



FACULTY: POLITICAL SCIENCE

Chair: International Organizations and Human Rights

THE SRI LANKAN CIVIL WAR
AND THE INADEQUACY OF THE
INTERNATIONAL RESPONSE

SUPERVISOR
Prof. Francesco Cherubini

CANDIDATE
Sara Del Debbio
ID 625322

CO-SUPERVISOR Prof.ssa Maria Rosaria Mauro

ACADEMIC YEAR 2015/2016

In memory of Graziella, my guiding light

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Map of Sri Lanka¹



¹ UNITED NATIONS, *Report of Secretary-General's Panel of Experts on Accountability in Sri Lanka*, 31 March 2011, p. XII, retrievable online.

Introduction

This dissertation will focus on the Sri Lankan Civil War, which lasted 26 years – from 1983 to 2009 – and was fought by the Sri Lankan Army and the separatist Liberation Tigers of Tamil Eelam (LTTE). The aim of this thesis is to demonstrate the inadequacy of the international response to the Sri Lankan Civil War, given the seriousness of the crimes committed during the war and the humanitarian disaster that occurred in the last phase of the conflict and that implied too many civilian casualties.

The Sri Lankan Civil War was an ethnic conflict between the minority of Tamil people and the Sinhalese-Buddhist majority. Once the British colonial rule had ended and independence was gained by Sri Lanka in 1948, the race to dominance on the part of the Sinhalese started and, with it, the discrimination of Tamils on the basis of a pure Sinhalese nationalist feeling. The discrimination of Tamils – formalized by the policies implemented by the successive Sri Lankan Governments from independence until the outbreak of the war – provoked increasing resentment on their part and, as a consequence, calls for justice, inclusion and, in particular, equality of opportunities with respect to the Sinhalese majority started spreading. Initially, Tamils' requests were expressed in a peaceful manner, through non-violent protests for example. Nevertheless, these demands being rejected, anger and lack of faith in a sea change in Sri Lankan policies towards the Tamil minority emerged among Tamil people and led to a radicalization of some of its groups. By the end of the 1960s and beginning of the 1970s, 37 Tamil militant groups were formed and, since their establishment, they started clashing with the Sri Lankan Government. The LTTE particularly emerged among these groups and it eventually managed to become the only Tamil militant group on the scene able to pose challenges to the national institutions. As this thesis

will show, if the Sri Lankan Governments had addressed at least some of the initially peaceful Tamil quests, the violent conflict would have probably been avoidable.

The war broke out in 1983 and in no way it has been possible to reach a political and peaceful solution to the conflict. Violence continuously escalated since the beginning of the war, reaching its apex during its very last stage. The first chapter of this thesis – entitled ‘Ethnicity and the Sri Lankan Civil War’ – will deal with all the issues that have been mentioned until this point, starting from the analysis of the root causes of the ethnic conflict, going through the creation of the separatist LTTE and arriving to the description of the outbreak of the conflict and of its four phases – called Eelam Wars, namely wars for the creation of the independent Tamil state in Sri Lanka.

This thesis will then focus on the Sri Lankan Civil War in an international perspective, analysing the role played by foreign states and by the United Nations in the conflict, respectively in the second and third chapters. Therefore, it will firstly highlight the as fundamental as contradictory role of India, secondly the role of Norway as facilitator of peace negotiations between the Sri Lankan Government and the LTTE during the conflict, thirdly the role of other foreign states that – in one way or the other – have been involved in the conflict. The second chapter will already demonstrate how the international response to the War on the side of foreign states has been inadequate, either because too little too late or because it even turned out to be counterproductive.

The third chapter will then analyse the response of the United Nations to the Sri Lankan conflict. The UN involvement in Sri Lanka was particularly relevant during the fourth Eelam War – from 2006 to 2009 – at the end of which the humanitarian disaster occurred. The actions – and in some cases inactions – of the United Nations raised concerns about its effective ability to pursue its goals and mission. The

United Nations failed in Sri Lanka with regard to its objective of maintaining or restoring international peace and security and to protect populations ravaged by war. The failure of the international community in protecting Sri Lankan people coincides with the devastating failure in the application of the United Nations' doctrine of the Responsibility to Protect in Sri Lanka. This failure – as the thesis will explain – is emblematic of the pitfalls that are still pervading and damaging the international peace and security mechanisms.

The United Nations action increased in the post-war period due to its willingness to ensure accountability for the alleged crimes committed during the war and to promote reconciliation in Sri Lanka. In other words, the UN tried – and is still trying – to be deeply engaged in the process of transitional justice in the country – dealt with in the fourth and final chapter. The last phase of the Sri Lankan conflict was marked by the commitment of war crimes, crimes against humanity and serious human rights abuses. The international community was too little too late in realizing the status quo of the humanitarian crisis that Sri Lanka was facing. As soon as the war ended, many countries and, in particular, the UN mobilized in order to investigate the crimes committed by both the LTTE and the Sri Lankan Army during the conflict, to prosecute the perpetrators of these crimes and to ensure justice to the victims. The fourth chapter will focus on the various steps of the process of transitional justice in Sri Lanka – the proposed establishment of an ad hoc special hybrid court included. The transitional justice process in Sri Lanka is ongoing at the time of writing and the future prospects of peace and justice in the country are still uncertain.

To conclude on the future prospects of the country, this thesis backs the idea that addressing the root causes of the conflict is the *conditio sine qua non* for the effective achievement of long-term peace. Moreover, with regard to the need for justice to be done in Sri Lanka, this

thesis promotes the establishment of the ad hoc special hybrid court proposed by the UN High Commissioner for Human Rights, but it also argues that this must be accompanied by radical reforms of the judiciary and legal system of the country in terms of de-politicization and strengthening of autonomy and impartiality.

1. Ethnicity and the Sri Lankan Civil War

The first chapter will describe the origins of the ethnic conflict between Sinhalese and Tamil people and will then deal with the outbreak of the Sri Lankan Civil War between the Sri Lankan Government and the Liberation Tigers of Tamil Eelam in 1983.

It will firstly present, in the subchapter 1.1, the issue of ethnicity in Sri Lanka, focusing on the features that constituted the very origins of the ethnic conflict between Sinhalese and Tamil peoples. Before dealing with the Liberation Tigers of Tamil Eelam (LTTE) which constitute the second party in conflict – the Sri Lankan Government being the first one – the subchapter 1.2 will recall the very origins of the debate between Tamil and Sinhalese peoples, the discrimination of Tamil people after the independence of Sri Lanka in 1948 and the escalation of tension between the two.

Only by focusing on these events the reader will be then able to understand the subchapter 1.3, which will deal with the Liberation Tigers of Tamil Eelam (LTTE). A description of the LTTE, entailing its origins, leader, requests and its structure will be given. Therefore, given the description of the parties in conflict and of the origins of the debate, the following subchapter will analyse the real outbreak of the war between the Sri Lankan government and the LTTE on July 23, 1983.

1.1.Ethnicity in Sri Lanka

Sri Lanka – whose precise name is Democratic Socialist Republic of Sri Lanka – is an island of 65,610 km², with a population of almost 21 millions. With regard to the history of the country, it is not in the interest of this thesis to go into a detailed description of it. Nevertheless, some historical events need to be recalled in order to understand, in particular, the ethnic tensions from which the conflict arose.

Sri Lanka – named Ceylon by the British – gained independence from Great Britain in 1948, which ruled the country since 1815. Under the British rule, political organization was based on a racial basis. In fact, representatives coming from each different community – namely Sinhalese, Tamil, Burgher, Kandyan, Moor, Muslim – were appointed in order to speak on behalf of their peoples. Not only was the administration of the country under the British based on a communal basis, as stated above, but also was it based upon languages' divisions. In fact, «areas with a predominance of Sinhala speakers were administered in Sinhala whilst areas with a predominance of Tamil speakers were administered in Tamil. Most schools used one or other of the vernacular languages, but a small élite was educated in English»². With regard to this small élite, it is important to stress the fact that it was mainly Tamil people constituting it. In fact, «[...] the British had favoured Ceylon's minority Tamil population, who were generally better educated than the Sinhalese majority and who were employed in government administrative positions»³. This British favouritism towards the Tamil minority will eventually turn against the minority itself, as it will be explained below.

In the earlier 20th century, the country experienced a new tendency towards «the spread of the franchise. [...] Sinhala people tended

² SPENCER, *Sri Lanka, History and the Roots of Conflict*, London, 1990, p. 29.

³ KINGSBURY, *Sri Lanka and the Responsibility to Protect*, Oxon, 2012, p. 51.

to support a widening of the franchise on the basis of ‘one person, one vote’, the system the British now favoured. In such a system, given their numerical majority, Sinhala interests would be secure. Not surprisingly, the minority Tamils saw such a system as necessarily discriminatory, and so they continually demanded an electoral system which would protect the ‘rights’ of the minorities»⁴. Sinhala nationalism started spreading and at the same pace did the Tamil minority’s fears of discrimination.

The formalization of cultural differences by the British rule, as Singer puts it, led to an increasingly sharp division between the various ethnic and religious groups. The latter undoubtedly contributed to the spread of this separatist perspective and, as soon as the country obtained independence, the groups started clashing with each other in order to gain power and, in some cases, prominence over the others. In fact, since the end of the British rule, the relationship between the Tamil ethnic group and Sinhalese began to deteriorate.

As Kingsbury affirms, «As Tamils and Sinhalese began to divide, a ‘traditional’ or reified cultural nationalism that had not yet otherwise developed as a civic identity led to an attempted hegemony by the majority ethnic Sinhalese over the Tamil and Muslim minorities, which in turn generated conflict as these minorities sought to resist hegemony»⁵. The following subchapter will deal with discrimination of Tamil people and will define it as one of the main causes of the outbreak of the war.

⁴ SPENCER, *op. cit.*, p. 32.

⁵ KINGSBURY, *op. cit.*, p. 52.

1.2. Discrimination of Tamil people

In order to understand the issue of discrimination of Tamil people in Sri Lanka, it is fundamental to recall the fact that many Tamils living there had come from the South of India in order to work in tea plantations under the British rule. These were called Indian Tamils and, according to Sinhalese nationalists, they were not to be considered citizens of Sri Lanka. This was demonstrated by the first act passed by the Sri Lankan Government soon after independence in 1948: the Ceylon Citizenship Act. This act marked the beginning of real discrimination towards the Tamil people. Through the Ceylon Citizenship Act, indeed, the so-called Indian Tamils were denied citizenship and, with it, the right to vote. Of course, «without a deep establishment of an equal civic national identity, the stage was set for almost inevitable conflict»⁶.

The following crucial step in the discrimination of Tamil people was made in 1956, through the Sinhala Only Act, encouraged and approved by the Prime Minister Solomon Bandaranaike – leader of the Sri Lanka Freedom Party (SLFP). The Act made Sinhala the only official language, necessarily discriminating Tamil-speaking people. Moreover, «in 1956 Tamils, who accounted for about one fifth of the population, held about 30 per cent of the administrative positions. Within twenty years, that figure had fallen to just 5 per cent»⁷. As mentioned above, in fact, under British rule the Tamil population had been favoured with respect to Sinhalese with regard to education – not only general education but also the teaching of English, which at that time represented Ceylon's administrative language – and public employment opportunities. Therefore, they also vested the highest roles in society and

⁶ KINGSBURY, *op. cit.*, p. 52.

⁷ WEISS, *The Cage, The Fight for Sri Lanka and the Last Days of the Tamil Tigers*, London, 2012, p. 48.

constituted a small élite that disappeared as soon as the Sinhala Only Act passed. From that moment on, in fact, administrative positions had to be held by Sinhala-speaking people and Tamil were therefore excluded. The first riots and manifestations of violence between Sinhalese and Tamil started after this act was passed. In fact, «One of the Tamil parties organized a *satyagraha* (non-violent protest) outside parliament which led to a clash with Sinhala-Buddhist extremists. Violence broke out in Colombo and then spread to the [...] east of the country, where the previous government had moved large numbers of Sinhala settlers into a colonization scheme in a predominantly Tamil area»⁸. The same happened again in 1958 and it is important to notice that «[these] conflicts erupted over issues of language (the use of Sinhala or Tamil) and access to land»⁹. Sinhalese nationalists – most of the times Sinhalese-Buddhists – were convinced that not only the supreme language of Sri Lanka had to be Sinhala, but also that Tamil could not claim any type of right on the territories they have been living in for more than a century. Sinhalese nationalistic feelings quickly spread in the country and were exacerbated by their legitimization on part of the Sri Lankan government. In fact, through the Sinhala Only Act, the mechanism to foster increasingly dangerous ethnic divisions was eventually created.

The demonstrations of 1956 and 1958 were all violently repressed and an estimate of 300 Tamil people remained killed. In these crucial years, the Prime Minister Bandaranaike seemed likely to have realized how the Sinhala Only Act – which had once been so useful in order to gain popular support at the 1956 elections – could really backfire on him, creating conflict between ethnic and also religious groups – Buddhist and Muslim, the latter being discriminated as the Tamil group was. As a

⁸ SPENCER, *op. cit.*, p. 35.

⁹ *Ibidem*.

consequence of this awareness, Prime Minister Bandaranaike tried to pass «[...] a bill allowing the use of Tamil for administrative purposes, limiting the sponsored movement of Sinhalese into Tamil-dominated areas and devolving administrative authority to regional councils»¹⁰. The bill never passed because of opposition from nationalist extremists and the 1960s were marked by a series of riots that continued to be violently disrupted.

In 1970 general elections were held and the United Front – constituted by the SLFP and the two major communist parties in the country – won them. The leader of the Sri Lankan United Front and, as a consequence, the new Prime Minister in 1970 was Mrs. Sirimavo Bandaranaike, the widow of Solomon Bandaranaike – already mentioned above. In 1971, the new government made its first step towards increasing discrimination of the Tamil population. In fact, «[...] the Sri Lankan United Front government introduced a quota system to increase the number of Sinhalese attending university. [...] Tamils now required a qualifying entry mark of 250 out of 400, while Sinhalese required only 229»¹¹. This provision led to further discrimination of the Tamil people, who saw this move as «designed to reduce their dominance in the professions and state bureaucracy»¹², as stated above.

Nevertheless, the main political move made by this government and particularly relevant also with regard to Tamils' discrimination, was the promulgation of the new Constitution in May 1972. Among the main provisions of this Constitution, there were the passage from a «[...] secular parliamentary democracy to [...] a socialist (communal) republic»¹³, the change of the name from Ceylon to Sri Lanka and the imposition of Buddhism as the state religion. Tamil people opposed this

¹⁰ KINGSBURY, *op. cit.*, p. 53.

¹¹ KINGSBURY, *op. cit.*, p. 55.

¹² WEISS, *op. cit.*, p. 48.

¹³ KINGSBURY, *op. cit.*, p. 56.

constitution because it – once again – discriminated them on the basis of language and religion. At this point, Tamil political forces decided to join under the same political party, the Tamil United Liberation Front (TULF). The latter started supporting separationist ideals for the areas mainly populated by Tamil people – namely the Northern and the Eastern Provinces¹⁴.

Given this synthetic outline of the events that created discrimination of Tamil people in Sri Lanka, it is now possible to understand the origins and features of the Liberation Tigers of Tamil Eelam (LTTE), described in the next subchapter.

1.3. The Liberation Tigers of Tamil Eelam (LTTE)

The Liberation Tigers of Tamil Eelam (LTTE) was born on May 5, 1976 – actually the LTTE was only the new name for the Tamil New Tigers, group created in 1972 – with the aim of fighting against Tamil discrimination and of creating a separate state for Tamil.

In 1976, Vellupillai Prabhakaran – who substituted the leader of the previous Tamil New Tigers – wrote «the constitution that officially changed the TNT into the LTTE [...]. The LTTE constitution stated that members would fight to establish the total independence of Tamil Eelam, to establish a sovereign and socialist democratic people's government, to abolish all forms of exploitation [...], to uphold armed revolutionary struggle as an extension of the political struggle, and to gradually and systematically transform guerrilla warfare into a genuine people's war of liberation»¹⁵. Initially, as mentioned above, also the main Tamil political

¹⁴ DE SILVA, *A History of Sri Lanka*, India, 2005, p. 674.

¹⁵ RICHARDS, *An Institutional History of the Liberation Tigers of Tamil Eelam (LTTE)*, November 2014, p. 13, retrievable online.

party – the TULF, supported the claim of a separate state for Tamil people. Nevertheless, at a certain point, «[...] the TULF found itself outflanked by the rise of new groups of young armed militants»¹⁶ and did not support their violent way of fighting for independence.

At the beginning there were almost 37 Tamil militant groups, 5 of which were the most relevant and consequently called “the big five”: the LTTE, the Tamil Eelam Liberation Organization (TELO), the Eelam Revolutionary Organization of Students (EROS), the Eelam People’s Revolutionary Liberation Front (EPRLF) and the People’s Liberation Organization of Tamil Eelam (PLOTE)¹⁷. It is fundamental to recall that «the “big five” Tamil militant groups all received backing from India following the anti-Tamil riots of 1977 and throughout the early 1980s. [...] The leading political parties in Tamil Nadu [in India] sought to affiliate themselves with the Sri Lankan Tamil militant groups, providing money, and allowing the establishment of front offices and training bases across the state»¹⁸ – more will be said on the role of India in the Sri Lankan Civil War in the subchapter 2.1.

Since the 1970s, manifestations of violence continued escalating between these Tamil militant groups and the Sri Lankan Government, until the attack on July 23, 1983 – which marked the official outbreak of the war and which will be dealt with in the next subchapter.

After a period of joint action between the various Tamil militant groups – especially marked by their establishment in 1983 the Eelam National Liberation Front (ENLF) – the LTTE started struggling with them¹⁹. The ENLF was successful in its attacks but did not last as long as expected. In fact, the LTTE – especially its leader Prabhakaran – started

¹⁶ SPENCER, *op. cit.*, p. 2.

¹⁷ RICHARDS, *op. cit.*, p. 13.

¹⁸ *Ivi*, p. 14.

¹⁹ HUMAN RIGHTS COUNCIL, *Report of the OHCHR Investigation on Sri Lanka (OISL)*, 16 September 2015, p. 12, retrievable online.

being suspicious of the others groups' alliances and intentions and decided to withdraw the ENLF in 1986²⁰. Not only did the LTTE separate from its allies, but also did it start attacking all of them. This behaviour of the LTTE with respect to the other groups «constructed it [the LTTE] as intolerant of political or military competition in its representation of the Tamil cause»²¹. At the end, the LTTE succeeded in becoming the most relevant Tamil militant group to fight against the Sri Lankan Government for a Tamil independent and separate state (the so-called Eelam).

With regard to the response of the Sri Lankan Government to the attacks of the Tamil militant groups – and especially of the LTTE – the Government declared the first state of emergency in 1971, then introduced emergency powers and – more importantly – the Prevention of Terrorism Act (PTA) in 1979. The latter possibly represents the most controversial step made by the Government, since it «provided a context for widespread arbitrary detention, torture and enforced disappearances»²².

