

THE SRI LANKAN CONFLICT AND STANDARDS OF HUMANITARIAN LAW

An Appeal to the Government of Sri Lanka and the LTTE Leadership

Since the end of January 1992, the Liberation Tigers of Tamil Eelam (LTTE) has engaged in a series of ambushes and larger offensives against the military in the northeast, some near areas housing newly returning refugees. Observers speculate that these "hit and run attacks" are designed to keep the army from concentrating efforts on the Jaffna peninsula. The army has responded in kind, with raids described as "test" operations throughout the northeast¹. Despite news that the government and military may be divided on the desirability of a large-scale offensive, many people familiar with the situation in Sri Lanka have expressed concern that political pressures are building on the Sri Lankan government to undertake such an offensive against remaining strongholds of the LTTE in the north, mainly the Jaffna peninsula. Reports indicate that this could be a truly massive offensive, possibly lasting as long as a month and employing tens of thousands of troops. Asia Watch is deeply concerned for the safety of noncombatants as military operations proceed and possibly escalate. During past offensives, combatants on both sides have committed gross abuses against civilians and engaged in indiscriminate attacks on residential areas.

In the interests of protecting noncombatants, Asia Watch appeals to the armed forces in the current conflict -- both the central government and its armed opposition, especially the LTTE -- to respect international standards on the conduct of warfare, particularly those designed to protect people who are not or are no longer taking an active part in the conflict. What follows is a summary of some of the key standards as they pertain to the Sri Lankan conflict. This is not a comprehensive list of the international obligations applicable to both parties, but rather an outline of minimum requirements.

I. Relevant Rules of the Laws of War

Since the conflict in Sri Lanka is no longer an international one, the armed forces must adhere to the standards governing noninternational, or internal, conflicts. These standards are found principally in common Article 3 of the Geneva Conventions of 1949 ("common Article 3") as well as in the Second Additional Protocol of 1977 ("Protocol II") to the 1949 Geneva Conventions. Sri Lanka has ratified the Geneva Conventions, and Article 3 by its terms applies to all parties to the conflict, that is, both government and rebel forces. Although Sri Lanka has not ratified Protocol II, many of its provisions are binding as a matter of customary international law. This appeal draws on both sets of standards.

¹During the last week in February, the army launched the largest of these recent operations, "Vanni Wickrema III." This operation, employing 3,000 troops, armor and air support took control of LTTE territory around Poornawasakulan, 15 miles northwest of Vavuniya, and Thalaimannar. Another major offensive was launched against Mullaitivu in March.

Common Article 3 makes clear that its application to rebel groups is not an endorsement of their legitimacy. As the International Committee of the Red Cross ("ICRC") states in its authoritative *Commentary*, "the fact of applying Article 3 does not in itself constitute any recognition by the *de jure* Government that the adverse Party has authority of any kind."

The duty to uphold the standards of Article 3 is "absolute for each of the Parties, and independent of the obligations on the other Party." (ICRC *Commentary*). That is, one side's violations do not excuse violations by the other. Article 3 applies both to regular forces and to less formal units operating under their direction or control.

Article 3 protects all "persons taking no active part in the hostilities." That includes the entire civilian population and individual civilians. (Those who assume the role of combatant forfeit this protection while they are actively involved in hostilities.) Article 3 also protects members of the armed forces of either side to the conflict who have surrendered or laid down their arms or are no longer able to engage in combat by reason of injury, illness, capture or any other cause. Article 3 expressly provides that all such people should be treated humanely, without adverse distinction based on race, color, religion or faith, sex, birth or wealth, or "any other similar criteria."

Among the acts specifically prohibited by Article 3 are:

- **"violence to life and person, in particular murder of all kinds, cruel treatment and torture";**
- **"taking of hostages";**
- **"outrages upon personal dignity, in particular humiliating and degrading treatment";**
- **"the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples."**

Article 3 also imposes an obligation on all parties to a conflict to collect and care for the wounded and sick.

