

**THE APPLICABILITY OF GENEVA CONVENTION TO
TAMIL TIGER TERRORISM
AND ONETIME MATERIAL PROVIDERS & EXPERT ADVISERS**

PRESENTATION BY
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FROM THE UNITED STATES

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Greetings to everyone, I am Daya Gamage addressing you from the United States; I worked closer to three decades in the U.S. Department of State as a Foreign Service National Political Specialist; having done some research and investigations, today I am presenting you the basics of International Humanitarian Law associated with the Geneva Convention, how it was applicable to the Tamil Tigers while they were engaged in ruthless terrorism, and most importantly, how some of the onetime LTTE professionals who provided 'expert advice' while the Eelam War IV was in progress, and still freely living in Western nations and in Scandinavian region, are culpable under the provisions of the Geneva Convention of providing 'material support' to a Armed Non-State Actor.

Western nations led by the United States, since the defeat of the LTTE in May 2009, have systematically sharpened their maneuvers to, first, strategically communicate to the rest of the world that the Government of Sri Lanka was responsible for violating International Humanitarian Law preparing the path to prosecute Sri Lankan leaders and military personnel .

The State Department's Office of Global Crimes Issues released two 'Sri Lanka War Crimes' reports in 2010 with ambiguous and unsubstantiated information creating a conducive atmosphere for the former LTTE operatives – whose violation of Geneva Convention well within the International Humanitarian Law which I will show in a moment - who have now become a voice within the Tamil Diaspora spreading unfounded allegations against Sri Lanka of war crimes. This facilitated the professional activists of the Tamil Diaspora to lobby Western nations to activate resolutions in UN Human Rights Council in Geneva.

Why were the blatant terrorism, mass killings of innocent civilians, ethnic cleansing with brutality and other atrocities committed by the Tamil Tigers since 1983 through 2009 'ignored'.

The accepted belief was **(or is)** that if the State actor – meaning the legitimate government - in an internal conflict is a signatory to international covenants of humanitarian law that State actor needs to abide by the provisions ratified by the UN and that any violation of the International Humanitarian Law (IHL), the State actor bears culpability. **In contrast**, in a situation in which an Armed Non-State Actor (ANSA) – in this case the Tamil Tigers - is not a signatory to international covenants, the general belief is, **and was**, it has no obligations toward honoring or upholding the provisions. **Further belief is, it limits the culpability of those who provide material support to such a non-state actor - by way of expert advice – in this case -advice to the LTTE leadership.**

My endeavor here is to highlight the provisions of the International Humanitarian Law (IHL) are in fact applicable to Armed Non-State Actors (ANSA), and most importantly to examine the applicability of the law to those who provided material support. In providing expert advice and related material support to the LTTE, these elements in fact justified the Tiger outfits use of terrorism.

One such person is New York-based immigration attorney Visuvanathan Rudrakumaran who associated with the LTTE when it was engaged in the violation of International Humanitarian Law constantly providing expert advice to Prabhakaran and the leadership of the LTTE when they were engaged in violent crimes to pursue their goal of a separate state in Sri Lanka.

Contrary to the general belief, we have found that the provisions of the Geneva Convention cover the acts of Armed Non-State Actors such as the LTTE and those who associated with such acts in providing 'Expert Advice' to such Non-State Actors. Rudrakumaran and many others who are freely living in Western countries fall within the definitions of the provisions of the Geneva Convention, and our endeavor is to make the Western nations knowledgeable – as they have conveniently turned a blind eye – that the Geneva Convention covers the acts of those individuals that facilitated the dastardly acts of the LTTE which too is within the jurisdiction of the Convention. We need to create a global awareness of this.

I will investigate how the IHL provisions are applicable to the violent acts of Sri Lanka's Tamil Tigers as well as those who facilitated those acts in using free speech and providing expert advice. Further we need to find out why and how the main nations in the International Community who are at present citing the International Humanitarian Law to put Sri Lanka on the dock conveniently in the past turned a blind eye or ignored the crimes against humanity, war crimes, mass killings of unarmed innocent civilians and genocide committed by the Tamil Tigers from 1983 through 2009.

Once this analysis clearly establishes that the IHL – at all times – applicable to the atrocities of the LTTE, an Armed Non-State Actor (ANSA) according to the legal definition of the International Humanitarian Law, a question will emerge as to why the Western nations ignored those provisions and attempted to sustain Sri Lanka's Tiger outfit, and failed to identify the individuals – even at present advocating a separate state in Sri Lanka – who facilitated the criminal acts of the LTTE.

Internal conflicts constitute a unique form of conflict, involving both guerrilla and regular army forces that produce many difficult questions and legal problems. The first question to consider is whether IHL is applicable to Armed Non-State Actors and armed conflicts in which they are parties. Are individuals involved in or supportive of these armed groups to be regarded as criminals, lawful or unlawful combatants?