The Sri Lankan Government then labelled the LTTE as a terrorist organization. This proscription as a terrorist organization is worth some reflection. In fact, there has been debate among scholars over this issue, with particular regard to the features that should be taken into account in order to define the LTTE as terrorist and also with regard to those that could have made the Sri Lankan Government terrorist as well. As Kingsbury notices, in fact, «there is no doubt that the LTTE from the outset employed methods that fall under the conventional heading of 'terrorism' [...]. Similarly, the Sri Lankan state could be accused of employing terrorism, notably in relation to mass killings of civilians,

²⁰ KINGSBURY, *op. cit.*, p. 68.

²¹ *Ibidem.*

²² HUMAN RIGHTS COUNCIL, *op. cit.*, p. 13.

presiding over the ‘disappearances’ of suspected activists and indiscriminate attacks against civilian populated areas»²³. All these and other allegations of crimes will be analysed in detail in chapter four.

To conclude the description of the LTTE, its structure and organization need to be outlined. The LTTE leader Prabhakaran can be identified as the chief in command of every LTTE’s action. Just under his power stood the Military Secretariat, which represented the Central Governing Committee and included commanders of LTTE’s five different military regions – namely Jaffna, Mannar, Wanni, Trincomalee and Batticaloa²⁴. The Military Secretariat then commanded the Air Tigers, the Sea Tigers, the Civilian Auxiliary Units, the Ground Forces and the Intelligence²⁵.

Apart from the military wing, the LTTE also had the political and international ones. With regard to the political wing, the Tamil Secretariat – established in 1987 – represented its main organ and managed the civilian administration since the 1990s. Civilian administration included the issuing of identity cards for people residing in LTTE controlled areas, the management of the economic, health, educational, security (judiciary and police), finance and transport sectors. The LTTE political party was created as well – namely the People’s Front of Liberation Tigers (PFLT)²⁶.

Dealing with the international network of the LTTE, this was already established in the 1970s, but it particularly developed since the 1980s because of the new international attention to the conflict and, more importantly, due to the large masses of Tamils emigrating abroad. With the escalation of the conflict in the following years, «[...] the number of

²³ KINGSBURY, *op. cit.*, p. 66.

²⁴ For reference see the Map of Sri Lanka, p. 5.

²⁵ RICHARDS, *op. cit.*, p. 17.

²⁶ *Ivi*, p. 39 et seq.

Tamils residing abroad increased to roughly 700,000»²⁷. The LTTE international secretariat was created in 1990 in London and «[...] [it] was responsible for overseas propaganda and fundraising»²⁸. The LTTE used various methods of fundraising, from voluntary to coerced donations, to the attempt of obtaining money from the Tamil diaspora²⁹.

Provided the description of the creation, the basic structure and organization of the LTTE, it is now possible to analyse the outbreak of the conflict between the latter and the Sri Lankan Government in 1983.

1.4. The outbreak of the war between the Sri Lankan Government and the LTTE

The start of the Sri Lankan Civil War is usually regarded to be on July 23, 1983 – there is not an official date. There had already been clashes and riots before, but it was on that date that the LTTE directly attacked some Sri Lankan Army (SLA) soldiers, killing 13 of them. The reaction of the SLA was immediate: in fact, «[...] soldiers killed 51 people in Jaffna and, following the funeral of the soldiers, anti-Tamil rioting broke out across the country, leading to many deaths – [...] between a conservative 400 and a more probable 3000»³⁰.

Apart from the immediate violent reaction of the Sri Lankan Government to the LTTE's attack, it also stated – through the Sixth Amendment to the Constitution (1983) – that there would have been no more Tamil politicians in favour of separatism sitting in parliament. As a matter of fact, “by the end of the year, all fourteen TULF members of

²⁷ *Ivi*, p. 39.

²⁸ *Ivi*, p. 51.

²⁹ For more information on the LTTE fundraising, see RICHARDS, *op. cit.*, chapter 6.2.

³⁰ KINGSBURY, *op. cit.*, p. 67.

Parliament were obliged to resign»³¹. This actually turned in favour of the LTTE, which attempted to have control of more Tamil people as possible and reached this goal. In fact, since the Sixth Amendment was put in force and the TULF was excluded from Parliament, «the road was paved for the rise to political ascendancy of the militant Tamil separatist movements [...]. With the anti-Tamil riots in 1983, these came to be widely seen as the protectors of the Tamil nation and the only hope for the creation of a separate Tamil state»³². Therefore, many Tamil people – mainly young Tamil – decided to join the Tigers' forces.

A significant part of Tamils, who decided not to become recruits – opted for leaving the country. In fact, the riots of July 23, 1983 gave birth to a series of manifestations of violence, which led to the migration of many Tamils from the country, both to Tamil Nadu in India (almost 100,000) and to other countries³³. As mentioned above, this migration of large masses represented also a good external source of funds for the LTTE.

Another remarkable consequence of the Sixth Amendment was that the LTTE eventually became the only Tamil interlocutor of the Sri Lankan Government.

In general, to fully understand the trigger of the explosion of LTTE violence, it is important to focus on the high level of dissatisfaction of Tamil people from the discrimination they faced and from the failure of the Tamil political elite to properly reduce it through Parliament. This represents also one of the main reasons why, at least initially, the LTTE received legitimization and support by many Tamil people who felt that someone really engaged in the fight for their rights had eventually show up. In other words, «the history of ethnic conflict in

³¹ MATTHEWS, *Radical Conflict and the Rationalization of Violence in Sri Lanka*, in *Pacific Affairs*, 1986, p. 32 et seq., retrievable online.

³² STOKKE, *Sinhalese and Tamil nationalism as post-colonial political projects from 'above'*, 1948-1983, in *Political Geography*, 1998, p. 108, retrievable online.

³³ WEISS, *op. cit.*, p. 71.

Sri Lanka is a typical case of a secessionist movement emerging out of mismanaged autonomy demands. It turned violent due to persistent insensitivity of the state in addressing genuine grievances of the Tamil community»³⁴.

To conclude on the events that marked outbreak of the war and on their tragic consequences, a quote by Spencer is reported:

«The July riots marked a critical juncture in the ethnic relations between Sinhala and Tamil. Soon afterwards, the guerrilla war between Tamil militants and the largely Sinhala government forces escalated into a ‘National Security’ issue and each community’s perception of the other as enemy hardened with each ambush, bomb explosion and massacre»³⁵.

The arguments mentioned in the quote possibly constitute the main reason why Black July marked by anti-Tamil riots still represents «[...] a searing wound in the collective Tamil memory and [...] is a mark of intense shame for many Sinhalese»³⁶.

The next subchapter will present the chronological description of the main events of the Sri Lankan Civil War following its outbreak – which has just been analysed. It seems important to clarify that, for the aim of this thesis, it seemed useless to the author to go into a detailed description of the war – in its tactics, singular battles and so on –, therefore only the events and strategies considered relevant to the arguments of this dissertation will be highlighted.

³⁴ MANOHARAN, *Brothers, Not Friends: India–Sri Lanka Relations*, in *South Asian Survey*, 2011, p. 227, retrievable online.

³⁵ SPENCER, *op. cit.*, p. 205.

³⁶ WEISS, *op. cit.*, p. 54.

1.5. The Chronological Description of the Conflict

This subchapter will illustrate the evolution of the conflict since its outbreak on July 23, 1983 – already described in the previous subchapter – until its end on May 18, 2009. As stated above, only an outline of the main and crucial events of the war – that are considered useful for the purpose of this thesis – will be provided.

The war has usually been divided into 4 Eelam wars – i.e. wars for the creation of the Tamil independent state in Sri Lanka. The following four subchapters will deal with each Eelam War and will highlight their timeline of events, providing the reader with the framework needed to understand the second and third chapters – which will explain the international response to the Sri Lankan Civil War and constitute the core of the thesis. In the following description, particular attention will be given to the ways in which both the Sri Lankan Government and the LTTE behaved during the 4 Eelam Wars, focusing on their tactics, strategies. The alleged commitment of war crimes and of serious abuses of human rights by both parties to conflict will just be mentioned in this chapter, but an in depth-analysis of this issue will be provided in the fourth chapter.

1.5.1. The Eelam War I

The Eelam War I corresponds to the first phase of the conflict, covering the period between 1983 and 1987. It started with the riots of July 23, 1983 – already illustrated in the subchapter 1.4. On that day, the killing of 13 SLA soldiers by the LTTE triggered a violent reaction by the Sinhalese population. In fact, «the response of Sinhalese [...] was the destruction and burning of Tamil homes and businesses, as well as

killings that ended with hundreds of dead Tamils»³⁷. Also on the part of the Sri Lankan forces, it appears that some of them supported the Sinhalese mobs and that the Sri Lankan Government failed to protect Tamil innocent people attacked with violence.

These riots led to an escalation of violence between the two ethnic groups and after almost two years of uninterrupted attacks and deaths in the rows of both parties to the conflict, the Sri Lankan Government tried to start peace negotiations with the militant groups in 1985 – at that time the LTTE was still flanked by other Tamil militant groups³⁸. These peace negotiations started in Thimpu (Buthan), «under the sponsorship of the Government of India»³⁹. The LTTE, with three other militant groups and a delegation of the TULF, issued the so-called Thimpu Declaration in which they outlined the principles that – according to them – had to be respected and followed in order to engage in peace talks. The principles were outlined as follows:

- «1. Recognition of the Tamils of Ceylon as a nation;
2. Acceptance of the existence of an identified homeland for the Tamils of Ceylon;
3. Recognition of the right to self-determination of the Tamil nation;
4. Recognition of the right of citizenship and the fundamental rights of all Tamils of Ceylon»⁴⁰.

It seemed fundamental to recall the Tamil militant groups' principles and requests to the Sri Lankan Government because they will almost remain the same throughout the whole war period. The recognition of these principles was fiercely denied by the Sri Lankan Government because of its will to protect national sovereignty and unity

³⁷ DEVOICIN, *Sri Lanka: Physical Reconstruction and Economic Development as Conflict Prevention Factors*, in *Croatian International Relations Review*, 2013, p. 60, retrievable online.

³⁸ For reference see the subchapter 1.3.

³⁹ PEIRIS, *op. cit.*, p. 32.

⁴⁰ PEIRIS, *op. cit.*, p. 33.

and also because they were considered « [...] inimical to the interests of the several communities, ethnic and religious»⁴¹ of the country.

The Thimpu peace talks did not have the wished effect of reducing violent attacks all over the country and in July 1987, after a climax of violence in the northern peninsula of Jaffna, the Sri Lankan Government decided to militarily attack that area in order to re-establish order. Following this offensive, India tried to help the LTTE sending «[...] supply boats to relieve the LTTE. These boats were blocked by the Sri Lankan Navy, so India supplied the LTTE with an air drop»⁴². After this Indian intervention, the two countries signed the Indo-Sri Lanka accord in 1987, which was designed as a possible solution to the conflict. Among its provisions, there were the concession of « [...] a degree of autonomy for Tamil majority areas in the North and East, but not independence [...], the establishment of Provincial Councils and specified a range of powers that would be devolved to them»⁴³, the upgrading of Tamil to an official language and, even more importantly, the Indo-Sri Lanka accord implied the introduction in Sri Lanka of the Indian Peacekeeping Force (IPKF).

The IPKF «[...] was sent to disarm the Tamil militants, replace the security forces of Sri Lanka in the maintenance of law and order, and create conditions necessary for the effective devolution of power to the north-east»⁴⁴. Not only did the LTTE reject the provisions of the Indo-Sri Lanka accord, but also was it ready to fight against whoever hampered its way towards the conquest of the Eelam. Indeed, the LTTE came into conflict with the IPKF as well and the latter left the country after three

⁴¹ PEIRIS, *op. cit.*, p. 34.

⁴² KINGSBURY, *op. cit.*, p. 69.

⁴³ LUNN, TAYLOR, TOWNSEND, *War and Peace in Sri Lanka*, Research Paper 09/51, House of Commons Library, London, 2009, p. 10, retrievable online.

⁴⁴ PEIRIS, *op. cit.*, p. 35.

years, in 1990, with huge losses – around 1200 troops⁴⁵ – and without having accomplished its mission. It is important to notice that the President of Sri Lanka at that time – Mr. Ranasinghe Premadasa – strongly opposed Indian intervention in Sri Lanka through the IPKF, so much that in 1988 «he [...] provided clandestine assistance to the LTTE for its guerrilla attacks on the Indian troops»⁴⁶. Once the IPKF left Sri Lanka, the Tamil Tigers were « [...] in a position of unparalleled strength [...]»⁴⁷, given by the training and equipment provided by India and by their control of most of the Jaffna peninsula. As a consequence, a new phase of the war started: the Eelam War II.

1.5.2. The Eelam War II

The Eelam War II is regarded to be covering the period between June 1990 and 1994. The start of the Eelam War II was marked by the massacre of «[...] more than 100 Tamil and Muslim police in the north-east who surrendered to the LTTE»⁴⁸. The reaction of the Sri Lankan forces was immediate and an estimated figure of 160-250 Tamil people was killed. At the end, only in June 1990, «around 7000 were killed [...], marking one of the more brutal periods of the war».

These terrible events marked the beginning of the Eelam War II, which continued with more massacres on both sides and with the homicide of the former Indian Prime Minister Rajiv Gandhi by hand of the LTTE. It was under his government that India decided to introduce the IPKF in Sri Lanka, action that had been fiercely opposed by the LTTE, which decided to let the author of the decision pay for it. Since

⁴⁵ WEISS, *op. cit.*, p. 83.

⁴⁶ PEIRIS, *op. cit.*, p. 35.

⁴⁷ WEISS, *op. cit.*, p. 83.

⁴⁸ KINGSBURY, *op. cit.*, p. 69.

this brutal assassination, «[...] the Indian Government, which prior to 1987 had at points displayed considerable sympathy for its cause, has been very hostile to the LTTE»⁴⁹.

President Premadasa made a new attempt of peace talks with the LTTE in 1990, but, once again, it failed. An LTTE suicide bomber killed President Premadasa in 1993 while attending the May Day procession in Sri Lanka⁵⁰. In the years between 1990 and 1994 – year in which new elections were held and the new President Chandrika Kumaratunga was elected – the Tamil «Tigers continued to sink naval vessels, overrun military camps, assassinate members of Parliament, bomb buses and amass armaments and finance from throughout the world»⁵¹.

The Eelam War II ended with the election of the new President Kumaratunga in November 1994. Since she was elected, she tried to establish a dialogue with the LTTE in an attempt to start new peace negotiations. Moreover, the government under her presidency «[...] sought to introduce another new Constitution during the 1990s, in which the principles of power-sharing and devolution would have been explicitly recognised and the state defined as a ‘union of regions’. However, the LTTE rejected these proposals»⁵². Both these attempts having failed – exactly as those before it – a new phase of the war started: the Eelam War III.

1.5.3. The Eelam War III

The Eelam War III covered the period between April 1995 and 2002. The outbreak of this new phase of the war was preceded by a ceasefire

⁴⁹ LUNN, TAYLOR, TOWNSEND, *op. cit.*, p.10.

⁵⁰ WEISS, *op. cit.*, p. 78.

⁵¹ *Ivi*, p. 84.

⁵² LUNN, TAYLOR, TOWNSEND, *op. cit.*, p.11.

between the Sri Lankan Government and the LTTE, which unfortunately lasted only two weeks. «In March 1995 the LTTE issued an ultimatum containing a set of unequivocal demands [...]»⁵³ that the Government was not willing to accept as a whole. As a consequence, the LTTE broke the ceasefire and on April 18, 1995, it attacked through the Sea Tiger a naval base of the Government, marking the beginning of the Eelam War III.

The peninsula of Jaffna was particularly relevant in this phase of the war: the Sri Lankan Army (SLA) succeeded in forcing the LTTE to leave the area by April 1996, but it soon responded by killing almost 1200 troops of the SLA in July 1996⁵⁴. The LTTE used suicide bombers and with this offensive it succeeded in «[...] consolidating its position in the north of the country and [in] establishing strong bases in the east»⁵⁵. The war in these years mainly consisted of conflicts aimed at conquering territory and pushing the enemy backwards and «the fighting was characterized by government advances, followed by surprise counter-attacks by the Tigers that often led to the army losing half the ground it had gained»⁵⁶. As a matter of fact, the SLA continued to gain and lose territories under its control and the same did the LTTE. By November 1999 the LTTE had regained the areas it had lost⁵⁷. One of the most relevant conquests of the LTTE was that of the Elephant Pass base – from which access to Jaffna was controlled – in 2000. The SLA tried to take it back but the attempt failed in front of the LTTE counter-attack.

The records of the Eelam War III were devastating. By 2000, «[...] it has been estimated that 64,000 people, mostly civilians, had been killed in the conflict»⁵⁸. The Eelam War III turned out to be «[...] the most destructive phase of the secessionist conflict. It was marked by: (a)

⁵³ PEIRIS, *op. cit.*, p. 40.

⁵⁴ WEISS, *op. cit.*, p. 84.

⁵⁵ KINGSBURY, *op. cit.*, p. 71.

⁵⁶ WEISS, *op. cit.*, p. 85.

⁵⁷ KINGSBURY, *op. cit.*, p. 71.

⁵⁸ *Ibidem.*

high-intensity military confrontations [...]; (b) several large-scale offensives launched by the government forces [...]; (c) LTTE attacks on army encampments and naval bases; and (d) extensive damage and destruction by the LTTE through several attacks on civilian institutions [...]»⁵⁹. Dealing with the latter, here follows a brief list of the main attacks by the LTTE on civilian targets: Central Bank (1996), Temple of Tooth Relic (1998), two mammoth election rallies (1999), a petroleum refinery (2000), the Colombo international airport (2001)⁶⁰.

In the meanwhile, Sri Lanka was also passing through a turbulent period pertaining to the political sphere. In fact, the elections of 2001 initiated a phase of Sri Lankan politics determined by what in France is called *cohabitation* – i.e. the situation in which the President belongs to the party opposed to that of the Prime Minister and the cabinet. In the case of Sri Lanka, the role of the President continued to be vested by Ms. Kumaratunga even after the elections of 2001, while the new Prime Minister was Mr. Ranil Wickremasinghe – leader of the United National Front (UNF). This political aspect needs to be mentioned because, from these elections onwards, the *cohabitation* led to «[...] pronounced marginalization of the president in government transactions including those pertaining to the ethnic conflict and the peace efforts»⁶¹. The victory of the UNF at the elections was fundamental with regard to the establishment of peace negotiations with the LTTE, because the UNF assured that, if winning, it would have offered to the LTTE an enhancement of «[...] powers and functions of the council of the north-east province»⁶². As a consequence, the «[...] LTTE announced a

⁵⁹ PEIRIS, *op. cit.*, p. 19.

⁶⁰ *Ivi*, p. 5.