Protocol II codifies a series of customary principles for the treatment of civilians in noninternational armed conflicts. These include:

- **"The civilian population and individual civilians shall enjoy general protection against the dangers arising from military operations." (Article 13(1).)**
- **"The civilian population as such, as well as individual civilians, shall not be the object of attack. Acts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited." (Article 13(2).)**
- **By inference, the civilian population is also protected from indiscriminate or disproportionate attacks (Article 13), such as:**
 - **attacks not directed at a specific military objective;**

- **attacks employing a method or means of combat that cannot be directed at a specific military objective;**
- **attacks that treat as a single military objective a number of clearly separate and distinct military objectives in an area populated by civilians;**
- **attacks that may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or any combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated.**
- **Attacks on medical facilities and personnel are prohibited. (Articles 9 to 11.)**
- **"Starvation of civilians as a method of combat" is prohibited, including by attacking or removing for that purpose "objects indispensable to the survival of the civilian population, such as foodstuffs." (Article 17(1).)**
- **"If the civilian population is suffering undue hardship owing to a lack of the supplies essential for its survival, such as foodstuffs and medical supplies, relief actions for the civilian population which are of an exclusively humanitarian and impartial nature and which are conducted without any adverse distinction" must be permitted. (Article 18(2).)**
- **The displacement of the civilian population should not be ordered for reasons related to the conflict "unless the security of the civilians involved or imperative military reasons so demand." (Article 17(1).)**
- **"All persons who do not take a direct part or who have ceased to take part in hostilities...shall in all circumstances be treated humanely, without any adverse distinction." (Article 4(1).) Prohibited acts (Article 4(2)) include the following:**
 - **"violence to the life, health and physical and mental well-being of persons, in particular murder as well as cruel treatment such as torture, mutilation or any form of corporal punishment";**
 - **"collective punishments";**
 - **"taking of hostages";**
 - **"acts of terrorism";**
 - **"outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault";**
 - **"slavery and the slave trade in all their forms";**
 - **"pillage";**
 - **"threats to commit any of the foregoing acts."**

- **Penal prosecutions related to the armed conflict must be conducted by independent and impartial tribunals that adhere to fundamental due process guarantees (Article 6(2)), including:**
 - **the right to be "informed without delay of the particulars of the offense alleged" and "all necessary rights and means of defense";**
 - **the right to be punished only for crimes committed individually;**
 - **the right to be punished only for actions or omissions that were crimes at the time they were committed, and for no more than the punishment prescribed at the time;**
 - **the presumption of innocence until proved guilty according to the law;**
 - **the right to a trial in the presence of the accused;**
 - **the right not to be compelled to testify against oneself or to confess guilt.**

These standards apply to all warring parties, including irregular forces acting with the authorization of military units.

II. Application to the Sri Lankan Conflict

The following acts that have characterized the Sri Lankan conflict are prohibited by the laws of war:

a) Massacres and Widespread Torture of Civilians

Credible reports reveal that killings of groups of civilians have been undertaken by both the Sri Lankan government and the LTTE. Such killings include LTTE massacres of Muslim and Sinhalese villagers and reprisal attacks by government-controlled forces upon Tamil communities. These acts have resulted in hundreds of civilian deaths. Because the victims of these massacres were not or were no longer taking an active part in hostilities, their killing was in direct violation of common Article 3 as well as the customary-law principle codified in Articles 4(2) and 13(2) of Protocol II. As such, these are acts of murder.

Violence short of the infliction of death upon noncombatants is also prohibited by the categorical prohibition of mutilation, cruel treatment, and torture under common Article 3 and the customary-law prohibition codified in Article 4(2) of Protocol II, as well as by the customary-law duty set forth in Article 13(1) of Protocol II to protect the civilian population against "the dangers arising from military operations."

b) Reprisals

Because the provisions of common Article 3 (and customary law) are "absolute," reprisals against noncombatants are prohibited. Reprisals are also barred as a form of collective punishment prohibited by the customary-law principle set forth in Article 4(2) of Protocol II.

c) Bombardment of Civilians

Sri Lankan government forces reportedly have engaged in a pattern of indiscriminate aerial and artillery bombardment of areas populated by civilians. Many of these attacks have been badly aimed attempts to flush out LTTE cadres hiding in residential areas. There have also been reports of deliberate attacks on civilian residential areas.