Sri Lanka never endeavored to address above issues long before it ended the domestic terror violence created by the LTTE to prepare for what it is facing today - dragged to Geneva facing resolution after resolution, the last being in October 2015 which advocated that international jurists should be involved in probing Sri Lanka's alleged violation of IHL. The United States that co-sponsored that resolution early this year prohibited investigators from the International

Criminal Court arriving in the U.S. citing an infringement of its sovereignty. Even long after the LTTE was defeated while the call for international scrutiny was entering the narrative of the West, Sri Lanka never undertook to address the LTTE culpability in terms of the IHL to round up the remaining 'Tiger remnants' in the U.S. – such as Visuvanathan Rudrakumaran - and others living in many Western and Scandinavian countries whose involvement with the Tamil Tiger terror was well documented advocating even arms transfer as a legitimate exercise to the Tigers describing the outfit as a national liberation movement.

What needs to be investigated is whether the IHL was applicable to the violent acts of Sri Lanka's Tamil Tiger outfit during those years of terror – 1983 through 2009 – and whether the remaining operatives/facilitators/counselors/active participants of that outfit could be exposed before the law under the provisions of the IHL.

The International Humanitarian Law has recognized four groups that fall within the category of Armed Non-State Actors.

(a) Rebels are individuals that are typically involved in purely sporadic and isolated acts of violence and hostilities against the established government. Rebels had never been considered to have any international rights or obligations. Their acts of violence were susceptible to standard containment procedures of internal security. Upon capture, these rebels were treated as criminals under domestic law.

(b) Insurgents constitute armed groups that become involved in civil disturbances and riots. These hostilities are usually restricted to a limited area of the State territory. They fall within the remit of domestic law. The classic example was the JVP which unleashed insurrections in 1971 and 1988/1989.

(c) National liberation movements' are the Third: Their main objective is to replace the existing State or form of their own state. Traditional international law lacked recognition for this specific category. Members of National Liberation Movements were recognized as rebels and were treated as criminals under the country's domestic law.

(d) Belligerents are the most organized. The act of belligerency is clearly defined in international law – **I stress clearly defined in international law** - pointing out certain conditions to be fulfilled first in order for a case of belligerency to be present; (1) the existence of an armed conflict; **(Which Sri Lanka experienced)** (2) occupation by the belligerents of a significant part of the national territory; **(Which the LTTE did in the north-east of Sri Lanka)** (3) an internal organization exercising sovereignty on that part of the territory; **(Which the LTTE exercised in the north-east)** (4) the same organization is keen on conducting the armed conflict in accordance with IHL; **(The :LTTE totally ignored the provisions of the IHL)** and (5) circumstances which make it necessary for outside States to define their attitude by means of recognition of belligerency. **(Which under the Geneva Convention the LTTE is recognized as belligerency)**

Except the 4th condition, the Tamil Tiger outfit fulfilled all the other conditions defined in international law to qualify as belligerents, according to international law, are engaged in non-international armed conflict.

Non-international armed conflicts are covered by Common Article 3, Protocol II, several other treaties, as well as by customary law. Customary law acts both as a complement and a confirmation of the basic standards set by both Protocol II and Common Article 3.

The traditional instruments, stipulated in the Geneva Conventions of 1949 and the two additional Protocols of 1977 to protect Human Rights and restrain humanitarian abuses-were developed to be applicable only to States. Since only States can have diplomatic relations with other States, sign treaties and be parties to international institutions, Armed Non-State Actors – such as like the LTTE - were usually not expected to meet the same standards as States. Their acts of violence were seen as a domestic problem of the State concerned, to be dealt with through legal, political, or military means.

The increased attention due to events such as Rwanda, Darfur, Afghanistan, Lebanon, made the world change their framework of Armed Non-State Actors (ANSAs). They came to be fairly recognized as the key players in internal armed conflicts. **This is why devises in the IHL were developed to make ANSAs responsible for their actions.**

The issue I raise here is whether the international community took any attempt to hold Sri Lanka's Tamil Tigers responsible for the violence it unleashed during 1983-2009 period.

I noted earlier that Sri Lanka's Tamil Tiger movement fell into the category of 'Belligerents' under the International Humanitarian Law (IHL).

I further described that the act of belligerency is clearly defined in international law pointing out certain conditions to be fulfilled first in order for a case of belligerency to be present.

I Repeat: The International Humanitarian Law declared armed organizations such as the LTTE because of the (1) the existence of an armed conflict; (2) occupying significant part of the national territory; (3) the Armed Group exercising sovereignty on that part of the territory;

It was also mentioned that due to the frequency of the internal armed conflicts as the one Sri Lanka experienced for 26 years, the international community was forced to realize that some form of regulation of non-international conflicts was needed. The effort to extend IHL to non-international armed conflicts – such as the one Sri Lanka experienced - ultimately resulted in the Article 3 common to the Geneva Conventions which is called Common Article 3.

What does Common Article 3 mean?

In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties – meaning a country like Sri Lanka which has entered into international covenants, each Party to the conflict – like Sri Lanka and the LTTE - shall be bound to apply, as minimum, the following provisions:

Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed disabled by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, color, religion or faith, sex, birth or wealth, or any other similar criteria.