⁶¹ *Ivi*, p. 62.

⁶² *Ivi*, p. 64.

unilateral declaration of a 30-day suspension of its armed confrontation with the government»⁶³.

At this point of the discussion on the Eelam War III, it must be recalled that because of its brutality and its record of deaths, international attention to the Sri Lankan Civil War considerably increased and, for the first time since its outbreak, a foreign state got involved in Sri Lankan internal affairs. In fact, Norway decided to intervene in 2000 and to put itself forward to act as a mediator of new peace talks between the LTTE and the Sri Lankan Government⁶⁴. As a matter of fact, Norway brokered the Ceasefire Agreement (CFA) between the two parties in conflict. The CFA «[...] entered into force on 22 February 2002 [and it] was intended to formalize the suspension of the campaign of war and terrorism conducted by the LTTE, and to pave the way for a direct dialogue between the government and the LTTE towards a negotiated solution to the country's ethnic conflict»⁶⁵. Among the provisions of the CFA, there was «[...] the establishment of the Sri Lanka Monitoring Mission (SLMM), composed of "Nordic" states charged with monitoring the ceasefire»⁶⁶.

From the ceasefire agreement on, «the front lines [were] held and the Tamil Tigers established 'customs' posts (and collected revenue) along the line of control. The mood of the entire nation was buoyant, and people believed that a negotiated peace was at hand»⁶⁷. In reality, peace was going to be broken soon.

⁶³ *Ibidem*.

⁶⁴ This subchapter will only briefly describe the sequence of events and circumstances that resulted from the relationship between Norway, the Sri Lankan Government and the LTTE, while an in-depth analysis of the intervention of Norway in Sri Lankan internal affairs will be provided in Chapter 2.

⁶⁵ PEIRIS, *op. cit.*, p. 67.

⁶⁶ DESTRADE, *India and the Civil War in Sri Lanka: On the Failures of Regional Conflict Management in South Asia*, GIGA Working Paper no 154, Hamburg, 2010, p. 10, retrievable online.

⁶⁷ WEISS, *op. cit.*, p. 90.

1.5.4. The Eelam War IV

The Eelam War IV is regarded to be covering the period between 2006 and May 18, 2009. Nevertheless, this subchapter will firstly illustrate the timeline of events preceding the beginning of this last phase of the war.

Immediately after the CFA entered into force in 2002, Sri Lanka started experiencing one of the longest periods of peace since the beginning of the war in 1983. Nevertheless, already since the very establishment of the ceasefire, three main contradictions emerged, as Peiris explains. Firstly, even if one of the main parties to the agreement was the Sri Lankan Government, the agreement was sponsored only by the Prime Minister Wickremasinghe and his cabinet and not by the President Kumaratunga too. She, in fact, remained outside of the peace process. Secondly, there remained the question of whether the government led by the Prime Minister Wickremasinghe would have had the power of formalizing an hypothetical «[...] federal solution of power-sharing between the main ethnic groups [...]»⁶⁸, in case this was reached. Thirdly, it was difficult to accept the fact that the LTTE was, as a matter of fact, accorded the same « [...] position of equality [...] in the procedures of negotiation»⁶⁹.

Peace was quite illusory, as the ceasefire started to be violated almost immediately after its establishment. In fact «the SLMM recorded thousands of infractions of the ceasefire, the majority of them committed by the Tamil Tigers as they hustled to consolidate their position. Hundreds of dissident Tamils across the island were murdered, the majority of them by the Tigers»⁷⁰. In 2003, the LTTE asked to the Government for « [...] the establishment of an Interim Self-Governing

⁶⁸ PEIRIS, *op. cit.*, p. 82.

⁶⁹ *Ivi*, p. 83.

⁷⁰ WEISS, *op. cit.*, p. 90.

Authority, which was immediately rejected»⁷¹. These events created continuous tensions between the President and the Prime Minister and «there was growing disenchantment in the electorate, especially that of the majority community (Sinhalese-Buddhist), with the performance of the UNF and its leader Prime Minister Wickremasinghe. Foremost among the causes for the declining popularity of the UNF was the widespread dissatisfaction with its approach towards negotiations with the LTTE»⁷². The President decided to make an increasing use of her presidential powers and, in 2003, she «took over the ministries of defence, interior and mass communication [...]»⁷³. Due to increasing disputes between the President and the Prime Minister, the former eventually decided to dissolve the Parliament in 2004 and new elections were held in April of the same year.

The elections held in 2004 were marked by the decline of the UNF and the victory of a coalition of parties including the United People's Freedom Alliance (UPFA) and the Janatha Vimukhti Peramuna party (JVP) – which was the Sinhalese nationalist party⁷⁴. Following the elections, the President Kumaratunga approved the cabinet of ministers and «appointed Mahinda Rajapaksa the Prime Minister»⁷⁵, who was the leader of the SLFP. The new Prime Minister Rajapaksa «from the outset, despite formally acknowledging the 2002 ceasefire agreement, [...] intended to seek a military victory over the LTTE»⁷⁶.

In the same year, Sri Lanka also experienced the terrible Tsunami. Apart from the obvious consequences of this tragedy – as the high number of deaths (almost 3,000), the serious economic crisis and the immediate decline of tourism – the Tsunami also represented an occasion

⁷¹ KINGSBURY, *op. cit.*, p. 72.

⁷² PEIRIS, *op. cit.*, p. 119.

⁷³ *Ivi*, p. 120.

⁷⁴ RICHARDS, *op. cit.*, p. 60.

⁷⁵ PEIRIS, *op. cit.*, p. 182.

⁷⁶ KINGSBURY, *op. cit.*, p. 72.

for the LTTE. In fact, «the Tigers had taken advantage of the chaos and the extraordinary flows of foreign aid into Sri Lanka in the wake of the Christmas 2004 tsunami [...] to rearm»⁷⁷.

The new turning point with regard to the peace process occurred in November 2005, when, at the presidential elections, the Prime Minister Rajapaksa won and became the new President of Sri Lanka. In fact, he was elected « [...] with a clear mandate to militarily defeat the LTTE. The LTTE refused to allow Tamils under its control to vote in the election [...]. Refusing Tamils under LTTE control permission to vote in the election handed power to Rajapakse, guaranteeing that there would be no further peace negotiations and that a return to war would be almost inevitable»⁷⁸. Moreover, the political groups that supported the President Rajapaksa excluded the possibility of negotiating with the LTTE and fiercely refused the hypothesis of implementing a federal system. Therefore, the LTTE as well had no more incentives to invest in peace talks and to seat at the negotiation table⁷⁹. In the meanwhile, both the LTTE and the Sri Lankan Army had increased their military capabilities and were now stronger than ever. The CFA was officially still in force, but in reality its provisions were definitely violated by the beginning of the Eelam War IV. Given this fundamental outline of the events that eventually led to the revival of the conflict, it is now possible to deal with the final phase of the conflict, i.e. the Eelam War IV.

The Eelam War IV started in July 2006 when « [...] the LTTE closed the sluice gates of the Mavil Aru reservoir in the East, which blocked water supply to 15,000 villages in government-controlled areas. When the government troops attempted to reopen the reservoir, fierce

⁷⁷ WEISS, *op. cit.*, p. 91.

⁷⁸ KINGSBURY, *op. cit.*, p. 73.

⁷⁹ WEIBERG-SALZMANN, *Ending Ethnic Civil Wars: By Negotiations or by Military Defeat? Lessons on security from Sri Lanka*, in *Journal of Asian and African Studies*, 2015, p. 142, retrievable online.

fighting broke out»⁸⁰. The government soon regained control of this area and the same pattern of events happened in August in the city of Muttur. After having re-conquered many areas of the East, the Sri Lankan Government shifted its focus on the North and by 2007 the LTTE had lost many northern cities⁸¹. Apart from reconquering territories, in the following attacks one of the SLA main objectives was that of capturing or killing the most relevant leaders of the LTTE – from the leader of the political wing who was killed in 2007 to the head of the LTTE intelligence killed in 2008⁸².

In January 2008 the Sri Lankan Government decided to withdraw from the Ceasefire Agreement – which was surprisingly and senselessly still in force. As a consequence, the SLMM was dissolved and this led to the lack of «[...] any internationally recognised observers of the situation in the north-east»⁸³. The war continued with continuous setbacks and advancements by both sides and «[...] from August 2008 the SLA eventually advanced, taking Mannar in the West and then assaulting the LTTE's 'capital' of Kilinochche [...], capturing it in January 2009»⁸⁴.

This moment marked the beginning of the possibly worst period of the Sri Lankan War in terms of brutality – which particularly hit civilians. As Kingsbury suggests, «Throughout this period it was clear that a humanitarian disaster was unfolding and, despite LTTE overtures that it was willing to talk, the government pressed the SLA's attack while foreign governments refused to intervene»⁸⁵ - the next chapter will

⁸⁰ MAYILVAGANAN, *Is it Endgame for LTTE?*, in *Strategic Analysis*, 2008, p. 29, retrievable online.

⁸¹ *Ivi*, p. 30.

⁸² *Ibidem*.

⁸³ SHASTRI, *Ending Ethnic Civil War: The Peace Process in Sri Lanka*, in *Commonwealth & Comparative Politics*, 2009, p. 95, retrievable online.

⁸⁴ KINGSBURY, *op. cit.*, p. 78.

⁸⁵ *Ibidem*.

provide evidence of the latter statement and will give an in-depth analysis of foreign intervention in the conflict.

In order to better understand the last months of the war, it is important for the reader to have a precise idea of the portion of territory implicated in the last clashes. A very small area in the North of Sri Lanka – the so-called Cage, represented the battlefield. The Cage was «tucked into the north-eastern corner of the Vanni region, on the eastern shore of Sri Lanka [...]. In January 2009, within this patch of land, the majority of the 330,000 people who had lived under the control of the Tamil Tigers for much of the past fifteen years waited for the final assault they knew must come»⁸⁶. The perimeter of the Cage could be seen as a triangle and was delineated by: the «seventy kilometres from Kilinochchi along the A35 road to the second major Tiger-controlled hub, the town of Mullaitivu»⁸⁷, by the fifteen kilometres of the A9 road from Kilinochchi to the Elephant Pass and by the road that went from the Elephant Pass «across the top of the Vanni and back down the coastline to Mullaitivu»⁸⁸. Because of the SLA attacks in this area, the latter became even smaller and more difficult to be escaped. In fact, even leaving the war zone from the sea was no longer an available option, since the SLA Navy blocked it. In other words, the Tamil civilian population remained stuck in this area under LTTE's control and this is the reason why it has also been called the Cage.

From the loss of the city of Kilinochche in January 2009, the future military defeat of the LTTE started to be quite obvious, not only because of its territorial losses, as explained above, but also because by 2008 it had already « [...] lost about 6,800 fighters compared to 674

⁸⁶ WEISS, *op. cit.*, p. 96.

⁸⁷ *Ivi*, p. 99.

⁸⁸ *Ivi*, p. 100.

soldiers on the government's side»⁸⁹ and because its «[...] heavy weapons and fortified positions [were] open to conquest by superior government forces [...]». Nevertheless, the LTTE's leadership had no intention to surrender and it decided to retreat itself and the civilian population under its control in the Cage. «The LTTE's rationale for opting for this strategy was twofold: to try to prevent the sustained bombing and shelling by the Sri Lankan military on LTTE targets by hiding among the civilian population and to create a massive humanitarian crisis to build international pressure for a government ceasefire»⁹⁰. People inside the Cage hoped for a massive international intervention with the aim of protecting them from SLA attacks. The following analysis will show how the premises and wishes of the 'twofold strategy' of the LTTE were wrong.

In the meanwhile, the Tigers and the Tamil civilians under their control were continuously pushed into increasingly smaller areas by the advancement of the Sri Lankan Forces and by the Sri Lankan Government's creation of the first 'No Fire Zone' (NFZ). Here follows a detailed description of the No Fire Zones established by the Sri Lankan Government in the last phase of the conflict⁹¹.

The unilateral decision to establish a NFZ – the first of a series of three – in an LTTE controlled area was taken on January 21, 2009. This area was about 30 square kilometres and civilians who were living in the war zone – almost 300,000 people – were asked to move into the arranged NFZ⁹² «[...] in order to avoid being caught up in the fighting»⁹³. Nevertheless, this unilateral decision did not prevent either party to the

⁸⁹ MAYILVAGANAN, *op. cit.*, p. 31.

⁹⁰ UYANGODA, *Sri Lanka in 2009: From Civil War to Political Uncertainties*, in *Asian Survey*, 2010, p. 104, retrievable online.

⁹¹ Most of the information about the No Fire Zones has been retrieved by the Report of the OHCHR Investigation on Sri Lanka (OISL).

⁹² RICHARDS, *op. cit.*, p. 64.

⁹³ LUNN, TAYLOR, TOWNSEND, *op. cit.*, p. 20.

conflict to uninterruptedly attack the No Fire Zone – even if the name itself recommended the opposite behaviour. As a matter of fact, evidence suggested that «while the government claimed that the security forces were “fully committed” to providing “maximum safety for civilians,” the SLA subjected the NFZ to sustained heavy bombardment and the LTTE continued to fire from within the zone»⁹⁴. For instance, the area close to the Vallipunam hospital – located inside the first NFZ – was repeatedly shelled from the day after the announcement of the NFZ’s establishment. On January 23, 2009, while the United Nations was building a humanitarian facility in the NFZ, which included a hospital and other several buildings «clearly marked with the Red Cross emblem», the SLA shelled this area – this allegation was rejected by army officials⁹⁵. The latter are just few examples of continuing violation of the main implication of the establishment of a No Fire Zone: not to, shell or, more generally, military attack the area.

Following the continuing attacks to the first NFZ, a second NFZ – covering a 14 square kilometres area – was announced on February 12, 2009. Many civilians who were escaping from the NFZ1 had already reached this area before the second NFZ was announced. This second NFZ was subject to attacks as the first one. Humanitarian aid providers as well had already moved their locations from the NFZ1 to the NFZ2 and a new hospital was settled in the area of Putumattalan. The hospital was shelled the day after the NFZ was established and it continued to be attacked and damaged by SLA-LTTE direct clashes even in the following days. Other «[...] humanitarian organizations set up in Valayarmadam [...]». Many civilians were sheltering in the church buildings in the same location [...]. On 22 February, mortar shells from SLA positions were

⁹⁴ RICHARDS, *op. cit.*, p. 64.

⁹⁵ HUMAN RIGHTS COUNCIL, *op. cit.*, p. 159 et seq.

fired in the direction of Valayarmadam»⁹⁶. The LTTE did not wait to let its presence be felt: in March it «[...] had raided the church [of Valayarmadam] and forcibly recruited dozens of young people who had sought refuge there to avoid recruitment by the LTTE or for safety»⁹⁷. Other attacks followed, some of which were directed to queues of people waiting to receive their ration of food and others to health centres and displaced people's shelters. Violence and shelling reached an unsustainable level and the second NFZ was cut in two parts, the northern being conquered by the SLA and the southern still in LTTE hands. About 100,000 succeeded in moving to the Northern part of the NFZ2, while 150,000 remained under LTTE control. At this point of the conflict, the Tigers no longer had the capacity and the numbers needed to defeat the SLA and they tried to blend into the crowd of civilians, in order not to be recognized by the Sri Lankan Forces. The SLA was presumably instructed by the Sri Lankan Government to stop using heavy weapons, but the instructions were not followed, as shells continued to fall.

The third and last NFZ was established on May 8, 2009 – about 10 days before the end of the conflict. It covered the small 2 square kilometres southern area of the NFZ2, which was the one still under LTTE control. «Tens of thousands of civilians were squeezed into this tiny area [...]»⁹⁸ and, as in the previous NFZs, the shelling continued uninterrupted. In particular, the only health centre available in the NFZ3 was subject to serious damage because of the «daily bombardment by SLA artillery, the air force and the navy»⁹⁹. Witnesses described the situation from this moment until the very end of the war as incredibly bloody, even more than in the previous months. «The final days of the

⁹⁶ *Ivi*, p. 169.

⁹⁷ *Ivi*, p. 170.

⁹⁸ *Ivi*, p. 174.

⁹⁹ *Ibidem*.

conflict in mid-May saw the remaining thousands of civilians, including members of the LTTE, as well as LTTE fighters who had put down their weapons and were now hors de combat, walk over to the bridge into the hands of Government troops»¹⁰⁰. The final days of the conflict were also marked by the highest level of international attention to the Sri Lankan Civil War since its outbreak; in fact, « [...] UN officials said that the “bloodbath” about which they had warned had become “a reality”. The International Committee of the Red Cross (ICRC) described the situation as an “unimaginable humanitarian catastrophe.” The UN estimates that at least 7000 civilians have been killed since January»¹⁰¹.

The Report of the OHCHR Investigation on Sri Lanka has identified some common features shared by the three No Fire Zones. Among these, the Report firstly highlights the relevance of the unilateralism facet of the Government decisions to establish them. In fact, as the LTTE did not agree on these decisions, it did not even feel compelled to respect the off-limits character of the NFZs imposed by the Government¹⁰². Secondly, as already mentioned above, the SLA continued to advance and to reduce the LTTE-controlled territory and the same accounted for the NFZs. In fact, «each NFZ was smaller than its predecessor»¹⁰³. Thirdly – and possibly even more importantly – «[...] the location of the NFZs was highly questionable. They coincided with pre-existing LTTE military positions, which were not removed from the designated areas beforehand». In other words, the reason why these NFZs were put so close to military bases and, as a consequence, to high risk of conflict areas is hard to be comprehended.

The Eelam War IV – and with it the 26 years long Sri Lankan Civil War finally – ended on May 18, 2009, with the Sri Lankan

¹⁰⁰ *Ivi*, p. 175.

¹⁰¹ LUNN, TAYLOR, TOWNSEND, *op. cit.*, p. 22.

¹⁰² HUMAN RIGHTS COUNCIL, *op. cit.*, p. 150 et seq.

¹⁰³ *Ibidem*.

government announcing the death of the leader Prabhakaran among the other LTTE fighters killed and with the unilateral declaration of the end of the conflict by the President Rajapaksa¹⁰⁴.

The next two chapters will deal with the international response to the Sri Lankan Civil War from its very first steps until the end, when the humanitarian crisis occurred and when too many civilians were left to the mercy of a terrible fate.

¹⁰⁴ LUNN, TAYLOR, TOWNSEND, *op. cit.*, p. 23.

2. International Response to the Sri Lankan Civil War: the Role of Foreign States

The issue of the international response to the Sri Lankan Civil War has been divided, for reasons of clarity into two chapters: the second chapter deals with the response of some foreign states to the conflict, while the third regards the response of the United Nations.

Therefore, this chapter will particularly focus on the response to the conflict by the following states: India, Norway, Japan, the United States, the EU, China, Pakistan and Iran. It will show how the intervention of these foreign states in the Sri Lankan conflict has been crucial in the various steps of the war.

