

**Subcommittee on Africa, Global Health, Global
Human Rights and International Organizations**

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Justice for All Sri Lankans and Tamils

Mr. Chairman and members of this esteemed subcommittee. It is my pleasure to talk to you about issues related to human rights violations and violations of international humanitarian law during the civil war in Sri Lanka, 1983-2009.

I approach this issue as a neutral, someone who stands for the rule of law, particularly on the battlefield and for the protection of noncombatants. We live in an age of extremes. Dirty little wars arise across the globe. Parties to the conflict pay little heed to the laws of armed conflict. Many of these largely non-international armed conflicts see civilian casualties mount, most of them women and children. The conflict in Sri Lanka was one such dirty little war, which saw the death and destruction of tens of thousands of human beings on both sides.

My perspective on the conflict in Sri Lanka comes from a lifetime of developing, teaching, and practicing the principles of international humanitarian law. I assisted in creating and then teaching the US Department of Defense Law of War program as the Chairman of the International and Operational Law Department at the US Army's Judge Advocate General's School at the University of Virginia in Charlottesville. The focus of that program was never again to repeat violations of the laws of armed conflict stemming from the Vietnam War, specifically the massacre at My Lai in 1968.

Additionally as a member of the Senior Executive Service of the United States my job was to oversee the Department of Defense's intelligence community (which is 80% of the US intelligence community) ensuring that these assets followed law, policy, and the US Constitution, to include international humanitarian law where appropriate. After 30 years in the US federal government dealing with IHL issues, I was appointed by the Secretary General of the United Nations to be the Chief Prosecutor of the international war crimes tribunal in West Africa, called the Special Court for Sierra Leone where I investigated, indicted and prosecuted the leadership of all parties in the civil war in Sierra Leone. Among those crimes were war crimes and crimes against humanity.

As a member of a panel of experts advising the Commission of Missing Persons set up by the GOSL in the Fall of 2014, I spent days walking the battlefields of the conflict in Sri Lanka, particularly the final campaign in the Winter of 2009. I have talked to parties on all sides

listening to them about what happened. Bottomline: I know what I am talking about when I tell this subcommittee the following:

First-Violations of international humanitarian law were committed on all sides. There are four governing principles that govern the laws of armed conflict established by the Hague Rules, the Geneva Conventions, other human rights and weapons treaties, along with customary international law. Though the lawful use of force is an international norm and accepted once allowed through legal sanctioning by an international or regional body, that force must follow the principles of military necessity, proportionality, unnecessary suffering, and discrimination. All four of these principles were violated by the GoSL armed forces and the LTTE.

Second-Civilians were intentionally targeted in a campaign of terror to seek a military and political conclusion of the conflict, particularly by the LTTE. A fundamental principle of international humanitarian law is that civilians cannot be intentionally targeted. The use of terror as a weapon is also a violation of international norms. Though both sides intentionally attacked civilians and need to be held accountable, this tactic was part of the overall strategic political and military plan of the LTTE.

Third-The brutality of the final campaign of the conflict in the Winter of 2009 was intentionally exacerbated by a desperate LTTE. As the LTTE was pushed back slowly to the northeast of the country they allowed and even forced civilians to retreat with them. Their policy was to use them for their own military gain as human shields in most instances placing them in harms way. Though there were instances of voluntary acts by civilians, the truth is most were forced to withdraw with the LTTE. As the final campaign narrowed the geographic space for these civilians to seek safety disappeared. It was only the NFZ's set up by the parties that these Tamil civilians could go. The LTTE then infiltrated these protected spaces engaging the GOSL armed forces. Using these human shields was perfidy a violation of IHL. In order to maneuver against a hostile force the Sri Lankan army was forced to engage with civilians all around. The result was an increased loss of civilians.

Third-The GOSL may have won the war, but they lost the peace. Due to the approach of the GOSL related to international interest in a just conclusion to the conflict have allowed the LTTE to turn the tables and highlight the excesses of the GOSL during the conflict and the resulting peace. Vigilantism, revenge, and retribution do not set the stage for a solution that can restore peace and security to the country. A policy of intransigence is and never will work. This hampers a practical and political space for accountability. Overt and subtle human rights violations continue by the GOSL.

Fourth-Accountability is the only key to a true sustainable peace in Sri Lanka. This can only be accomplished by a neutral body given the practical, moral, political, and ethnic issues that surrounds the creation of a justice mechanism. A model to consider is a hybrid international war crimes tribunal similar to the Special Court for Sierra Leone. Its mandate should be simple

and straight forward: Prosecute those who bear the greatest responsibility for war crimes and crimes against humanity from 1983 to 2009. The location of the court should be in Sri Lanka.

Fifth-A Truth and Reconciliation Commission should also be created made up of internationals, Lankans, and Tamils. Their goal would be to let the victims tell their stories and that a formal record be created. It must be noted that in Sierra Leone a tribunal and a truth commission operated successfully at the same time from 2002 to 2004. To have a sustainable peace one must have both truth and justice.

In conclusion, various political entities in Sri Lanka hope that the political interest by the international community in accountability will subside and that Sri Lanka will fade into history as a tragic dirty little war. This is not the solution. There must be a neutral accountability mechanism to ensure that all of the victims of the atrocities carried out in the conflict in Sri Lanka receive justice and that they have the ability to tell their stories to their fellow countrymen and to the world.