If one carefully reads the above Common Article 3, many of the provisions were applicable to the atrocities committed by the LTTE fighting cadre. Also it is applicable to the 'Material Supporters' – such persons like Visuvanathan Rudrakumaran - who sustained Tiger terrorism for decades from their overseas posts: Who effectively engaged in fund raising, propaganda and diplomatic endeavors, legal counseling, expert advice and defending the procurement of armaments justifying the Tiger movement a liberation organization.

The US Supreme Court in June 2010 upheld a federal law that makes it a crime to provide “material support” to foreign terrorist organizations, **even if the help takes the form of training for peacefully resolving conflicts.**

The United States federal statute defines "material support or resources" as: *"any property, tangible or intangible, or service, including currency or monetary instrument or financial securities, financial services, lodging, training, expert advice or assistance, safe houses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel (1 or more individuals who may be or include oneself), and transportation, except medicine or religious materials"*.

Common Article 3 does not confer by any means recognition to the ANSA involved in the conflict, nor does it change their status in international law. **Provisions of the International Law certainly do not provide any legitimacy to their cause. Meaning – Common Article 3 of the Geneva Convention does not provide, or did not provide, any legitimacy to the Tamil Tiger cause.**

Therefore, those who provided ‘material support’ – as was done by Rudrakumaran and others who are freely living in western countries and in the Scandinavian region who continue to advocate a separate state in Sri Lanka – violated provisions of the Geneva Convention under the International Law, and in the case of Rudrakumaran, violated United States’ federal laws as pronounced in the June 2010 judgment of the US Supreme Court.

While Common Article 3 does not provide a definition of “non-international armed conflict”, however, Article 1 of Protocol II, clarifies that the Protocol applies to armed conflicts which take place **(1)** in the territory of a State Party to the Protocol, (Sri Lanka is a State Party to the Protocol) **(2)** between its armed forces and Armed Non-State Actors (ANSAs) which (a) are organized under a responsible command (b) exercise control over part of its territory, (c) are able to carry out continuous and intensive military operation and to implement the Protocol.

When interpreting that: the LTTE took the conflict to the territory of Sri Lanka which is a State Party to the Geneva Convention; the conflict was between the armed forces of the State of

Sri Lanka; the LTTE exercised control over part of Sri Lanka territory.

The above description fits well to the armed conflict between the Government of Sri Lanka and LTTE, and the controlling authority the LTTE possessed during the conflict.

Consider the applicability of the International Humanitarian Law to the Tamil Tigers of Sri Lanka and its actions; the condition of having a responsible authority and putting in place an organization do not imply that the hierarchical system of the Tamil Tiger outfit is similar to that of the armed forces of Sri Lanka. It simply points out the obligation of having an organization that exercises control over a certain amount of territory and capable of planning and carrying out continuous and concerted military operations. **That's what the LTTE did.**

Now, the above interpretation of the International Humanitarian Law clearly shows how the LTTE fitted into the description, and the applicability of Protocol II to all the actions the LTTE committed during the 26 years of armed conflict against the legitimate Government of Sri Lanka and its armed forces.

The LTTE control of vast land and its hierarchical structure with the high intensity of the conflict that Sri Lanka experienced and what the international community witnessed covered Protocol II and Common Article 3.

Therefore, the Protocol applied to the internal conflict between the LTTE and GSL armed forces as the above threshold had clearly passed. Once this threshold is passed, the application of the Protocol is automatic, i.e. no declaration has to be made by the parties to the conflict as long as the requirements of Article 1 of Protocol II are met.

Both Common Article 3 and Protocol II apply simultaneously and automatically to internal conflicts when certain threshold criteria are reached. We saw in Sri Lanka how these threshold criteria had met. And I pointed out this fact before.

Protocol II describes its scope in considerable detail, **excluding low intensity conflicts.** Sri Lanka experienced very high intensity conflict during those 26 years.

Article 1 makes the application of Protocol II dependent on the exercise of de facto control of part of the national territory and on the ability of material circumstances linked to the nature of the hostilities, i.e. the ability to carry out organized and sustained acts of violence and to implement the Protocol. It applies to all armed conflicts in which these conditions are met, regardless of who triggered the conflict and why. This is where the provisions of the Geneva Convention cover from Eelam War ONE through Eelam War FOUR.

All these conditions were present during the 26-year conflict in Sri Lanka that the West could have seen the applicability to the LTTE and its acts.

Now if this is so, those who aided and abetted the LTTE to unleash the ruthless violent acts in its endeavor to bifurcate the Sri Lankan nation, and those who provided expert advice to the LTTE to engage in such acts too are covered by the Geneva Convention. **The LTTE was totally annihilated in May 2009 and does not exist: but those who gave material support to the LTTE are freely domiciled in many Western nations and in the Scandinavian region still**

advocating a separate state and division of the Sri Lankan territory. Among them is the New York immigration attorney Visuvanathan Rudrakumaran who heads an organization called the Transnational Government of Tamil Eelam (LGTE) spread in many countries advocating the division of Sri Lanka. The freedom they enjoy without being subject to International Humanitarian Law could facilitate another terrorist movement in the form of the LTTE in the sovereign state of Sri Lanka.

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