The Indian behaviour will be the first one to be analysed because it has been considered the most relevant since the very beginning of the ethnic conflict between Tamil and Sinhalese people, through the birth of the LTTE, until the end of the conflict. The role of India has been contradictory in many aspects that will be underlined in the subchapter 2.1. An additional focus will be put on the influence exercised by the Cold War balances of power on Indian behaviour in the Sri Lankan conflict.

The role of Norway has been crucial as well, especially with regard to its role of facilitator in the peace talks between the Sri Lankan Government and the LTTE. The reasons why Norway has been so interested in the resolution of the conflict will be highlighted and special attention will be accorded to the type of relationship that Norway established with both the parties to the conflict.

Thirdly, this chapter will focus on the role of other foreign states – already mentioned above – in the Sri Lankan conflict. Each of them contributed in a different way to the development of the Sri Lankan issue

and the various aspects of the intervention of the International Community will be highlighted. While describing the different responses of foreign states to the conflict this chapter will show how geopolitical interests played a relevant role in the decisions related to their intervention in the Sri Lankan Civil War.

2.1. The contradictory role of India

India – due to its condition of most powerful neighbouring state to Sri Lanka – has always exercised a significant influence on the country. In order to understand the role that India played in Sri Lanka during the Civil War, it seems necessary to make a step back to the period antecedent to the war and to focus on the implications that the interaction between the two countries and the rest of the world provoked with regard to the ethnic conflict.

The most relevant effect of India's closeness to Sri Lanka when dealing with the outbreak of the ethnic conflict between Tamil and Sinhalese was identified in the migration flows from India to Sri Lanka, which created multi-ethnicity in the country. In fact, «the Sinhalese claim descent from the Aryans of north India [...]. They consider themselves to be the original settlers of the country. [...] The Tamils [...] originate from Dravidian stock of South India. [...] The Indian Tamils are the country's third minority. [They were] brought as indentured labour in the tea plantations by the British»¹⁰⁵. The country, as a consequence, became «[...] multi-ethnic, multi-lingual and culturally plural»¹⁰⁶.

¹⁰⁵ SAMARANAYAKE, *Political Terrorism of the Liberation Tigers of Tamil Eelam (LTTE) in Sri Lanka*, in *South Asia: Journal of South Asian Studies*, 2007, p. 172, retrievable online.

¹⁰⁶ IYER, *Tamil Tragedy in Sri Lanka and Contradictory Strategy by India-I*, in *Economic and Political Weekly*, 1988, p. 1417, retrievable online.

As long as India and Sri Lanka were under colonial rule, Sri Lanka was suspicious of India because it feared of being retained under Indian rule once Indian independence would have been obtained from British rule. Therefore, Sri Lanka protected itself by signing a Defence Agreement with India. Once independence had been gained by both countries and as soon as Sri Lanka realized that there would have not been Indian rule over the country, it opted for non-alignment in foreign politics in 1956; a stable and good relationship between the leaders of the two countries was born. This lasted until the 1970s, when two major problems emerged: «[...] the status of IOTs [Plantation Indian Tamils] and the demarcation of the maritime boundary»¹⁰⁷. As already mentioned in the first chapter, soon after independence Tamils, especially Indian Tamils, started to be discriminated by the Sri Lankan Governments and India signed agreements with the latter in order to «bring about a compromise on sharing the stateless IOTs even without taking into consideration the wishes of these people»¹⁰⁸. This Sri Lankan behaviour undoubtedly deteriorated the relationship between the two countries, also because India had a strong interest in maintaining peace among Tamils, who constituted the big state of Tamil Nadu.

The ethnic conflict eventually broke out in 1983 and no foreign state had more interest than India in intervening because of its geopolitical position and of its role of Indo-centric region. «As the conflict in Sri Lanka escalated and in particular after the 1983 riots, India chose to become involved, based on what has been called its ‘Doctrine of Regional Security’ [...]. The basis for this doctrine was that India

¹⁰⁷ MANOHARAN, *Brothers, Not Friends: India–Sri Lanka Relations*, in *South Asian Survey*, 2011, p. 226, retrievable online.

¹⁰⁸ *Ibidem*.

opposed external intervention in regional conflicts and that if external intervention was required this should fall to India to undertake it»¹⁰⁹.

The initial interventions of India must be seen in the perspective of the strong link that tied together the Indian Tamils and the Sri Lankan ones. In fact, «the Tamil people of India, who sympathize with the Tamils of Sri Lanka, reacted emotionally when the island was rocked by violent Sinhalese-Tamil ethnic riots in July 1983»¹¹⁰. In reality, Indian Tamils of the Tamil Nadu state of India were already supporting the Tamil militant groups when the conflict broke out. In fact, «the “big five” Tamil militant groups all received backing from India following the anti-Tamil riots of 1977 and [...] particularly following the 1983 “Black July” riots [...]»¹¹¹. As many sources affirm – providing evidence – the Indian state of Tamil Nadu and the Indian intelligence Research and Analysis Wing have been covertly supporting the LTTE for many years, by providing training, weapons etc. It has been estimated that «between 1983 and 1986, the Indians trained around 15,000 Tamil militants. Instruction included basic infantry tactics, jungle warfare, artillery, the use of explosives for sabotage and guerrilla combat [...]»¹¹². India also provided the Tigers with armaments and munitions and helped them to bring weapons in Sri Lanka.

India's first step to induce negotiations between the Sri Lankan Government and the LTTE was to suggest to the one time President of Sri Lanka Jayewardene to accept «[...] India's offer to hold talks with Sri Lankan Tamil leaders to find a resolution to the conflict»¹¹³. Sri Lanka

¹⁰⁹ KINGSBURY, *op. cit.*, p. 134 et seq.

¹¹⁰ VENKATESHWAR RAO, *Ethnic Conflict in Sri Lanka: India's Role and Perception*, in *Asian Survey*, 1988, p. 419, retrievable online.

¹¹¹ RICHARDS, *An Institutional History of the Liberation Tigers of Tamil Eelam (LTTE)*, November 2014, p. 14, retrievable online.

¹¹² WEISS, *The Cage, The Fight for Sri Lanka and the Last Days of the Tamil Tigers*, London, 2012, p. 72.

¹¹³ KINGSBURY, *Sri Lanka and the Responsibility to Protect*, Oxon, 2012, p. 135.

accepted, India made proposals to the two parties but it failed. New peace talks were held in 1985 in Thimpu, Bhutan – as already mentioned in chapter 1. Until this moment, India only played the role of a mediator between the parts, even if – as already stated above – India also «[...] went to the extent of providing military training to some important Tamil militant groups in the 1980s to shore up their bargaining power vis-à-vis the Sri Lankan government».

As tensions between the LTTE and the Sri Lankan Government escalated, the Prime Minister of India, Rajiv Gandhi, eventually decided to seek a new peaceful solution in July 1987 through the Indo-Sri Lanka accord. Inhere the main conditions of the Indo-Sri Lanka accord are reported as described in chapter 1: ‘the concession of « [...] a degree of autonomy for Tamil majority areas in the North and East, but not independence [...], the establishment of Provincial Councils and specified a range of powers that would be devolved to them»¹¹⁴, the upgrading of Tamil to an official language and, even more importantly, the Indo-Sri Lanka accord implied the introduction in Sri Lanka of the Indian Peacekeeping Force (IPKF)’. In addition, there was the condition of surrender of weapons by the Tamil militant groups and, on the side of the Sri Lankan Government, «[...] there was to be a repeal of emergency and anti-terrorist laws and the release of political prisoners»¹¹⁵.

The most relevant condition of the Indo-Sri Lanka accord was the Indian deployment of the IPKF in Sri Lanka, which, from the political and practical point of view, implied military intervention in a foreign country and interference in internal affairs. The IPKF was sent «[...] in the North and the East of the island with the task of supervising the ceasefire and disarming the LTTE. The IPKF mission soon turned out to

¹¹⁴ LUNN, TAYLOR, TOWNSEND, *War and Peace in Sri Lanka*, Research Paper 09/51, House of Commons Library, London, 2009, p. 10, retrievable online.

¹¹⁵ KINGSBURY, *op. cit.*, p. 136.

be the darkest episode in India's regional policy: the LTTE, which had not been invited to the ISLA negotiations, resisted being disarmed and started fighting the IPKF»¹¹⁶. The LTTE started its battle against the IPKF immediately after its arrival and, in order to increase the number of fighters, «[...] the LTTE began to systematically recruit not only women, but also children, including both boys and girls»¹¹⁷. It was after the IPKF deployment in Sri Lanka that the LTTE increased its use of violence also against the rival Tamil militant groups, until it became the only one being able to represent a threat for the Sri Lankan Government. The latter was one of the main unexpected effects of the presence of the IPKF, together with the fact that this «[...] large-scale Indian military presence in Sri Lanka generated resentment among the Sinhalese mainly because the accord itself had all the elements of the enforcement of India's will on Sri Lanka [...]. This added a nationalist dimension to the ongoing anti-government insurrection [...]»¹¹⁸.

The first phase of Indian involvement in Sri Lankan affairs in the Civil War period ended with the withdrawal of the IPKF from Sri Lanka in 1990, caused by the missed accomplishment of its purpose – namely disarming the LTTE and peacefully ending the conflict. The IPKF left the country by March 1990, having lost «1,200 of its personnel and spending millions of dollars»¹¹⁹. It must be noticed that in the first phase of Indian policy towards the Sri Lankan War, India already played different roles: from supporting the Tamil cause and training and providing weapons to LTTE militants, to the deployment of an Indian military force with the aim of disarming the LTTE and annihilate it.

¹¹⁶ DESTRADE, *India and the Civil War in Sri Lanka: On the Failures of Regional Conflict Management in South Asia*, GIGA Working Paper no 154, Hamburg, 2010, p. 9, retrievable online.

¹¹⁷ RICHARDS, *op. cit.*, p. 31.

¹¹⁸ PEIRIS, *Twilight of the Tigers: Peace Efforts and Power Struggles in Sri Lanka*, New Delhi, 2009, p. 18.

¹¹⁹ MANOHARAN, *op. cit.*, p. 228.

After the failure of this mission, India transformed its role once again, starting the second phase of its evolutionary involvement in the Sri Lankan Civil War. This new phase was induced only in part by the withdrawal of the IPKF from Sri Lanka: the main cause of the new Indian trend towards Sri Lankan affairs was the assassination of the Indian Prime Minister Rajiv Gandhi in 1991. In fact, «after the Indian Supreme Court attributed the assassination to the LTTE as an act of revenge for the IPKF operation, the LTTE was classified as a terrorist organization in India, and its leader, Prabhakaran, became a wanted man in India»¹²⁰. From this moment on, India radically changed its policy towards the Sri Lankan conflict and, for sure, it did not support the LTTE cause any longer. India decided to adopt « [...] an informal ‘hands off policy’ towards the island’s ethnic issue. At the same time, it kept a keen watch on the developments in the island. Realising the enormity of threats posed to regional security by LTTE’s activities, India became one of the first major countries to formally ban the Tigers in 1992, much to the delight of Sri Lanka»¹²¹. Moreover, India abandoned the ‘Doctrine of Regional Security’ – already mentioned above – and promoted the intervention of other states in the attempt to resolve the Sri Lankan conflict. In fact, when Norway decided to ‘intervene in 2000 and to put itself forward to act as a mediator of new peace talks between the LTTE and the Sri Lankan Government’, India supported it and welcomed its presence. Indo-Sri Lankan relationship continued to be peaceful and cooperative until the mid 2000s, when tensions arose between the two countries. As Norwegian-brokered peace talks and the Ceasefire Agreement were deteriorating, India encouraged Sri Lanka – under the Rajapaksa’s government – to avoid the restart of the violent conflict, but at the same time it provided training to the Sri Lankan security staff as if

¹²⁰ DESTRADE, *op. cit.*, p. 9.

¹²¹ MANOHARAN, *op. cit.*, p. 229.

it had to go to war soon. The reason of these contradictory actions stood in the fact that India feared the behaviour of China, which was already helping Sri Lanka supplying it with weapons, armaments and general support. As a consequence, « [...] India was caught in a dilemma: to maintain good relations with Sri Lanka in all spheres to keep away extra-regional powers from gaining a foothold on the island, but, at the same time, taking into consideration sentiments from Tamil Nadu and the interests of Sri Lankan Tamils»¹²². In any case, India decided to maintain a policy of non-interference in Sri Lanka affairs and continuously suggested the adoption of a political settlement of the ethnic conflict, avoiding as much as possible armed conflict. In particular, India expressed its preference for the maintenance of the united state of Sri Lanka – without the creation of an independent state of Tamil – and for the implementation of a federal system¹²³.

By 2006, a new phase of the Sri Lankan Civil War was starting – namely the Eelam War IV – triggering a new evolution of the Indian approach to the Sri Lankan war. As violence escalated in Sri Lanka, « [...] India began to abandon its rigorous non-involvement approach and started to take an indirect but highly significant role in the military conflict. This new approach was manifested, on one hand, in the crackdown on LTTE networks in Tamil Nadu [...], and, on the other hand, in the provision of military hardware, mainly in the form of “defensive” equipment, and in other forms of military cooperation with the Sri Lankan government»¹²⁴. Of course, as mentioned above, India always had to be careful in its approach to the island’s conflict because of the Tamil Nadu support to the Sri Lankan Tamils’ cause, so it was too dangerous for India to provide open military support to the Sri Lankan

¹²² *Ibidem*.

¹²³ DESTRADE, *op. cit.*, p. 12.

¹²⁴ *Ivi*, p. 13.

Government in this phase of the war. Nevertheless, India made it clear that, from that moment on, it was staying on the side of the Sri Lankan Government and, from 2008, it also seemed in favour of a military solution to the conflict¹²⁵ – the one it had discouraged for so long.

As soon as the Sri Lankan Civil War ended in May 2009, India provided «[...] massive assistance to address the crisis. [...] New Delhi immediately pledged US\$ 100 million for relief, rehabilitation and reconstruction purposes (Business Standard 2009). [...] India has extended credit to Sri Lanka, especially for infrastructure development»¹²⁶.

With regard to the Indo-Sri Lankan relationship after the end of the war, the Indian Government provided strong support to the Sri Lankan Government, even when it started being alleged of the commitment of war crimes. In fact, the «[...] Indian Government has not supported the calls for an independent investigation to be held into allegations that both the Sri Lankan Government and the LTTE committed war crimes. Critics like Human Rights Watch have claimed that India ‘could have saved many lives if it had taken a proactive position [...]»¹²⁷¹²⁸.

Given the description of the evolution of the Indian approach to the Sri Lankan conflict, a brief excursus will now be done in order to accord special attention – as announced at the beginning of this chapter – to the particular influence that the Cold War exercised on Indian behaviour with respect to Sri Lanka and its conflict. This issue has been particularly analysed by Jyotindra Nath Dixit, an Indian diplomat who was appointed India’s High Commissioner to Sri Lanka in 1985 – overseeing the signing of the Indo-Sri Lanka accord in 1987 – and has

¹²⁵ *Ibidem*.

¹²⁶ MANOHARAN, *op. cit.*, p. 231.

¹²⁷ LUNN, TAYLOR, TOWNSEND, *op. cit.*, p. 36.

¹²⁸ An in-depth analysis of the allegations of commitment of war crimes by the LTTE and the Sri Lankan Government will be provided in Chapter 4.

also been Indian Foreign Secretary between 1991 and 1994¹²⁹. As soon as India gained independence in 1946, it had to start building its own foreign policy and to define its priorities with foreign states. Among the first steps India had to make, it had «[...] to cope with the problem of defining its political and strategic world view in the conflict between Western allies led by the USA and the Socialist and Communist group of nations led by the USSR»¹³⁰. In this first phase of its foreign policy, India opted for a policy of non-alignment in the Cold War order. Nevertheless, when Khrushchev replaced Stalin in the leadership of the USSR, the latter started being interested in establishing new relations with India. At the same time, India was interested as well in this proximity, since it saw the opportunity to «[...] strengthen its economic and defence capacities with the assistance of the Soviet Union to use the leverages of Indo-Soviet friendship [...] to counter politico-strategic challenges to India's territorial integrity and national consolidation processes»¹³¹. India and the Soviet Union formalized their relationship with the Indo-Soviet Treaty of Peace, Friendship and Cooperation in 1979. In the meanwhile, some Indian neighbour states were forging strict relationships with the other main party to the Cold War. In fact, Pakistan, Bangladesh, Nepal and – most importantly – Sri Lanka «[...] were forging political and defence relationships with US, China, Israel and other countries due to their perceptions about India»¹³².

The main question that Dixit posed to himself was that of whether India really had to engage in the Sri Lankan conflict, especially in the first phase of the conflict. He backed the idea according to which this intervention was an obliged choice for India not only because of the reasons already described in this subchapter – mainly the discrimination

¹²⁹ THE EDITORS OF ENCYCLOPEDIA BRITANNICA, *J. N. Dixit*, 2015, retrievable online.

¹³⁰ DIXIT, *India's Foreign Policy and Its Neighbours*, New Delhi, 2001, p. 24.

¹³¹ *Ivi*, p. 28.

¹³² *Ivi*, p. 42.

of Tamil citizens by the Sri Lankan governments – but also «[...] in terms of India’s national concerns due to the Sri Lankan government’s evolving security connections with the US, Pakistan and Israel»¹³³. In the early 1980s in fact, the US and its allies – in this case particularly Pakistan and Israel – feared that India was a supporter of the Soviet invasion of Afghanistan. The US, Pakistan, Israel and China planted the seed of suspicion in Sri Lanka as well, which, in addition, was already experiencing its own fears with respect to India. In fact, the island was already scared by the link between Sri Lankan Tamils and Tamils from the Indian state of Tamil Nadu. As a consequence, the then Sri Lankan President Jayawardene, «[...] established substantive defence and intelligence contacts with the US, Pakistan and Israel»¹³⁴.

Therefore, India and Sri Lanka were eventually staying on the opposite sides of alliances in the Cold War spheres of influence and, according to a preminent journalist of the Sri Lankan newspaper ‘The Island’, Mr. Shamindra Ferdinando, this issue was of extreme importance in the Indo-Sri Lankan relationship. In fact, in my personal interview to Mr. Ferdinando, he affirmed:

«During the conflict between the US and the Soviet Union in the 1980s, India took the side of the latter, while Sri Lanka was on the side of the US. Therefore, the Indian decision to destabilize Sri Lanka is based on that. [...] At the beginning India trained and armed the LTTE. As Dixit said, India felt threatened by Sri Lanka’s friendship and partnership with Pakistan, Israel and the US. [...] Therefore, India organized terrorism in this country»¹³⁵.

¹³³ DIXIT, *Makers of India’s Foreign Policy*, India, 2004, p. 144.

¹³⁴ *Ivi*, p. 145.

¹³⁵ Appendix B, *Integral Version of a personal interview to Mr. Shamindra Ferdinando*, Journalist of the Sri Lankan Newspaper The Island , 22 July 2016, Seeduwa, Sri Lanka.

