peace and reconciliation.

A political solution is essential for long-term peace to be developed in this long-suffering nation. And whilst serious allegations of human rights abuse anywhere in the world deserve to be aired and investigated, Sri Lanka is at a point in their development where they need the support of the international community to forge a real political solution to continue their process of reconciliation and rehabilitation. As strong local representatives of that international community, we must ensure that opportunities for further turmoil and conflict within Sri Lanka are not given oxygen. A sustainable peace, with all major parties achieving a seat at the table, must be the first priority during this delicate time in this nation's history.

Sri Lanka is a country of immense natural beauty, with a unique wealth of cultural history that beckons to be explored and enjoyed again. As a member of this parliament I express the sincere hope that all the people of Sri Lanka can be given the opportunity to fulfil their potential, to live in peace and to share the wonders of their nation with the rest of us.

The DEPUTY SPEAKER (Mr S Georganas)—Order! The time allotted for this debate has expired. The debate is adjourned and the resumption of the debate will be made an order of the day for the next sitting.

PRIVATE MEMBERS' BUSINESS

Loss of the *Malu Sara*

Debate resumed, on motion by **Mr Entsch**:

That this House:

- (1) notes:
 - (a) the judgment of the Federal Court of Australia in *Comcare v The Commonwealth* (FCA 1331), and the report of the Queensland coroner inquest into the loss of the *Malu Sara*, and in particular that:
 - (i) the court found that the respondent admitted liability;
 - (ii) the coroner found significant aspects of the investigation into the incident were severely flawed; and
 - (iii) a number of agencies of both the Queensland government and the Australian government were strongly criticised for their involvement in events leading up to and during the incident; and
 - (b) that the court fined the respondent \$242 000, the maximum penalty;
- (2) in light of both the judgment and the coroner's report, calls on the government to:
 - (a) legislate to establish a trust for the benefit of the families of the victims to commemorate the tragic loss;
 - (b) transfer the fine imposed by the court to the trust, as well as allocate additional funds to provide continuing financial support to the victims' families and provide a lasting legacy to the community;
 - (c) fully examine the court's judgment, including the contractors and others named in the report of the Queensland coroner into the same incident; and
 - (d) construct appropriate memorials on Badu Island and Thursday Island to properly commemorate this tragic event and provide respectful places for the families of the victims to pay their respects and remember their loved ones;
- (3) strongly encourages the Australian government to ensure that the Department of Immigration and Citizenship's contract and tendering procedures are fully reviewed to ensure that lapses such as this do not occur again; and
- (4) expresses its deep sympathy to the victims of this tragedy.

Mr ENTSCHE (Leichhardt) (12.23 pm)—At noon on 14 October 2005, the *Malu Sara* left Sabai Island in the Torres Strait for a four-hour journey to Badu Island. I think it is fair to say that the people on board had no idea of the fate that lay before them. However, I know that there were serious concerns—particularly expressed by the skipper—prior to leaving. In fact, he requested that he be able to stay back until the following day because of weather conditions. Unfortunately, his superior officer on Thursday Island insisted that he leave immediately on that journey; 16 hours later that boat had disappeared completely and the five people on board had drowned. Sadly, only one body has ever been found. It was rightly reported that there was a lot of pressure on him to go at that stage and his knowledge of the area was ignored. In forcing him to do so, there were some serious concerns about the seaworthiness of the vessel and concerns about the certification for its use in open seas.

The Queensland State Coroner, Michael Barnes, stated that the circumstances of the *Malu Sara* were some of the most wretched he had ever been exposed to. The ship had been commissioned without a GPS, a two-way radio or appropriate maps. A marine supplier who was involved asked why the boat that would be used by an Indigenous crew was not fitted with up-to-date equipment, and he was told by a departmental officer, 'They won't be needing that. These guys are two generations behind and they won't be able to use it.' Comments like this quite frankly make you sick in the stomach.

An experienced boatbuilder who tendered to build the *Malu Sara* and its five sister ships said that the project was certainly not properly funded. He reported that the project was so underfunded from the word go that they could not possibly have vessels that would do the job safely for the price that was allowed by the department of