The bombardment of civilians and civilian objects as a means of conducting hostilities is prohibited by customary law as codified in Article 13(2) of Protocol II, which prohibits attacks on civilians as such. Attacks on military targets in civilian areas in which precautions are not taken to avoid civilian casualties are indiscriminate and thus prohibited by the customary-law principle codified in Article 13(1) of Protocol II, which provides that "the civilian population and individual civilians shall enjoy general protection against the dangers arising from military operations." As the ICRC explained in its separate *Commentary* on Protocol II, this provision "means that the obligation does not consist only in abstaining from attacks, but also in avoiding, or in any case reducing to a minimum, incidental losses, and in taking safety measures," including "reducing the effects of military operations which could affect protected persons." Such precautions include a requirement that the warring parties distinguish military targets from noncombatants and avoid disproportionate collateral harm to civilians.

d) The Use of Contact Land Mines

Contact land mines have been used by the parties to the conflict, particularly the LTTE, in a manner that is indiscriminate, in that there is no way of directing them at military targets as opposed to civilians who might use the same route and stumble upon a mine. Such indiscriminate use of weapons is prohibited under the customary-law principle set forth in Article 13(1) of Protocol II.

e) Religious and Ethnic Discrimination

On many occasions, civilians have been attacked because they are, for example, Tamils, or because of their religious affiliation. This violates the customary-law prohibition against making noncombatants the subject of attack. It also violates the prohibition of adverse distinctions in applying the duty of humane treatment based on race, religion or "any other similar criteria" contained in common Article 3 and codified in similar form as a customary-law principle in Article 4(1) of Protocol II.

D Selected Executions and Disappearances

Investigations by human rights monitors indicate that Sri Lankan government forces have engaged in a series of purges of suspected sympathizers of various guerilla groups. These purges have involved mass arrests, disappearances, and extrajudicial executions, and have been carried out summarily, without adherence to fundamental requirements of due process. As noted above, individual extrajudicial executions as well as all acts of torture violate common Article 3 as well as the customary-law principle codified in Articles 4(2) and 13(2) of Protocol II.

The Sri Lankan government is entitled to punish captured LTTE members for the commission of pre-existing crimes under Sri Lankan domestic law. An LTTE guerilla who kills a government soldier, for example, can be tried for murder, treason, sedition, or other offenses. Nevertheless, criminal sentences

can be imposed only after a regularly constituted court of law has pronounced judgment. Article 3 expressly requires the intervention of such a court, and demands that those persons captured by government forces be extended judicial guarantees "recognized as indispensable by civilized peoples." These guarantees are authoritatively enumerated and codified in Article 6(2) of Protocol II.

g) Use of Civilians as Human Shields

Eyewitnesses have described government forces rounding up civilians from refugee camps and forcing them to march ahead of government troops into LTTE gunfire or through mine fields. Execution has been threatened of those who try to escape. Such activity violates the requirement of humane treatment for noncombatants and the prohibition of cruel and degrading treatment for such people contained in common Article 3 and codified as a principal of customary international law in Article 4(2) of Protocol II. It also violates the customary-law principle codified in Article 13(1) of Protocol II that "the civilian population and individual civilians shall enjoy general protection against the dangers arising from military operations."

h) Hostages

In cases in which civilians are not actually used as shields, they reportedly have been used as hostages. This practice is prohibited by common Article 3 and the customary-law rule codified in Article 4(2) of Protocol II.

D Attacks Upon Medical Facilities and Places of Worship

On several reported occasions, Sri Lankan government forces have attacked medical facilities because they were treating wounded LTTE fighters. Such attacks violate the principle set forth in Article 11 that "medical units and transports shall be respected and protected at all times and shall not be the object of attack...unless they are used to commit hostile acts, outside their humanitarian function." Treating wounded combatants is fully compatible with a medical facility's humanitarian purpose and does not render it subject to attack.

Sri Lankan government forces have also reportedly attacked places of worship in which civilians have taken refuge. Attacks on civilians are strictly prohibited by common Article 3 and the customary-law principle set forth in Article 13(2) of Protocol II. Insofar as government forces contend that rebel combatants have hidden in such facilities, efforts to attack or capture them must, under the customary-law principles set forth in Article 13(1) of Protocol II, be made only after all feasible steps are taken to avoid collateral civilian casualties. Even then, attacks that are indiscriminate or cause disproportionate harm to civilians are prohibited.