To conclude the discourse about the role of India in the Sri Lankan civil conflict, it seems important to stress the fact that it has been considered contradictory in this dissertation because of the uninterrupted transformations of Indian policy dealing with the Sri Lankan conflict. As seen above, in fact, India passed from providing training to the LTTE, to militarily intervening in Sri Lanka through the IPKF – which eventually fought with the LTTE – to leaving the country to its own destiny after the IPKF failure through the adoption of a non-interference policy in Sri Lankan internal affairs, to the defence of the Sri Lankan Government in the post-war period when accused of having committed war crimes.

2.2. The special case of Norway

In the list of foreign states involved in the Sri Lankan Civil War, Norway is second only to India with regard to its relevance. Norway started being involved in the Sri Lankan conflict in 1999, when it set itself up to the Sri Lankan Government to be the mediator between the latter and the LTTE in order to find a peaceful resolution of the conflict. It was in February 2000 that «[...] Norway formally agreed to a request from President Chandrika Kumaratunga and Velupillai Prabhakaran, the LTTE chief, to assist as a third party in the proposed peace negotiations. The Norwegian government appointed Erik Solheim [...]»¹³⁶ as the Norwegian peace envoy. From this moment onwards, Mr. Solheim started engaging in pre-negotiations and the peace talks eventually started in 2001, especially thanks to the election of Ranil Wickremesinghe as Prime Minister of Sri Lanka. In fact, he was strongly supporting Norway's role as facilitator of

¹³⁶ MOOLAKKATTU, *Peace Facilitation by Small States, Norway in Sri Lanka*, in *Cooperation and Conflict: Journal of the Nordic International Studies Association*, 2005, p. 392, retrievable online.

the peace process between the LTTE and the Sri Lankan Government. It is important to focus on the word *facilitator*: for the Sri Lankan Foreign Minister Mr. Kadirgamar – belonging to the government led by Mr. Wickremesinghe – the difference between facilitator and mediator was fundamental. In fact, Sri Lanka wanted «[...] Norway to function within the rules of facilitation, which is confined to bringing the parties in conflict to the negotiating table. Once that is achieved, in Kadirgamar's conception, Norway's facilitator role comes to an end»¹³⁷. On the other hand, the LTTE favoured «[...] the concept of third party involvement [...] [that] is crucial even after the commencement of negotiations»¹³⁸. According to the LTTE, the presence of a third party between two historical enemies was fundamental in order to let the peace process develop smoothly.

As already explained in the first chapter, the turning point in the peace talks was the signing of the Ceasefire Agreement (CFA) on 22 February 2002. The agreement – or better the Memorandum of Understanding that constituted the CFA – was drafted by Norway and then proposed to the two parties to the peace talks. As seen above, the CFA ‘was intended to formalize the suspension of the campaign of war and terrorism conducted by the LTTE, and to pave the way for a direct dialogue between the government and the LTTE towards a negotiated solution to the country’s ethnic conflict’¹³⁹. Norway was also the chair of the Sri Lanka Monitoring Mission (SLMM), in which it had to « act as an impartial moral watchdog of the cease-fire agreement without being invasive»¹⁴⁰.

Following the signing of the CFA, six rounds of peace talks took place between 2002 and 2003; they dealt with issues such as the need for

¹³⁷ BULLION, *Norway and the peace process in Sri Lanka*, in *Civil Wars*, 2001, p. 82.

¹³⁸ *Ibidem*.

¹³⁹ PEIRIS, *op. cit.*, p. 67.

¹⁴⁰ MOOLAKKATTU, *op. cit.*, p. 396.

relief and reconstruction in war areas, the «[...] resettlement of displaced persons [...]»¹⁴¹, power-sharing, humanitarian needs, recruitment of children as soldiers, human rights violations and aid packages for reconstruction. However, just one month after the end of the sixth round of peace talks – i.e. in April 2003 –, the LTTE left the peace negotiating table and prospects of peace started to be increasingly unlikely. This was also suggested by the continuous violations of the CFA by both sides – as explained in the first chapter.

The aim of this subchapter – more than describing the Norwegian steps in the peace process and its evolution – is that of highlighting and analysing the roots of Norwegian involvement in the Sri Lankan war situation and engagement in the pursuit of a peaceful resolution of the conflict.

Many theories have emerged concerning the motivations both of Norway for its involvement in the Sri Lankan issue as well as of Sri Lanka for the choice of Norway as facilitator of peace talks. Among the theories dealing with the motivations of Norway's engagement, «the first is that Norway is interested in the fisheries and oil resources of Sri Lanka, but this is at odds with Norway's international profile and past record in peace-making. The influence of the Tamil expatriate community in Norway is cited as another factor. A third reason is that Norway wants to compensate for the failed Oslo Accords and establish itself internationally as a peace-maker»¹⁴². With regard to the second theory, it is true that in 2001 there were already an estimate of over 10,000 Tamil refugees living in Norway¹⁴³, but still this does not seem to be enough for a country to engage as seriously as Norway did in the resolution of the Sri Lankan conflict. As far as the third theory concerns,

¹⁴¹ PEIRIS, *op. cit.*, p. 35.

¹⁴² MOOLAKKATTU, *op. cit.*, p. 391.

¹⁴³ BULLION, *op. cit.*, p. 77.

Norway was not actually able to lead to the peaceful resolution of the conflict between Palestinians and Israelis through its efforts in the Oslo Accords, and this can have represented a reason for its involvement in the Sri Lankan peace process in order to prove its ability as a third party mediator. Mr. Shamindra Ferdinando, journalist of the Sri Lankan newspaper 'The Island', provided one more explanation for Norway's interest in intervening in Sri Lanka. According to him, «Norway, being a member of the NATO, wanted international recognition; it did not have a great military power, so it thought that – by picking a situation in which it could show its involvement and power – it could demonstrate how powerful it was. Norwegian rule has been underwritten by 3 other countries or groups of countries: USA, EU, Japan. Norway achieved international recognition through its intervention in Sri Lanka, even if it pathetically failed in Sri Lanka (as it did in the Israel-Palestinian conflict)»¹⁴⁴. Nevertheless, it is more likely that Norwegian participation in Sri Lanka was due to a whole bunch of reasons, those mentioned above being included. Here follows a quote by Deiniol Jones about the root causes of Norway's role as peace facilitator in Sri Lanka:

«Norway wants to play an international role. However, it is too small and powerless a state to project its sovereignty safely in the international world in which it moves. Owing to its weakness, the facilitator can act 'internationally' only by radically domesticating international politics. Owing to the weakness of the small state facilitator, international politics must be radically tamed. International politics is safe, for the facilitator, only if every one is

¹⁴⁴ Appendix B, *Integral Version of a personal interview to Mr. Shamindra Ferdinando*, Journalist of the Sri Lankan Newspaper The Island, 22 July 2016, Seeduwa, Sri Lanka.

a 'friend'. The line between the international and domestic politics is thus blurred by the small-state facilitation»¹⁴⁵

Moreover, Norway also decided to remain in Sri Lanka even after 2006 – when the Eelam War IV broke out and when Norwegian brokering of the peace negotiations was over – in order to «[...] maintain Norway's image as a patient mediator in the eyes of the US and India»¹⁴⁶.

Among the facts that made Norway a good candidate to act as a third party mediator in the peaceful resolution of the Sri Lankan conflict stood its smallness – not arousing reverential awe in Sri Lanka, as it could have been with a Western super-power –, distance from the island, its previous demonstrations of interest in the protection of violence's victims, its «[...] relatively strong social democratic heritage»¹⁴⁷, its absence of colonial past, its previous role as peace broker, especially in the Oslo Accords between Palestinians and Israelis, and its substantial contributions in foreign aid.

The support accorded to Norway by Sri Lanka must also be seen in the perspective of Indian support to Norwegian involvement in the peace process. In fact, as soon as India realized that it could not play the role of impartial third party in the peaceful resolution of the conflict and after the IPKF failure, India started promoting Norway as mediator between the LTTE and the Sri Lankan Government. The original cause of this support is not to be found in a particular friendship between the two countries, but in the fact that India wanted to avoid a hypothetical US presence in Sri Lanka. In fact, as Bullion explains, «the choice of Norway as intermediary was greatly influenced by the pronounced

¹⁴⁵ JONES, *Cosmopolitan Mediation? Conflict Resolution and the Oslo Accords*, Manchester, 1999, p. 144.

¹⁴⁶ JIRASINGHE, *The International Community's Intervention during the Conclusion of the War in Sri Lanka*, in *Strategic Analysis*, 2016, p. 298, retrievable online.

¹⁴⁷ MOOLAKKATTU, *op. cit.*, p. 386.

distaste in South Block (India's defence establishment) towards great powers such as the US becoming more directly involved in what it considers as South Asian internal affairs [...]»¹⁴⁸. As a consequence, Sri Lanka felt safe in choosing Norway for this post since it understood that there would have been no real objection to this by its neighbour countries – especially by India. Moreover, Norway always worried about keeping India updated on every development of the peace process between the LTTE and the Sri Lankan Government, convinced that by including India, this would have not felt suspicious of Norway's intentions.

Obviously, also some criticism emerged from various voices on the conduct of Norway with respect to the Sri Lankan issue. Above all, Norway and especially the Norwegian peace envoy, Mr. Erik Solheim, were accused by some of conceding too much to the LTTE – starting from the provisions of the MoU of the ceasefire agreement, to the following rounds of peace talks. They were alleged – mainly by Sinhalese nationalists led by the JVP and Buddhist Monks – of being too delicate and comprehensive with a terrorist group such as the LTTE. The rationale beside this critique was that, according to them, putting the LTTE – considered as a terrorist organization – on the same level of the Sri Lankan Government at the negotiating table was unacceptable¹⁴⁹. Another source of criticism came from the Sri Lankan human rights community, «particularly the Tamil-dominated University Teacher's Association for Human Rights (Jaffna) or UTHR. It lambasted Norway for being unmindful of the violations of human rights that the LTTE was practising in spite of the February ceasefire and Memorandum of Understanding (MoU)»¹⁵⁰. They wanted Norway to care more,

¹⁴⁸ BULLION, *op. cit.*, p. 79.

¹⁴⁹ MOOLAKKATTU, *op. cit.*, p. 394.

¹⁵⁰ *Ibidem*.

throughout the peace process, about the protection of human rights and to settle accountability mechanisms for their repeated violations.

Apart from these critiques, Norway deserves the recognition of the effort it put in the peace process in Sri Lanka, whatever the limitations this effort had and whatever the root causes of its decision to get involved in the Sri Lankan Civil War were. Of particular relevance is the fact that Norway decided to stay even when the peace talks deteriorated and were then abandoned.

After the official withdrawal from the CFA in 2008, «[...] Norway's role has significantly diminished, although it remains involved with international efforts to end the fighting and ensure the provision of humanitarian aid to civilians caught up in it»¹⁵¹. When, after the end of the conflict, both the LTTE and the Sri Lankan Government started being alleged of having committed war crimes, «the Norwegian Government was one of the first to support the proposal that an independent investigation should be conducted [...]»¹⁵².

The next subchapter will show the behaviour of the other foreign states that participated – in one way or the other – to the Sri Lankan Civil War.

2.3. The role of other foreign states

Other states, apart from India and Norway, did intervene in the Sri Lankan Civil War, either by participating in the peace process, or by helping the development and reconstruction of the country, or by trying to speak with both parties to conflict in order to end it. Moreover, some of them accused both the LTTE and the Sri Lankan Government or Army of having committed serious crimes during the war, some called for the

¹⁵¹ LUNN, TAYLOR, TOWNSEND, *op. cit.*, p. 32.

¹⁵² *Ibidem*.

establishment of investigation commissions, or backed this proposal or opposed it, but all these latter issues, related to the post-war period, will be just be mentioned in this chapter while a more detailed analysis will be provided in the final chapter of this thesis, focused on transitional justice. Therefore, this subchapter will deal, in order, with Japan, the United States, the EU, China, Pakistan and Iran and it will analyse their role during the Sri Lankan Civil War.

With regard to Japan, firstly it must be reminded that already in 2002 it supported, in particular together with the US and the European Union, the role of Norway in promoting the peace process in Sri Lanka. More importantly, by the early 2000s, it represented «[...] the biggest official reconstruction and development assistant in Sri Lanka»¹⁵³. From that position, Japan «organized a donor conference in 2003, which was attended by the world's most important donors, development banks and private funds, as well as many UN agencies, NGOs and states»¹⁵⁴. The donor conference just mentioned – namely the Tokyo Conference on Reconstruction and Development of Sri Lanka of June 2003 – was attended by the «Representatives of 51 countries and 22 multinational aid agencies [...]»¹⁵⁵ and chaired by the Japanese Prime Minister: together, they established they would have aided Sri Lankan reconstruction and development with US\$ 4.5 billion¹⁵⁶. The four Co-Chairs of the Tokyo Conference were the EU, the US, Norway and – as already seen – Japan. The latter contributed with the one fourth of the US\$ 4.5 billion mentioned above¹⁵⁷. One of the main aspects of the Tokyo Declaration, which resulted from the Tokyo Conference, was that it established a

¹⁵³ ĐEVOICIN, *Sri Lanka: Physical Reconstruction and Economic Development as Conflict Prevention Factors*, in *Croatian International Relations Review*, 2013, p. 66, retrievable online.

¹⁵⁴ *Ibidem*.

¹⁵⁵ PEIRIS, *op. cit.*, p. 128.

¹⁵⁶ *Ivi*, p. 129.

¹⁵⁷ LUNN, TAYLOR, TOWNSEND, *op. cit.*, p. 33.

policy of conditionality that tied the donor support to the progress of the peace talks¹⁵⁸. Nevertheless, as the peace process deteriorated and then formally ended in 2008, Japan did not cease or significantly reduce its aid to Sri Lanka. With the escalation of the humanitarian crisis, «[...] Japan has joined with other members of the international community in calling for civilians to be adequately protected and providing humanitarian assistance»¹⁵⁹. Japan made a donation of other US\$ 4 million for humanitarian needs. As far as the post-war period concerns, Japan opposed the establishment of an independent investigation for the alleged commitment of war crimes by the LTTE and the Sri Lankan Government, even if it was invited by the International Community and by «[...] the ICG, the Human Rights Watch, Amnesty International and the Global Centre for the Responsibility to Protect [...] to be more proactive, including pushing for Sri Lanka to be placed on the formal agenda of the UN Security Council»¹⁶⁰.

Dealing with the role of the United States in the Sri Lankan conflict, at the beginning of the war it was very limited – actually almost inexistent. The only US action in the first 20 years of the conflict was that of supporting other states' attempts of re-establishing peace in the country. After 2001, a new American interest in Sri Lanka emerged, even if there were no realistic strategic factors triggering it. This new interest, instead, was mainly determined by the will of seeing a terrorist organization defeated and by the fact that Sri Lanka was already «[...] engaged in a process which, if successful, would resolve a conflict marked by terrorism through peaceful political means – assisted by the international community»¹⁶¹. It is important to recall the fact that the US,

¹⁵⁸ LUNSTEAD, *The United States' Role In Sri Lanka's Peace Process 2002-2006*, Colombo, 2007, p. 22.

¹⁵⁹ LUNN, TAYLOR, TOWNSEND, *op. cit.*, p. 33

¹⁶⁰ *Ibidem.*

¹⁶¹ *Ibidem.*

already in 1997, had inserted the LTTE in the list of Foreign Terrorist Organizations. This decision implied that «[...] the U.S. government could not provide material assistance to the LTTE, and had to block LTTE funds. LTTE officials could not obtain visas to visit the U.S. unless a waiver was granted [...]»¹⁶².

Another factor that neared the US and Sri Lanka after 2001 was the strong personal interest of the then-US Deputy Secretary of State, Richard Armitage. A few months before the meeting of various countries' delegates for a preliminary talk on reconstruction and development aid to Sri Lanka that was held in Washington in April 2003¹⁶³, Armitage explained the reasons why he thought it was relevant for the US – even if there were no realistic strategic interests – to deal with the Sri Lankan issue. He said: «The United States should be playing a role, in concert with other nations...because it can be done...Because the parties to the conflict appear to be ready to reach a solution...This may be the moment when international support can help to spring this country into prominence as a recovering victim of conflict, terrorism, and human rights abuses»¹⁶⁴. In reality, the parties were not ready to reach a solution. In fact, at the meeting just mentioned, held in Washington in 2003, the US-imposed label of terrorist organization of the LTTE implied – not legally but as a US political decision¹⁶⁵ – that its representatives could not attend it. Moreover, LTTE was excluded «[...] from participating in the allocation of resources and all that implied for the economic marginalisation of the LTTE in areas it controlled under terms of the 2002 ceasefire»¹⁶⁶. The LTTE, therefore, decided to withdraw from political negotiations; it is still debated whether this LTTE's

¹⁶² LUNSTEAD, *op. cit.*, p. 15.

¹⁶³ PEIRIS, *op. cit.*, p. 122 et seq.

¹⁶⁴ LUNSTEAD, *op. cit.*, p. 13.

¹⁶⁵ There was no legal proscription that outlawed the meeting with LTTE officials, therefore this was a political decision.

¹⁶⁶ KINGSBURY, *op. cit.*, p. 139.

exclusion by the US from the talks represented a clever move, given the fact that the LTTE abandoned peace negotiations soon after.

The US policy towards the LTTE was very severe – as seen above – but the US was supposed to be rigid with the Sri Lankan Government as well. In fact, it «[...] made its military assistance to the Sri Lankan Government conditional upon its human rights performance, and claimed that none of the assistance provided would enhance the offensive capacity of the Sri Lankan armed forces»¹⁶⁷. In any case, in military terms, the relationship between the US and Sri Lanka increased exponentially after 2001. The US repeatedly affirmed that « [...] the enhanced military relationship and increased assistance levels were not intended to encourage the GSL to return to war; rather, they were intended to deter war»¹⁶⁸, but it is not sure whether the LTTE instead saw this move as a dangerous threat.

In 2003, the US joined the Tokyo Conference of June 2013 as a Co-Chair, together with Norway, Japan and the EU. As mentioned above, the Tokyo Declaration established the principle according to which the help of the donor community was dependent on progresses in the peace talks. «The U.S. was an enthusiastic proponent of adding conditionality to the Tokyo Declaration»¹⁶⁹, but this enthusiasm must not be overestimated with regard to the intentions of this conditionality. In fact, the US, as other states, strongly advocated for the inclusion of the principle of conditionality more for the opportunity cost of the investment rather than for humanitarian reasons. In other words, «if the peace process were progressing well, donors would be likely to find additional funds for Sri Lanka. Conversely, if the peace process stagnated

¹⁶⁷ LUNN, TAYLOR, TOWNSEND, *op. cit.*, p. 29.

¹⁶⁸ LUNSTEAD, *op. cit.*, p. 18.

