

**The Tamil Genocide by
Sri Lanka***

By Professor Francis A. Boyle

On 8 April 1993 and 13 September 1993 the author single-handedly won two World Court Orders on the basis of the 1948 Genocide Convention that were overwhelmingly in favor of the Republic of Bosnia and Herzegovina against Yugoslavia to cease and desist from committing all acts of genocide against the Bosnians.

The Tamils on the Island known as “Sri Lanka” have been the victims of genocide as defined by the 1948 Convention on the Prevention and Punishment of the Crime of Genocide. I say that as the first person to have ever won anything from the International Court of Justice in The Hague (the so-called World Court of the United Nations System) on the basis of the Genocide Convention. And the fact that the Tamils living on “Sri Lanka” have been victims of genocide only strengthens and reinforces their right to self-determination under international law, including establishing their own independent State of Tamil Eelam if that is their desire.

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

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

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

....

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

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

Since 1983 the Sinhala-Buddhist Ceylon/ Sri Lanka has exterminated approximately 150,000 Hindu/Christian Tamils. Nevertheless, apologists for Sri Lanka have argued that since these mass atrocities are not tantamount to the Nazi Holocaust against the Jews, therefore they do not qualify as “genocide.” Previously, I had encountered and refuted this completely disingenuous, deceptive and bogus argument against labeling genocide for what it truly is, when I was the Lawyer for the Republic of Bosnia and Herzegovina arguing their genocide case

against Yugoslavia before the International Court of Justice. There the genocidal Yugoslavia was represented by Shabtai Rosenne from Israel as their Lawyer against me. Rosenne proceeded to argue to the World Court that since he was an Israeli Jew, what Yugoslavia had done to the Bosnians was not the equivalent of the Nazi Holocaust against the Jews and therefore did not qualify as “genocide” within the meaning of the 1948 Genocide Convention.

I rebutted Rosenne by arguing to the World Court that you did not need an equivalent to the Nazi Holocaust against the Jews in order to find that wholesale atrocities constitute “genocide” in violation of the 1948 Genocide Convention. Indeed the entire purpose of the 1948 Genocide Convention was to prevent another Nazi Holocaust against the Jews. That is why Article I of the Genocide Convention clearly provided: “The Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake *to prevent* and to punish.” (Emphasis supplied.) You did not need six million dead human beings in order to constitute “genocide.”

Furthermore, in support of my 1993 genocide argument to the World Court for Bosnia, I submitted that Article II of the 1948 Genocide Convention expressly provided: “In the present

Convention, genocide means any of the following acts committed with the intent to destroy, *in whole or in part*, a national, ethnic, racial or religious group, as such..." (Emphasis supplied.)

In other words, that to be guilty of genocide a government did not have to intend to destroy the "whole" group as the Nazis intended to do with the Jews. Rather, a government can be guilty of genocide if it intends to destroy a mere "part" of the group. Certainly Yugoslavia did indeed intend to exterminate all Bosnian Muslims if they could have gotten away with it, as manifested by their subsequent mass extermination of at least 7,000 Bosnian Muslim men and boys at Srebrenica in July of 1995.

But in 1993 it was not necessary for me to argue to the World Court that Yugoslavia intended to exterminate *all* the Bosnian Muslims. Rather, I argued to the World Court that at that point in time the best estimate was that Yugoslavia had exterminated about 250,000 Bosnians out of the population of about 4 million Bosnians, including therein about 2.5 million Bosnian Muslims. Therefore, I argued to the World Court that these dead victims constituted a "substantial part" of the group and that the appropriate interpretation of the words "or in part" set forth in Article II of the Genocide Convention should mean a "substantial part."

The World Court emphatically agreed with me and rejected Rosenne's specious, reprehensible, and deplorable arguments. So on 8 April 1993 the International Court of Justice issued an Order for three provisional measures of protection on behalf of the Republic of Bosnia and Herzegovina against Yugoslavia that were overwhelmingly in favor of Bosnia to cease and desist from committing all acts of genocide against all the Bosnians, both directly and indirectly. This World Court Order for the indication of provisional measures of protection was the international equivalent of a U.S. domestic Temporary Restraining Order and Injunction combined. The same was true for the Second World Court Order with three additional provisional measures of protection that I won for the Republic of Bosnia and Herzegovina against Yugoslavia on 13 September 1993 on the basis of the 1948 Genocide Convention.

In its final Judgment on the merits in the *Bosnia* case that was issued in 2007, the World Court definitively agreed with me once and for all time that in order to constitute genocide, a state must only intend to destroy a "substantial part" of the group "as such":

198. In terms of that question of law, the Court refers to three matters relevant to the determination of “part” of the “group” for the purposes of Article II. In the first place, the intent must be to destroy at least a substantial part of the particular group. That is demanded by the very nature of the crime of genocide: since the object and purpose of the Convention as a whole is to prevent the intentional destruction of groups, the part targeted must be significant enough to have an impact on the group as a whole. That requirement of substantiality is supported by consistent rulings of the ICTY and the International Criminal Tribunal for Rwanda (ICTR) and by the Commentary of the ILC to its Articles in the draft Code of Crimes against the Peace and Security of mankind (e.g. *Krstić*, IT-98-33-A, Appeals Chamber Judgment, 19 April 2004, paras. 8-11 and the cases of *Kayishema*, *Byilishema*, and *Semanza* there referred to; and *Yearbook of the International Law Commission*, 1996, Vol. II, Part Two, p. 45, para. 8 of the Commentary to Article 17).

In other words, in order to find Sri Lanka guilty of genocide against the Tamils, it is not required to prove that Sri Lanka has the intention to exterminate *all* Tamils. Rather, all that is

necessary is to establish that Sri Lanka intended to destroy a “substantial part” of the Tamils living on Sri Lanka.

Furthermore, in paragraphs 293 and 294 of its 26 February 2007 *Bosnian* Judgment, the World Court found that you did not even need 250,000 exterminated Bosnians in order to constitute genocide, let alone six million exterminated Jews. Rather, even the seven thousand exterminated Bosnian Muslim men and boys at Srebrenica were enough to constitute genocide. According to the World Court, these victims constituted about one-fifth of the Srebrenica community. Certainly since the World Court ruled in its 2007 Judgment that the extermination of 7000 Bosnians at Srebrenica constituted “genocide,” then a fortiori Sri Lanka’s extermination of 50,000 Tamils in Vanni two years later in 2009 also constituted genocide.

Historically the only way a people who have been subjected to genocide like the Tamils on Sri Lanka have been able to protect themselves from further extermination has been the creation of an independent state of their own. Indeed as the entire world witnessed during the first six months of 2009, Sri Lanka wantonly, openly, shamelessly, and gratuitously exterminated over 50,000 Tamils in Vanni. Yet not one state in the entire world rose to protect them or defend

them or help them as required by Article I of the 1948 Genocide Convention. Hence the need for the Tamils on Sri Lanka to create their own independent state in order to protect themselves from further extermination and total annihilation by Sri Lanka.

International law and practice establish that an independent state of their own is the only effective protection as well as the only appropriate reparation for a people who have been the victims of genocide. Bosnia's Statehood was the only thing that prevented the Bosnians from going the same way the Jews did in 1939. The creation of the Independent State of Tamil Eelam will be the only thing preventing the Tamils on Sri Lanka from going the way of history. **Create Tamil Eelam!**