D Interdicting Essential Supplies

Although the ICRC has been permitted to make some deliveries to the Jaffna peninsula, government troops at other times reportedly have deprived civilians of essential food and medical supplies.² Article 14 of Protocol II prohibits "starvation of civilians as a method of combat," including by

²The food embargo was relaxed in August 1991, but by the end of the year there was still a lengthy list of prohibited items, including medicines, soya-based foods, sanitary napkins, surgical equipment, bandages, batteries, gasoline and matches. All goods transported to the northeast are subject to military approval and anything which is potentially

attacking or removing for that purpose "objects indispensable to the survival of the civilian population, such as foodstuffs." As the ICRC *Commentary* notes, this prohibition "is really only a specific application of common Article 3, which imposes on parties to the conflict the obligation to guarantee humane treatment for all persons not participating in the hostilities, and in particular prohibits violence to life." Thus, as the ICRC *Commentary* explains, "the use of blockade and siege as methods of warfare...[must be] directed exclusively against combatants."

Related to the prohibition on using starvation of civilians as a method of combat is Article 18(2) of Protocol II, which provides:

If the civilian population is suffering undue hardship owing to a lack of the supplies essential for its survival, such as foodstuffs and medical supplies, relief actions for the civilian population which are of an exclusively humanitarian and impartial nature and which are conducted without any adverse distinction shall be undertaken subject to the consent of the [government] concerned.

As the ICRC *Commentary* notes, Protocol II thus does "not allow the argument of military necessity to be used to justify starving the civilian population. As soon as there is a lack of indispensable objects, the international relief actions provided for in Article 18...should be authorized to enable the obligation following from Article 14 to be respected." The ICRC *Commentary* continues: "The fact that consent is required [for a relief action to be undertaken] does not mean that the decision is left to the discretion of the parties. If the survival of the population is threatened and a humanitarian organization fulfilling the required conditions of impartiality and non-discrimination is able to remedy this situation, relief actions must take place."

k) Displacement of Persons

Hundreds of thousands of people have been displaced in the course of the war, many apparently for reasons of ethnic discrimination or to deprive opposition forces of local popular support. Under the principle set forth in Article 17(1) of Protocol II, "the displacement of the civilian population" should not take place "for reasons related to the conflict unless the security of the civilians involved or imperative military reasons so demand."

III. Specific Rules for the Prohibition of Military Abuses in the Sri Lankan Conflict

In light of the above, Asia Watch calls on the parties to the Sri Lankan conflict to refrain from the following actions proscribed by the laws of war:

1) Deliberate killing of noncombatants.

useful to the militants is banned, no matter how essential to the general public. The official list, published in August 1991, shows only a fraction of the goods that are actually kept from reaching the north. Local commanders on the road have final say over the import of essential supplies.

2) Indiscriminate attacks in civilian areas, including by bombardment or the use of contact land mines.

3) Attacks causing disproportionate harm to civilians or civilian objects.

4) Attacks in civilian areas in which all feasible steps are not taken to avoid collateral civilian casualties.

5) Reprisals against noncombatants by acts of violence or destruction of property.

6) Torture and other deliberate mistreatment of any person.

7) Subjecting noncombatants to adverse distinction in the duty to treat them humanely because of their religion or ethnic background.

8) Using noncombatants as human shields to protect a warring party from enemy fire or to detect mine fields.

9) Taking or using noncombatants as hostages.

10) Summarily executing or punishing persons suspected of participating in a rebellion or aiding enemy forces.

11) Imposing any punishment for a criminal offense without a trial before an independent and impartial tribunal affording fundamental due process rights.

12) Attacks on medical facilities and places of worship that are being used for humanitarian purposes.

13) Using starvation of civilians as a method of combat, or denying impartial humanitarian relief operations when there is a lack of supplies essential for the survival of the civilian population.

Commanders should order a halt to all violations of the above-listed rules, and violators should be charged, tried and punished according to due process of law.

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For More Information

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Asia Watch was founded in 1985 to monitor and promote internationally recognized human rights in Asia. The Chair is Jack Greenberg and the Vice Chairs are Harriet Rabb and Orville Schell. The Executive Director is Sidney Jones and the Washington Director is Mike Jendrzeczyk.

Asia Watch is a division of Human Rights Watch, which also includes Africa Watch, Americas Watch, Helsinki Watch, Middle East Watch and the Fund for Free Expression. The Chair of Human Rights Watch is Robert L. Bernstein and the Vice Chair is Adrian DeWind. Aryeh Neier is Executive Director and Kenneth Roth is Deputy Director. Holly Burkhalter is Washington Director.

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