¹⁶⁹ *Ivi*, p. 22.

or regressed, additional funds would likely be spent in other countries that were either more promising or needier»¹⁷⁰.

As the peace process started deteriorating, the US decreased the level of aid and resources it previously allocated to Sri Lanka, but it openly and repeatedly supported the Government of Sri Lanka in its fight against terrorism, especially after the outbreak of the Eelam War IV. As far as the allegations of commitment of serious human rights violations by both parties to the conflict concern, the US has always seemed more prone to attack the LTTE than the Sri Lankan Government when they were under accusation¹⁷¹. As Weiberg-Salzmann states, «the USA condemned the LTTE actions without mentioning the human rights violations of the Sinhalese security forces»¹⁷². In order to understand the US perspective on the conflict at its very last stages, a press release by the United States seems to be useful. It stated the following:¹⁷³ «the fall of Kilinochchi represents an important point in the 25-year war that has divided Sri Lanka. We hope that this event will help hasten an end to the conflict. [...] The United States does not advocate that the Government of Sri Lanka negotiate with the LTTE, a group designated by the United States since 1997 as a Foreign Terrorist Organization». In other words, the US seemed to be strongly suggesting a military solution to the conflict instead of negotiations. Nevertheless, the US – as soon as it understood the humanitarian catastrophe that was going to occur as the LTTE was not surrendering to the Sri Lankan Government – did also invite the LTTE and the Sri Lankan Government to respectively « [...] desist from firing heavy weapons from areas within or near civilian

¹⁷⁰ *Ibidem*.

¹⁷¹ An in-depth analysis of this issue will be provided in Chapter 4.

¹⁷² WEIBERG-SALZMANN, *Ending Ethnic Civil Wars: By Negotiations or by Military Defeat? Lessons on security from Sri Lanka*, in *Journal of Asian and African Studies*, 2015, p. 147, retrievable online.

¹⁷³ EMBASSY OF THE UNITED STATES SRI LANKA & MALDIVES, 'Embassy Colombo Press Statement', Colombo, January 6, 2009, retrievable online.

concentrations [...] [and to] resist the temptation to launch retaliatory shelling into areas populated by civilians. Both sides must exercise maximum restraint to ensure civilians are not caught in crossfire»¹⁷⁴. As already seen in the first chapter, the US advice was not followed.

As the war ended, the relationship between the US and the Sri Lankan Government changed again because of the allegations of commitment of serious crimes received by the latter. The US solicited accountability of the Sri Lankan Government for the allegations of commitment of war crimes it was subject to. In fact, especially after the release of the Report of the OHCHR Investigation in Sri Lanka (OISL) – which alleged Sri Lanka for the commitment of serious war crimes and for continued violation of human rights – the US reacted «[...] moving Sri Lanka to the top tier of its diplomatic agenda in Geneva and around the world»¹⁷⁵.

Having dealt with Japan and the US, it is now time to analyse the involvement in the Sri Lankan Civil War of the fourth Tokyo Co-Chair: the EU. The EU strongly supported the role of Norway as a third party mediator in the peace negotiations and the CFA that resulted from the peace talks in 2002. Nevertheless, the EU really started letting its voice be heard from 2006 on, when the peace talks were about to collapse. In fact, the EU repeatedly asked to both parties to the conflict to newly engage in peaceful negotiations and, in 2006, it followed the decision already made by the US, Canada, India and other countries «[...] to classify the LTTE as a terrorist organization and to add it to its list of banned terrorist groups»¹⁷⁶. As a consequence, «[...] the LTTE demanded that monitors of EU nationality be removed from the SLMM, severely

¹⁷⁴ JIRASINGHE, *op. cit.*, p. 299.

¹⁷⁵ RATNER, *Accountability and the Sri Lankan Civil War*, in *The American Journal of International Law*, 2012, p. 808, retrievable online.

¹⁷⁶ WEIBERG-SALZMANN, *op. cit.*, p. 147.

weakening the entity's capacity to monitor CFA breaches»¹⁷⁷. As a matter of fact, the EU decision to ban the LTTE created tension on the side of the LTTE, which saw this European move as a sign of taking the side of the Sri Lankan Government. In the same year, «[...] the EU has also taken a leading role in pushing for the creation of a UN human rights monitoring mission for Sri Lanka»¹⁷⁸.

As the conflict escalated, the main policy the EU adopted with respect to Sri Lanka was the decision in 2008 to threaten Sri Lanka of exclusion from the Generalized System of Preferences Plus (GSP+)¹⁷⁹. For Sri Lanka, participating in the GSP+ meant benefitting from economic incentives for sustainable development – among which there was the exemption from taxes for Sri Lankan imports in the EU. Nevertheless, in order to participate to the GSP+, states have to respect «[...] key international environmental, labour and human rights standards. [...] Since October 2008 the European Commission has sought to send an investigation mission to look into alleged human rights violations by the Government»¹⁸⁰. The idea that an independent investigation mission had to be sent to Sri Lanka was quite common among UN member states after the end of the war and the EU, apart from strongly backing this proposal, also criticized the inability of the Human Rights Council to «[...] conduct an independent investigation into alleged war crimes»¹⁸¹. In 2010, as soon as the EU had the possibility of entering Sri Lanka in order to investigate, it «[...] decided to withdraw preferential tariff benefits to Sri Lanka under [...] [the] GSP+, following an investigation by the European Commission which identified significant shortcomings

¹⁷⁷ UNITED NATIONS, *Report of The Secretary-General's Internal Review Panel On United Nations Action In Sri Lanka*, November 2012, p. 5, retrievable online.

¹⁷⁸ LUNN, TAYLOR, TOWNSEND, *op. cit.*, p. 26.

¹⁷⁹ ĐEVOICIN, *op. cit.*, p. 65.

¹⁸⁰ LUNN, TAYLOR, TOWNSEND, *op. cit.*, p. 26.

¹⁸¹ *Ivi*, p. 27.

in Sri Lanka's implementation of three UN human rights conventions»¹⁸².

Given the description of the intervention of the Tokyo Co-Chairs – who were also the most interested Western powers in the Sri Lankan Civil War – it is now the turn of the states that, in Jirasinghe's words, have been considered the 'allied states' of the Sri Lankan Government¹⁸³. As he explains, China and Pakistan «[...] were primary leaders of the allied states that have supported the GoSL as suppliers of military hardware and training from the late 1970s onwards. The number of allied states increased during the end of the war, with Iran and Russia giving their support to the GoSL»¹⁸⁴.

Starting with China, the relationship it maintained with Sri Lanka has been transforming in the various steps of the conflict. «Since the early 1980s, the succession of Sri Lankan governments had been repeatedly rebuffed each time they sought Chinese military assistance to deal with the Tamil Tiger insurgency»¹⁸⁵, but by the year 2000 things changed. In fact, in the meanwhile, China had established important economic and commercial relations with India's neighbours, surpassing India itself and gaining «[...] leverage on areas that India considered lay within the Indian sphere of influence»¹⁸⁶. In 2007, China and Sri Lanka issued a joint statement in which they affirmed that they «[...] resolved to fight tirelessly against the three evil forces of terrorism, separatism and extremism [...]»¹⁸⁷. As a consequence, by 2008 China represented «[...] the biggest military and aid donor to Sri Lanka, giving a total of nearly \$1 billion [...]»¹⁸⁸.

¹⁸² UNITED NATIONS, *op. cit.* p. 93.

¹⁸³ JIRASINGHE, *op. cit.*, p. 294.

¹⁸⁴ *Ibidem.*

¹⁸⁵ WEISS, *op. cit.*, p. 201.

¹⁸⁶ *Ivi*, p. 202.

¹⁸⁷ *Ibidem.*

¹⁸⁸ LUNN, TAYLOR, TOWNSEND, *op. cit.*, p. 36.

In the last phases of the conflict and in the post-war period, in opposition to the Western powers' decision to «[...] link their economic, military, and diplomatic assistance to Sri Lanka to issues of human rights, democracy, media freedom, and minority rights»¹⁸⁹, China continued to guarantee its military assistance and its economic investments to the country, regardless of the allegations of war crimes committed during the war. Not only did China continue to support Sri Lanka in economic and military terms, but also in political ones. In fact, through the possibility of using its veto power in the UN Security Council, China succeeded – together with Russia – in preventing «[...] the UNSC from making the human security crisis of 2009 in Sri Lanka a formal agenda item»¹⁹⁰. Needless to add that China fiercely opposed whatever kind of independent investigation in Sri Lanka.

To understand the reasons of Chinese interest in the quick military solution to the Sri Lankan conflict, it is important to recall the fact that «[...] China's relationship with Sri Lanka served its commercial and strategic interests, with one view being that China's construction of a US\$1 billion port at Hambantota in Sri Lanka's south was part of a plan to establish port facilities throughout the Indian Ocean»¹⁹¹. The port's position was strategic and the commercial accord between China and Sri Lanka seems to have been crucial in the transformation of Chinese behaviour since the end of the 1990s, starting from the will to conclude the war in the fastest available way, to the huge supply of weapons, to that of humanitarian aid, to the opposition to criticism faced by Sri Lanka for its conduct of the war – especially with regard to the allegations of war crimes.

¹⁸⁹ UYANGODA, *Sri Lanka in 2009: From Civil War to Political Uncertainties*, in *Asian Survey*, 2010, p. 107, retrievable online.

¹⁹⁰ JIRASINGHE, *op. cit.*, p. 300.

¹⁹¹ KINGSBURY, *op. cit.*, p. 138.

The Chinese-Sri Lankan relationship created deep concern in India, which has always claimed its role of superpower in the South Asian region and felt threatened by Chinese competition. India did react to this threat by starting cooperating at the military level with Sri Lanka from 2007 and by promising to Sri Lanka new economic cooperation. In fact, «[...] in 2008 India and Sri Lanka signed the Comprehensive Economic Partnership Agreement, [...] expected to boost bilateral trade flows»¹⁹² and, as already seen in the subchapter 2.1., after the end of the war India provided assistance and invested in Sri Lanka.

Pakistan represented another – if not the most – hostile country to India approaching Sri Lanka during the conflict. Pakistan started developing strong relations with Sri Lanka since the end of the 1990s «[...] focusing on the military and intelligence spheres [...]. This growing relationship, which has been encouraged by China, is viewed with a certain anxiety by India»¹⁹³. For Sri Lanka, this new relationship meant a new reduction in the Indian leverage on the country and – more practically – it meant «defence co-operation across “all fields”, including military training, exercises, intelligence sharing and reportedly, further sales of military equipment»¹⁹⁴. Along with the other ‘allied states’ of the Sri Lankan Government, also Pakistan opposed calls for an independent investigation.

Iran is the last foreign state this subchapter will briefly deal with. The relationship between Sri Lanka and Iran was based – once again – on reciprocal and strategic interests. In fact, Sri Lanka obtained from Iran «[...] \$US1.9 billion low-interest loan to buy military equipment, develop a hydro-electric scheme and buy Iranian oil and develop and oil-refining capacity [...]. In return, Sri Lanka supported the development of Iran’s

¹⁹² DESTRADE, *op. cit.*, p. 20.

¹⁹³ LUNN, TAYLOR, TOWNSEND, *op. cit.*, p. 37.

¹⁹⁴ *Ivi*, p. 48.

independent nuclear energy capability»¹⁹⁵. To conclude on China, Pakistan and Iran, it can be affirmed that Sri Lanka has definitely benefited from the competitive relationship between India and the Sri Lankan ‘allied states’, obtaining military, economic and humanitarian assistance and protection from the allegations of commitment of war crimes that Sri Lanka was subject to in the immediate post-war period.

Having dealt with the intervention of foreign states in the Sri Lankan Civil War – namely India, Norway, Japan, the US, the EU, China, Pakistan and Iran – the next chapter will focus on the as fundamental as debated role of the United Nations in the Sri Lankan Civil War.

¹⁹⁵ KINGSBURY, *op. cit.*, p. 139.

3. International Response to the Sri Lankan Civil War: the Role of the United Nations

The United Nations' list of principles, values and objectives is particularly ambitious in its scope. For the purpose of this thesis, one specific UN value – if it can be called like this – will be taken into consideration: the UN humanitarianism concept, «[...] both in pursuit of its stated ideal of a better world, and as a practical measure to protect populations that have been ravaged by war»¹⁹⁶. The UN action in cases of wars is justified by – first among the others – the principle and objective evoked in Article 1 (3), of the UN Charter, which states:

«To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace»¹⁹⁷.

Chapter VII of the Charter – entitled «Action with Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression» – establishes the ways in which the UN should act in order to fulfil the objectives and the mission stated in the UN Charter, Article 1 mentioned above. Chapter VII – which includes Articles 39-51 – is of particular relevance in the context of humanitarian intervention and it «[...] provides the framework

¹⁹⁶ WEISS, *The Cage, The Fight for Sri Lanka and the Last Days of the Tamil Tigers*, London, 2012, p. 137.

¹⁹⁷ UNITED NATIONS, *Charter of the United Nations*, 1945, Article 1 (3), retrievable online.

within which the Security Council may take enforcement action. It allows the Council to “determine the existence of any threat to the peace, breach of the peace, or act of aggression” and to make recommendations or to resort to non-military and military action to “maintain or restore international peace and security”»¹⁹⁸.

As the conflict in Sri Lanka escalated and as the number of attacks and subsequent victims increased in the last phase of the war – i.e. the Eelam War IV – the role of the UN started to be in the limelight. Expectations of UN intervention and humanitarian assistance were high in Sri Lanka and, unfortunately – as explained below – they were barely met.

The next subchapter will deal with the role played by the United Nations during the Sri Lankan Civil War – especially dealing with its last phase. Particular emphasis will be devoted to the abandonment of the war area – namely the Wanni area – in September 2008 under invitation of the Sri Lankan Government to do so. An analysis of the reasons of this government’s request will be provided. The subchapter 3.2. will then highlight the main critiques moved towards the UN response to the Sri Lankan Civil War and, finally, the subchapter 3.3. will explain the Responsibility to Protect principle – established by the UN – and will give evidence of the dramatic failure in the application of this principle in the Sri Lankan case.

¹⁹⁸ REPertoire OF THE PRACTICE OF THE SECURITY COUNCIL, *Actions with Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression (Chapter VII)*, retrievable online.

3.1. United Nations response to the War

In order to deal with the sequence of actions undertaken by the UN with respect to the Sri Lankan Civil War, the *Report of the Secretary-General's Internal Review Panel on United Nations Action In Sri Lanka* seems to be the most comprehensive official document. As a consequence, it will be used in this subchapter to outline and then analyse the steps made by the UN in the attempt of peacefully resolving the conflict and of restoring peace in Sri Lanka.

Until 2002, the UN took care of the Sri Lankan conflict principally by assuming the role of international and independent observer. However, from 2002, the UN human rights bodies started emitting warnings «[...] about violations, including alleged disappearances by state actors, the killing of civilians by the Government and the LTTE [...]»¹⁹⁹ and also confirmed the practice of children recruitment by the LTTE. From this moment onwards, the UN organized visits in Sri Lanka by senior UNHQ officials in order to talk with the Sri Lankan Government, which, however, «[...] rejected most of the proposed initiatives, including the appeal by the USG-Human Rights for a field operation, and the UN had little success in identifying alternative approaches»²⁰⁰.

The UN organized its action in Sri Lanka through several bodies, among which operated the UN Development Programme (UNDP), the UN Country Team (UNCT) – which was responsible for common analysis and decision-making – UNICEF, UNHCR and the role of «Primus inter Pares» was played by the Resident Coordinator, who was

¹⁹⁹ UNITED NATIONS, *Report of the Secretary-General's Internal Review Panel on United Nations Action In Sri Lanka*, November 2012, p. 5, retrievable online.

²⁰⁰ *Ivi*, p. 6.

responsible of the coordination of the action of the UN in Sri Lanka²⁰¹. As the report affirms, «As the situation deteriorated a Crisis Management Group (CMG) was established with a reduced UNCT membership, including notably the RC and the country heads of UNDP (the RC), UNICEF, the UN High Commissioner for Refugees (UNHCR), the World Food Programme (WFP), the UN Office for Project Services (UNOPS), and OCHA»²⁰².

The UN action, however, was strongly limited by the Sri Lankan Government, that obstructed the UN attempts to increase its staff in the country until the 2004 Tsunami, that led to a change of policy towards humanitarian assistance and, as a consequence, to an increase in humanitarian staff on the ground. In any case, the relationship between the UN and the Sri Lankan Government has been quite complicated during the war period; the Government «[...] used its control of visas, as well as harsh and even defamatory articles in the domestic media, as a means to pressure and intimidate any staff perceived as critical of the State. Several Resident Coordinators (RCs) were declared *persona non grata* (PNG) and a number of senior staff were withdrawn by the UN before they suffered the same fate»²⁰³.

After 2005 – with the election of President Rajapaksa and his clear intention to engage in military offensive against the LTTE – the humanitarian situation deteriorated. Many of the UN bodies just mentioned started emitting reports giving evidence of numerous human rights abuses and recommending an increase in the monitoring capacity. In 2007 the OHCHR made proposals for the establishment of UN field operations, but the Government rejected them²⁰⁴. A Task Force was established in order to monitor and report on abuses on children, but it

²⁰¹ *Ivi*, p. 7.

²⁰² *Ibidem*.

²⁰³ *Ivi*, p. 41.

²⁰⁴ *Ivi*, p. 43.

was very limited in its scope and «[...] could not address the much wider international human rights and humanitarian law situation»²⁰⁵. The number of high-rank UN officials' visits increased exponentially after 2007 and each of them was focused on a different issue of debate and on the will of recommending action in order to protect human rights in the country. The Government and LTTE's promises of following the recommendations were vain²⁰⁶.

With regard to the UN member states, as already seen in the previous chapter, there was disagreement between them on the ways in which the Sri Lankan conflict had to be dealt with, from the military, economic and political assistance, to the humanitarian intervention hypothesis and to the post-war accountability mechanisms. Disagreement also arose on the power, consideration and responsibility that they accorded to the UN. For instance, from its very beginning, the Tokyo Co-Chairs Group – formed by Japan, Norway, the EU, the US – «made several public statements appealing for the protection of civilians, respect for international humanitarian law and access for the UN and ICRC»²⁰⁷. On the other hand, other states – principally among the so-called 'allied states'²⁰⁸ – were less concerned with the human rights' abuses record and more about the quick resolution of the conflict, apparently regardless of the number of innocent civilians captured in the conflict.

In 2007, the last area under LTTE control was the Wannu, which started to be attacked by the Government in the same year. As already explained when dealing with the Eelam War IV in the first chapter, from this moment on the government tactic was that of increasingly pushing the LTTE inwards in order to reduce its territory. When in September

²⁰⁵ *Ibidem*.

²⁰⁶ *Ivi*, p. 46.

²⁰⁷ *Ivi*, p. 47.

²⁰⁸ For more details on the 'allied states', see subchapter 2.3.: 'The role of foreign states'.

2008 the conflict intensified and hit the ‘safe zone’ in which the UN and other NGOs had settled, «[...] the Government officially informed the UN it could no longer guarantee the safety of staff in the Wanni. The Government’s security warning came after many months during which the UN perceived the Government to be trying to restrict the access of non-governmental organizations (NGOs) to the area»²⁰⁹. This event was crucial for the subsequent development of the war, therefore it requires particular attention. The Government’s request to the UN to leave the city of Killinochchi – inside the Wanni area – came after some artillery shells fell close to the UN base. However, according to the UN, «[...] the artillery shells originated from Government forces»²¹⁰. Neither the UN nor the NGOs on the ground felt that this was a coincidence. In fact, accepting the UN statement that the shells were effectively originating from the SLA, then it seems quite logic to assume that the Government voluntarily hit the ‘safe zone’ to have a pretext to invite the international observers to leave the war zone and in order to have no more international witnesses on the ground. Many authors, journalists, human rights activists, UN aid workers and officials have supported this theory, as it can be seen in the following quotes:

«[The UN Aid Worker in Sri Lanka] Dixie was sure the Sri Lankan government had ordered them to quit so that there would be no independent witnesses to what was coming»²¹¹.

«*Question*: Do you feel that this government’s request was actually determined by the incapability to protect UN staffers? Is there any other reason hidden behind this request according to you?

²⁰⁹ UNITED NATIONS, *op. cit.*, p. 8.

²¹⁰ *Ivi*, p. 49.

²¹¹ HARRISON, *Still Counting the Dead, Survivors of Sri Lanka’s Hidden War*, London, 2013, p. 14.

Answer: Of course the real reason was to have no longer international observers on the ground»²¹² (Personal Interview)

«The government’s expulsion of the UN from the battle space mirrored the absence of the independent media. It suited the army to have no witnesses to the coming assault»²¹³.

As a matter of fact, the Government reached its goal, and the UN relocated from the LTTE-controlled area of Wannī – which, as just seen, represented the battlefield – to Vavuniya. The relocation was not an easy task, since the LTTE initially opposed the withdrawal of the UN national staff. Eventually, the first convoy left on September 11, 2008 while the «[...] the second was delayed from 12 to 15 September while hundreds of civilians protested against the UN’s departure and blocked the convoy’s exit»²¹⁴. This part of the story has been protagonist of a report conducted by Britain’s Channel 4 called ‘Sri Lankan Killing Fields’²¹⁵. This video shows – apart from serious crimes committed by some SLA soldiers that will be dealt with in the next chapter – images of civilians begging the UN staff not to leave the war zone and not to abandon them to a terrible destiny. As the Internal Review Panel report on Sri Lanka affirms, «[...] people approached UN staff pleading with them to stay, saying: “Some families have come to Killinochchi town due to the presence of international organizations and the belief that this would provide some form of physical security”; “there is a concern that the moment that humanitarian organizations leave, the Government will begin bombing Killinochchi town and that the physical security of the civilian population

²¹² Appendix A, *Integral Version of a personal interview to Mr. Ruki Fernando*, Human Rights Activist in Sri Lanka, 25 July 2016, Colombo, Sri Lanka.

²¹³ WEISS, *op. cit.*, p. 104.

²¹⁴ UNITED NATIONS, *op. cit.*, p. 52.

²¹⁵ CHANNEL 4 BROADCAST (UK), *Sri Lanka’s Killing Fields*, 14 June 2011, retrievable online.

will be at increased risk”»²¹⁶. From the moment in which the UN left the Wanni area and moved to Vavuniya, providing humanitarian assistance to the war zone became increasingly difficult and «[...] just 11 UN land convoys travelled between October 2008 and January 2009, and none thereafter, delivering a small percentage of the food needed up to May 2009 and for which very little distribution monitoring was possible»²¹⁷. The 11th Convoy, containing basic food, approached the Wanni area on 16 January – precisely it arrived in Puthukkudiyiruppu (PTK) – and the area came under attacks soon after the arrival of the UN convoy. The 11th Convoy was supposed to leave the war zone the day after its arrival, but it was «[...] trapped for two weeks, with national UN staff and two internationals [...] under intense artillery fire, primarily from Government forces»²¹⁸. Five days after the arrival of the 11th Convoy, the Sri Lankan Government unilaterally established the first No Fire Zone (NFZ)²¹⁹ and the UN was invited to move there by the Government. In the subsequent days, the NFZ started to be shelled by Government forces and by the LTTE even very close to the UN position and the shelling injured and killed many civilians.

The UN managed to leave the area on 29 January and this was the last time that the UN delivered humanitarian assistance by land²²⁰. From this moment onwards, the UN various offices and agencies started inviting both the LTTE and the Sri Lankan Government to stop shelling the NFZs and to protect civilians. Increasing debate emerged over the exact figure of people killed in the conflict as the number of victims increased exponentially from January 2009. «The focus of UN advocacy turned almost exclusively to bilateral approaches to the Government

²¹⁶ UNITED NATIONS, *op. cit.*, p. 8.

²¹⁷ UNITED NATIONS, *op. cit.*, p. 9.

²¹⁸ *Ibidem.*

²¹⁹ For more details on the No Fire Zones see the subchapter 1.5.4.: ‘The Eelam War IV’.

²²⁰ UNITED NATIONS, *op. cit.*, p. 62.

seeking a humanitarian pause and an end to the use of artillery, and to getting the LTTE to then allow civilians to flee the conflict zone. Senior UN officials repeatedly asked the Government to stop using heavy weapons in the NFZs. The Government continued to claim it was not using such weapons, despite evidence to the contrary, and the UN did not challenge the Government on its denials»²²¹.

As the war ended on 19 May 2009, the UN action was more intense than it was during the war period. The end of the war was immediately followed by a visit of the Secretary General and «[...] the Secretary-General reached an agreement with the President of Sri Lanka on a Joint Statement listing mutual Government and UN post-conflict commitments and providing the platform for UN priorities for the year ahead»²²². During the same days, the Human Rights Council reached the majority to schedule a Special Session on Sri Lanka and both Member States and the Sri Lankan Government submitted their own draft resolutions; «the Special Session ultimately adopted a slightly adapted version of the Sri Lanka Government draft, which commended the Government for its support to IDPs [Internally Displaced Persons], welcomed Government commitment to human rights, and urged the international community to cooperate with the Government. The resolution did not mention accountability [...]»²²³. In fact, «The Sri Lankan Government marshalled support from China, Russia, India, Pakistan and other countries to prevent a critical resolution being passed [...] [and] there was no call in the resolution that was eventually passed for an international war crimes investigation [...]»²²⁴.

²²¹ UNITED NATIONS, *op. cit.*, p. 84.

²²² *Ivi*, p. 14.

²²³ *Ivi*, p. 15.

²²⁴ LUNN, TAYLOR, TOWNSEND, *War and Peace in Sri Lanka*, Research Paper 09/51, House of Commons Library, London, 2009, p. 43, retrievable online.

The subsequent actions undertaken by the UN and its bodies will be analysed in depth in the fourth chapter, which – while dealing with transitional justice – will examine the official UN reports and the Human Rights Council resolution on accountability in Sri Lanka.

The next subchapter will deal with the criticism that emerged on the UN reaction to the last phase of the Sri Lankan Civil War; by now, it seems already important to stress the fact that the UN – whatever the evidence it owned over the commitment of war crimes by both the Sri Lankan Government and the LTTE – did never explicitly speak out as a single body with a unique voice until the end of the war. This created a serious precedent in favour of the Sri Lankan Government, which would have then used this lack of clarity in the allegations it was subject to in order to bypass the question.

3.2. Critiques to the UN behaviour in the Sri Lankan Civil War

As already mentioned in the previous subchapter, the UN plan of action with regard to the Sri Lankan conflict raised no little criticism by foreign countries, national and international NGOs, the media, UN staffers and people left by the UN during the conflict.

One of the most relevant sources of criticism came from the action – or better inaction – of the UN Security Council (UNSC). In fact, «from late 2008, several non-permanent Security Council Members were increasingly concerned about the evolution of the situation. In early February 2009 three non-permanent Security Council members were urging that Sri Lanka be put on the Council's formal agenda. There was,

however, little readiness among the membership as a whole to do so»²²⁵. More than little readiness, there was the opposition coming from Russia and China, ready to use their veto power to block other member states' efforts. Weiss – who was the UN spokesman in Sri Lanka for two years during the conflict – provided a clear analysis of the UNSC situation dealing with the Sri Lankan issue:

«In Sri Lanka the UN was confronted by a humanitarian crisis, but was hamstrung by the interests of some of its most powerful members. As the situation unfolded, the positions of China, Russia and India became clear. There would be no resolution from the UN Security Council warning Sri Lanka to restrain its forces. [...] While the UN gave with one hand in the form of humanitarian help and expressions of concern, it was forced to withhold concrete political action with the other»²²⁶.

As a consequence of these dynamics, Sri Lanka was only discussed in the UNSC and only once did the UN speak out with a stronger voice than before during the conflict. The occasion was the statement released by the OHCHR on 14 March 2009: it expressed concern about the Sri Lankan military and LTTE actions and the increasing number of civilians fallen victims to the conflict; it mentioned, for the first time, the still hypothetical commitment of international crimes – citing also war crimes and crimes against humanity – and it also made reference to a specific figure of civilians killed in the conflict. In fact, it affirmed that «[...] credible sources have indicated that more than 2,800 civilians have been killed and 7,500 injured since 20 January, many of them inside the no-fire zones ... [T]here are legitimate fears that the loss of life may reach

²²⁵ UNITED NATIONS, *op. cit.*, p. 80.

²²⁶ WEISS, *op. cit.*, p. 139 et seq.

catastrophic levels if the fighting continues in this way ... More civilians have been killed in Sri Lanka in the past seven weeks, than in Afghanistan during the whole of last year [...]»²²⁷. It is interesting to notice that, before the release of this statement, the Secretary-General's Chef de Cabinet invited the High Commissioner to modify it in terms of reducing the severity of its arguments – especially with regard to the reference made to the commitment of international crimes –, of being «[...] more general or tentative about the figures [...]»²²⁸ and of being careful in putting the LTTE's and the SLA's actions on the same level. The UN Secretary-General's office was scared of the likely repercussions for the UN giving the seriousness of the allegations made in the statement. The OHCHR, supported at least by the UN Department of Political Affairs, maintained its position and released the statement with little modifications²²⁹. Nevertheless, the UN Resident Coordinator was in disagreement with the High Commissioner's statement and the Sri Lankan Government immediately used this disagreement in order to demonstrate that the UN was not sure of its own allegations and, as a consequence, the UN made a step back and affirmed that the figure of civilians killed announced by the High Commissioner was not verifiable.

The fact that some of the harshest disapproval towards the UN attitude came exactly from the UN staff is particularly explicative of the contradictory dynamics going on inside the UN. For instance, when dealing with the UN abandonment of the war area in September 2008, Benjamin Dix – UN staffer in Sri Lanka during the Civil War – told the BBC «I believe we should have gone further north, not evacuate south, and basically abandon the civilian population with no protection or

²²⁷ UNITED NATIONS, *op. cit.*, p. 67.

²²⁸ *Ibidem.*

²²⁹ *Ivi*, p. 68.

witness. [...] As a humanitarian worker, questions were running through my mind 'what is this all about? Isn't this what we signed up to do?」²³⁰. Frances Harrison – BBC correspondent for Sri Lanka during the war – outlined Dix's similar arguments in his book 'Still Counting the Dead': «More than 400,000 Tamils had been abandoned to an army bent on eliminating the rebels at any price. The UN's departure from the rebel territory was the first step along this path and it's questionable whether they really fought hard enough to protect the people they left behind」²³¹. This is further supported by the human rights activist Ruki Fernando who, when asked by the author of this thesis how he felt about the abandonment of the war area by the UN, answered: « [The issue] is not really about their leaving, it is about the way in which they left. They really did not give a fight; their job was to stay there and protect civilians. The UN staff on the field did not consider protecting civilians as an important part of their work; they thought that providing water, shelter, tents or medicine was the most important part of their work」²³².

With regard to criticism towards the UN coming from direct victims of the war, they mainly accused the UN of having left them behind, not protecting and taking care of them as it was supposed to and as they expected. The statement by a Tamil asylum seeker detained in Australia – reported by Harrison – seems to be quite explicative of the victims' feeling towards the UN: «The United Nations should have never left us in the first place. Then at the end they should have come so we could have surrendered to them instead of the government. They could

²³⁰ BBC, *UN 'failed Sri Lanka civilians', says internal probe*, 13 November 2012, retrievable online.

²³¹ HARRISON, *op. cit.*, p. 17.

²³² Appendix A, *Integral Version of a personal interview to Mr. Ruki Fernando*, Human Rights Activist in Sri Lanka, 25 July 2016, Colombo, Sri Lanka.

have sent ships. They were selfish and I have no faith in them. At the right time they simply didn't do what they had to do»²³³.

Giving a more geo-political perspective, Edward Mortimer – UN official who chaired the Sri Lanka Campaign for Peace and Justice – as soon as the Internal Review Report was issued, commented saying: «I fear this report will show the UN has not lived up to the standards we expect of it and has not behaved as the moral conscience of the world. [...] There was a responsibility to protect in Sri Lanka but unfortunately it didn't get publicity like in Libya. The north of Sri Lanka was destroyed field by field, street by street, hospital by hospital but we didn't get that kind of reaction - Sri Lanka doesn't have much oil and isn't situated on the Mediterranean»²³⁴.

A more peculiar way of criticism towards the UN actions in Sri Lanka came from the Sri Lankan journalist of 'The Island', Mr. Ferdinando, who criticizes the International Community and the UN more for their inaction at the very beginning of the war than for the latest events which have been mentioned until this point. In fact, in a personal interview with the author, he affirmed: «The international community, which I intend as the UN and Western powers, did not constrain the LTTE power on time and from the 1980s, when India started intimidating Sri Lanka, they did not do anything. [...] This was a clear example of a big power intimidating a smaller neighbour country by introducing terrorism in it. There is not even a single step the international community made to stop Indian intimidation in Sri Lanka. This happened because they had important trade relationship with India»²³⁵.

²³³ HARRISON, *op. cit.*, p. 30.

²³⁴ BBC, *UN 'failed Sri Lanka civilians', says internal probe*, 13 November 2012, retrievable online.

²³⁵ Appendix B, *Integral Version of a personal interview to Mr. Shamindra Ferdinando*, Journalist of the Sri Lankan Newspaper The Island, 22 July 2016, Seeduwa, Sri Lanka.

To conclude, the long-term perspective criticism is the one that comprehensively examines and accuses the flaws of the international system – with regard to peace and security. The following quote by Norah Niland – worker at the UN both in the field and in the Headquarters – accurately sums up the main points of the criticism just mentioned:

«Few will dispute that the catastrophic situation that emerged in Sri Lanka was a systemic, as well as a collective, failure of the international community. Peace processes were not inclusive and failed to address the causes of conflict. The determination of the UN Security Council to avoid putting the crisis on its agenda, coupled with the ready supply of arms by Permanent Five members to Colombo, illustrate the contradiction and weaknesses inherent in international peace and security mechanisms. It also points to the hollowness of years of Security Council action in relation to its “Protection of Civilians” (PoC) agenda that is, in principle, concerned with strengthening measures to safeguard the lives of endangered civilians in conflict settings»²³⁶.

The failure of application of Responsibility to Protect (R2P) principle was another major source of bitter criticism towards the effectiveness of the UN system. In order to better understand the extent of the non-performance of the UN in the Sri Lankan case, the failure of the application of Responsibility to Protect (R2P) principle – established by the UN when the Sri Lankan Civil War was still ongoing – must be taken into account. In fact, the next subchapter will analyse the R2P principle, will highlight the factors that caused such failure and will eventually give

²³⁶ NILAND, *Inhumanity and Humanitarian Action: Protection Failures in Sri Lanka*, Medford, 2014, p. 11, retrievable online.

evidence of the serious flaws of the international peace and security mechanisms mentioned above.

3.3. Failure of application of the Responsibility to Protect

The Responsibility to Protect (R2P) principle is quite recent in formal terms, in fact it was firstly enunciated, explained and analysed in December 2001, with the International Commission on Intervention and State Sovereignty (ICISS) document on the R2P. «The ICISS document outlined as elements of R2P the responsibility to prevent [...] conflict and other endangering crises; the responsibility to react to situations compelling human need, including sanctions, international prosecution and in extreme cases military intervention; and the responsibility to rebuild, particularly after military intervention [...]»²³⁷.

The UN General Assembly formally adopted the R2P during the 2005 World Summit and, in 2009, the Secretary-General issued the Report 'Implementing the responsibility to protect' in which the core principles of the R2P doctrine were re-stated. The three pillars of the doctrine allocate responsibility as follows: «[...] responsibility of the State to protect its populations, whether nationals or not, from genocide, war crimes, ethnic cleansing and crimes against humanity, and from their incitement; [...] commitment of the international community to assist States in meeting those obligations; [...] responsibility of Member States to respond collectively in a timely and decisive manner when a State is manifestly failing to provide such protection»²³⁸.

²³⁷ KINGSBURY, *Sri Lanka and the Responsibility to Protect*, Oxon, 2012, p. 18.

²³⁸ UNITED NATIONS, *Report of the Secretary-General 'Implementing the responsibility to protect'*, 12 January 2009, p. 8 et seq., retrievable online.

Explained in this way, it is difficult to capture the difference between the original concept of humanitarian intervention and R2P, but in reality there are many. First of all, as the first pillar of the R2P doctrine mentioned above shows, the R2P scope is narrower than the humanitarian intervention's one, since the R2P regards only 'genocide, war crimes, ethnic cleansing and crimes against humanity'. Moreover, the R2P, compared to humanitarian intervention, is «[...] broader in its protection strategy (which consists of three pillars), and more restrictive on the use of force (only as a means of last resort)»²³⁹. It is important to recall that humanitarian intervention was not formalized and regulated by the UN – as instead the R2P is; in fact, the practice of humanitarian intervention was started by states and not by the international community. Third states witnessing massive violations of human rights in other states – usually when caught up in internal conflicts – started facing «[...] the following dilemma: it was very likely that the State community would not intervene, but a unilateral intervention was tantamount to a violation of international law. The intervener could only hope that in view of the ever growing network of international human rights its international responsibility would be mitigated in view of the valuable goals pursued»²⁴⁰. To deal more specifically with the main differences between humanitarian intervention and R2P, the following quote appears very useful:

«The doctrine of humanitarian intervention may be summed up as, military intervention in a state, without the approval of its authorities, and with the purpose of preventing widespread

²³⁹ MIKULASCHEK, *The United Nations Security Council and The Responsibility To Protect: Policy, Process, And Practice*, Report from the 39th International Peace Institute Vienna Seminar on Peacemaking and Peacekeeping, 2009, p. 22, retrievable online.

²⁴⁰ HILPOLD, *From Humanitarian Intervention to Responsibility To Protect: Making Utopia True?*, Oxford University Press, 2011, p. 463, retrievable online.

suffering or death among the inhabitants. This differs from the Responsibility to Protect on at least three grounds. First, the remit of humanitarian intervention, which aims at preventing large scale suffering, is far broader than that of R2P, which focuses upon the prevention of the four mass atrocity crimes. Second, humanitarian intervention automatically focuses upon the use of military force, by a state or a group of states, against another state without its consent. As such it overlooks the broad range of preventive, negotiated and other non-coercive measures that are central to R2P. Third, to the extent that the doctrine of humanitarian intervention is predicated on the basis of the “right to intervene,” it assumes that it can proceed without the need to secure appropriate authorization under international law»²⁴¹.

From the mere procedural perspective, therefore, while past humanitarian interventions did not necessarily imply the authorization of the UN Security Council, the implementation of the R2P can occur only «[...] multilaterally through a consensus within and under the auspices of the UN Security Council in cases of actual or imminent mass atrocities»²⁴².

R2P can be considered as an evolution of humanitarian intervention – whose application by third states was particularly controversial – «by shifting the terms of the debate from sovereignty as control to sovereignty as responsibility and from a right to intervene to a responsibility to protect (if need be, through intervention)»²⁴³. The R2P doctrine entails the responsibility to intervene more than the right to do so. In fact, the R2P is considered «[...] a mandatory duty vested upon all states that have the capacity to provide the required protection of human

²⁴¹ ADAMS, *Libya and the Responsibility to Protect*, Global Centre for the Responsibility to Protect, Occasional Paper Series, 2012, p. 11, retrievable online.

²⁴² KINGSBURY, *op. cit.*, p. 18.

²⁴³ PETERS, *The Security's Council Responsibility to Protect*, in *International Organizations Law Review* 8, 2011, p. 5, retrievable online.

rights, the non-performance of which constitutes a violation of ‘an undisputed obligation of international law’²⁴⁴. Moreover, «[...] the R2P entails a ‘continuum’ of intervention»²⁴⁵ with respect to the humanitarian intervention, which – when applied in precedence – did entail neither prevention in the first place nor, most of the times, rebuilding activity in the post-conflict state.

The R2P doctrine raised no little concerns among member states for various reasons. It raised criticism and even opposition in some cases because of the ancient debate between universalism and relativism of rights – the so-called ‘exceptionalist claim’ or ‘Asian values’ paradigm²⁴⁶ - or because of the resentment by post-colonial states to the imposition of a Western perspective on the definition of human rights, or because of a different view of what is to be considered as the ‘greatest good’ and so on. In fact, as Matthews explains, «[...] there are [...] various ideological blocs hostile to an imposed human rights ideology that is also perceived as a Western dominant concept»²⁴⁷.

Given the debate over the very definition of rights and ‘greatest good’, a huge debate necessarily emerged on which actions are to be considered as legitimate in order to protect those rights and to reach that ‘greatest good’²⁴⁸. In fact, the most adverse issue in the R2P doctrine regards the legitimacy of the use of violence and of foreign interference in the internal affairs of a sovereign state in order to protect the rights of its people.

²⁴⁴ PEIRIS, *Twilight of the Tigers: Peace Efforts and Power Struggles in Sri Lanka*, New Delhi, 2009, p. 244.

²⁴⁵ *Ibidem*.

²⁴⁶ For more information on the relativism of human rights, the ‘exceptionalist claim’ and the ‘Asian values’ paradigm, see KINGSBURY, *op. cit.*, p. 31 et seq.

²⁴⁷ MATTHEWS, *The Limits of International Engagement in Human Rights Situations: The Case of Sri Lanka*, in *Pacific Affairs*, 2009-2010, p. 582, retrievable online.

²⁴⁸ KINGSBURY, *op. cit.*, p. 31 et seq.

Without going into a detailed description of both humanitarian intervention and the doctrine of the R2P – which is not in the aim of this thesis – it is nevertheless necessary to understand why and how the application of the R2P, which was also established by the UN during the Sri Lankan Civil War, failed in this state. As soon as the Sri Lankan situation deteriorated in the last Eelam War, there started to emerge the conditions for the R2P application. The alleged crimes committed by both the Sri Lankan Army (SLA) and the LTTE implied the responsibility to protect the people of the country. «[...] [A]llegations of perpetration, [...], of war crimes, including extra-judicial killings, the ill-treatment and murder of prisoners, intentional (or easily preventable) large-scale deaths [...], and the use of torture and rape as instruments of war»²⁴⁹ by the SLA and the LTTE's terrorist should have been considered valid reasons for the R2P exercise given the catastrophic humanitarian situation.

Nevertheless, not only did the Sri Lankan Government fiercely oppose the application of the R2P and «[...] endorsed the notion of absolute inviolability of state sovereignty»²⁵⁰, but also other states did so. In general, opposition to the R2P doctrine has been principally based on «[...] four categories of reasons [...]. They include that it violates national sovereignty, that it may cause more harm than it resolves, that it relies on a self-interested UN Security Council and that it imposes neo-imperialist agendas»²⁵¹.

As a matter of fact, from the end of 2008 until the end of the war, evidence increasingly confirmed that war crimes and crimes against humanity²⁵² had been committed and grounds were eventually

²⁴⁹ KINGSBURY, *op. cit.*, p. 95.

²⁵⁰ *Ivi*, p. 114.

²⁵¹ *Ibidem*.

²⁵² Crimes against humanity are to be intended as specified in the Rome Statute, Article 7: murder, extermination, and other inhuman acts 'when committed as part of a

established for intervention. However, as mentioned above, in the Sri Lankan case too many states were contrary to the application of the R2P. The most problematic opposition came from China and Russia as they could block any decision in the Security Council as permanent and veto-bearing members. In addition to this opposition, China and India engaged in an active support to the Sri Lankan Government, as already seen in the subchapter 2.3., dealing with the role of foreign states in the Sri Lankan Civil War. «There was also reluctance by Western states to do anything more than apply economic pressure to Sri Lanka»²⁵³ and this was barely influential given the leverage of Chinese economic support. Moreover, it is important to recall the fact that when reference was made to the need for R2P application in the international forum, this « [...] made consensus only more difficult to establish during the diplomatic negotiations because they alienated non-aligned countries and other major powers»²⁵⁴.

As Kingsbury concludes after having analysed the flaws of the R2P doctrine, the Sri Lankan case and the relationship between the two, there were 4 principal reasons for the failure of the R2P application in Sri Lanka. Firstly, there continued to be a permanent division in the international community «[...] over whether or not R2P is a legitimate form of international activity»²⁵⁵, as already seen at the beginning of this subchapter. Secondly, «[...] as a result of Sri Lankan appeals, the LTTE was widely classified as a proscribed terrorist organisation [...]. There was little international sympathy for the LTTE and considerable international support for the continued unity of the state of Sri Lanka»²⁵⁶. Thirdly, as stated above, the Western States' economic sanctions imposed to the Sri Lankan Government did not create enough concern

widespread or systematic attack directed against any civilian population, with knowledge of the attack?.

²⁵³ KINGSBURY, *op. cit.*, p. 151.

²⁵⁴ JAGANATHAN, KURTZ, *op. cit.*, p. 102.

²⁵⁵ KINGSBURY, *op. cit.*, p. 152.

²⁵⁶ *Ibidem*.

because of the huge Chinese economic support. The fourth reason regards the hypothetical on-ground intervention. In fact, «[...] should members of the international community have contemplated on-ground R2P intervention, under its generally accepted (if not specifically endorsed) terms, it must have had a reasonable chance of success and must not have caused more harm than it resolved»²⁵⁷. The hypothetical intervention had to be likely successful in terms of benefits versus costs but, most importantly, had to be supported and endorsed by the UN Security Council, which as already seen was blocked.

To conclude on the failure of application of the responsibility to protect the people of Sri Lanka, this thesis strongly supports the following arguments by Kingsbury:

«The world had a clear opportunity and, in terms of civilian deaths, a moral obligation to bring the R2P principles to bear in the Sri Lanka war. Instead, tens of thousands of people were killed in a relentless and barbaric act of warfare [...]. It may be that, had R2P been properly implemented in a timely manner, Sri Lanka could now be rebuilding as a prospering, liberal democratic state [...] in which there was devolved authority for ethnically specific areas. [...] [T]he international community paid too little attention for too long and such opportunity, as it ever existed, was lost»²⁵⁸.

Given the analysis of the flaws of the response of the international community – including both foreign states and the United Nations – to the Sri Lankan Civil War, the next chapter will describe the post-war transitional justice process that has already started in Sri Lanka. Moreover, given the evident inadequacy of the international response to the Sri Lankan conflict, some suggestions will follow on how the

²⁵⁷ KINGSBURY, *op. cit.*, p. 152.

²⁵⁸ *Ivi*, p. 153.

international system's shortcomings with regard to peace and security mechanisms could and should be balanced.

4. Transitional Justice in Sri Lanka

The International Center for Transitional Justice (ICTJ) defines transitional justice as «[...] a response to systematic or widespread violations of human rights. It seeks recognition for victims and promotion of possibilities for peace, reconciliation and democracy. Transitional justice is not a special form of justice but justice adapted to societies transforming themselves after a period of pervasive human rights abuse»²⁵⁹. The field of transitional justice expanded in the last decades in terms of its meaning and scope.

Initially, the word transition was used to indicate the «[...] shifts from authoritarian rule to democracy [...]»²⁶⁰ while, in the context of transitional justice, it indicates the shift from a war period to peace. The meaning of justice has transformed as well in time and «[...] the pursuit of justice itself has also been increasingly viewed in terms of its instrumental value for the attainment of a range of other goals, such as peace, stability and the rule of law»²⁶¹. Moreover, various new institutions have been created aimed at establishing the mechanisms needed in order to let the process of transitional justice physically work. It is important to recall the fact that «the study of transitional justice has [...] been marked by an increasing awareness of its political dimensions, as international institutions, legal regimes, states and civil society actors seek to implement conflicting visions of what ‘dealing with the past’ requires»²⁶². In the Sri Lankan case, for instance, harsh disagreement arose between the post-war Sri Lankan government and the International

²⁵⁹ INTERNATIONAL CENTER FOR TRANSITIONAL JUSTICE, *What is Transitional Justice Factsheet*, 2009, retrievable online.

²⁶⁰ GOWING, *War by Other Means?, An analysis of the contested terrain of transitional justice under the ‘Victor’s Peace’ in Sri Lanka*, Working Paper Series 2013, p. 8, retrievable online.

²⁶¹ *Ibidem*.

²⁶² *Ivi*, p. 9.

Community on the ways in which the transitional justice process should take place – as it will be explained in this chapter.

Transitional justice is constituted by a series of steps, namely by «[...] a justice process (to hold perpetrators accountable), a reparation process (to redress victims), a truth process (to fully investigate what happened during the conflict and identify perpetrators and victims), and an institutional reform process (to ensure that atrocities do not happen again)»²⁶³. Every transitional justice process has its own peculiarities because of the differences in the causes of the conflict, in the ways the conflict was dealt with by the national and international institutions, in the method of ending the conflict and so on.

In the Sri Lankan transitional justice process, the first particular feature to be noticed is that the process of transition from war to peace was not accompanied by a change of regime. In fact, the political regime of the last five years of the war stayed in power for other five years after the end of the war – in fact President Rajapaksa stood in power until January 2015. This chapter will also explain how this continuity of regime created several frictions and difficulties in the transitional justice process. Moreover, the Sri Lankan Civil War ended without seriously addressing the main causes of the war itself, namely the discrimination of Tamil people and their desire of an independent state. This issue will be analysed when dealing with the future prospects of peace in Sri Lanka, in the subchapter 4.3.

The last phase of the Sri Lankan conflict was marked by the commitment of war crimes, crimes against humanity, serious human rights abuses. A humanitarian disaster occurred in Sri Lanka and perpetrators of crimes must be held accountable and justice to the victims

²⁶³ BALA, *Transitional Justice in Sri Lanka: Rethinking Post-War Diaspora Advocacy for Accountability*, in *International Human Rights Law Journal*, 2015, p. 21 et seq., retrievable online.

must be granted. It is in this perspective that the process of transitional justice in Sri Lanka should be looked at.

Therefore, the subchapter 4.1. will deal with the first step of the transitional justice process in Sri Lanka, which encompasses the truth and justice processes mentioned above. In fact, it will analyse the pressure by the international community on the Sri Lankan Government in order to foster accountability for the alleged commitment of a list of serious crimes and to settle an independent investigation. An in-depth analysis of the 2011 UN Panel of Experts Report on Accountability in Sri Lanka, of the 2014 Human Rights Council Resolution on Promoting reconciliation, accountability and human rights in Sri Lanka and of the subsequent OHCHR Investigation in Sri Lanka (OISL) will be provided. This analysis – by revealing the crimes committed during the war both by the LTTE and the Sri Lankan forces – will provide the reader with the right framework in which the essential need for justice in the country has to be understood.

The subchapter 4.2. will then focus on the reparation process, which is represented by the UN call for the establishment of an ad hoc special hybrid court. This court would be constituted by both national and international judges, prosecutors and defence lawyers and would be aimed at addressing allegations of war crimes and crimes against humanity and at ensuring justice is done. Current opposition by the Sri Lankan Government to the establishment of this court will be highlighted, making particular reference to the two personal interviews made by the author of this thesis to a renowned journalist and a human rights activist, both coming from Sri Lanka.

Finally, the subchapter 4.3. will give an overview of the future prospects of peace and justice, given the analysis of the transitional process provided above. In particular, it will make some

recommendations on the ways in which the transitional justice process should develop in order to be effective.

4.1. Pressure for Accountability in Sri Lanka

As soon as the war ended, the international community and the Tamil people – both those who were still living in Sri Lanka and the Tamil diaspora – started evoking the establishment of accountability mechanisms for the alleged commitment of serious crimes during the war period. Therefore, this subchapter will deal with the most relevant bodies and functions that have been established since the end of the conflict in order to do justice to the concerns of the interested parties unjustly involved in the conflict.

The first relevant international mechanism established in order to shed light on the crimes committed during the war was the UN Secretary-General's Panel Of Experts on Accountability in Sri Lanka, whose results were then published in a Report. The subchapter 4.1.1. will describe the contents of the Report, with special regard to the alleged violations of international humanitarian and human rights law.

The subchapter 4.1.2. will then deal with the Human Rights Council (HRC) Resolution 25/1 of 2014 called 'Promoting reconciliation, accountability and human rights in Sri Lanka'. In particular, it will describe the effects of the establishment – suggested by the Resolution – of the OHCHR Investigation in Sri Lanka (OISL).

4.1.1. UN Secretary-General's Panel of Experts Report on Accountability in Sri Lanka – 2011

On 22 June 2010 the UN Secretary-General established a «Panel of Experts on accountability in Sri Lanka (Panel of Experts) to advise him on accountability during the final stages of the war in Sri Lanka»²⁶⁴. More specifically, the mandate of the Panel Of Experts was «to advise the Secretary-General regarding the modalities, applicable international standards and comparative experience relevant to an accountability process, having regard to the nature and scope of alleged violations of international humanitarian and human rights law during the final stages of the armed conflict in Sri Lanka»²⁶⁵. It is important to stress the fact that the mandate does not include fact-finding and the start of an investigatory mission. The independent investigation, in fact, would have been launched only four years later, through the Human Rights Council Resolution on Sri Lanka – as explained in the subchapter 4.1.2.

Given its inability to investigate, «the Panel analysed information from a variety of sources in order to characterize the extent of the allegations, assess which of the allegations are credible, based on the information at hand, and appraise them legally. [...] Allegations are considered as credible in this report only when based on primary sources that the Panel deemed relevant and trustworthy. [...] The Panel applied the rules of international humanitarian and human rights law to the credible allegations involving both of the primary actors in the war [...]»²⁶⁶.

Therefore the Panel of Experts' Report – issued on March 31, 2011 – goes into a detailed description of all the allegations of

²⁶⁴ UNITED NATIONS, *Report of the Secretary-General's Internal Review Panel on United Nations Action In Sri Lanka*, November 2012, p. 4, retrievable online.

²⁶⁵ UNITED NATIONS, *Report of Secretary-General's Panel of Experts on Accountability in Sri Lanka*, 31 March 2011, p. I, retrievable online.

²⁶⁶ *Ibidem*.

commitment of war crimes and crimes against humanity. Before dealing with the categories of violations, it is fundamental to stress that the UN, through this Report, talks for the first time about the figure of civilians killed. In fact, it affirms that «two years after the end of the war, there is still no reliable figure for civilian deaths, but multiple sources of information indicate that a range of up to 40,000 civilian deaths cannot be ruled out at this stage»²⁶⁷. Dealing with the unlawful acts committed, the Report reveals five main categories of violations by the Government of Sri Lanka and six categories by the LTTE. It seems necessary to the author to quote the almost integral description of the allegations by both parties to the conflict as the Report did, because these allegations will be restated in the reports described in the next subchapters.

The Sri Lankan Government categories of violations are reported as follows:

«(a) *Killing of civilians through widespread shelling.* The Sri Lanka Army (SLA) advanced its military campaign in the Vanni, using large-scale and widespread shelling, [...] causing large numbers of civilian casualties. It shelled in three consecutive No Fire Zones [...]. The Government sought to limit external pressure and observation by excluding international organizations from the conflict zone.

(b) *Shelling of hospitals and other humanitarian objects.* The Government systematically shelled hospitals on the frontlines, some of them repeatedly [...].

(c) *Denial of humanitarian assistance.* The Government systematically deprived persons in the conflict zone of humanitarian assistance, in the form of food and basic medical supplies, particularly supplies needed to treat injuries [...].

²⁶⁷ UNITED NATIONS, *Report of Secretary-General's Panel of Experts on Accountability in Sri Lanka*, 31 March 2011, p. 41, retrievable online.

(d) *Human rights violations suffered by victims and survivors of the conflict.* [...] [T]he Government subjected victims and survivors of the conflict to further deprivation and suffering[...] . All IDPs were detained in closed camps and were not allowed to speak privately with humanitarian organizations. Women were subject to further harassment and exploitation in the camps and in detention. Screening for suspected LTTE took place without any transparency or external scrutiny. Some suspected LTTE cadres were executed and others disappeared. Photos and footage of naked female cadre indicate that they may have been raped or sexually assaulted. Torture during interrogation continued. Suspected LTTE were removed to separate camps where they were held for years, outside the scrutiny of the ICRC, the Sri Lankan Human Rights Commission or other agencies.

(e) *Human rights violations outside the conflict zone.* The Government sought to intimidate and silence the media and other critics through a variety of threats, including the use of white vans to abduct and make people disappear»²⁶⁸.

With regard to the allegations of commitment of crimes made by the LTTE, they were categorized as follows:

« (a) *Using civilians as a human buffer.* Despite the grave dangers [...] in the conflict zone, the LTTE refused civilians permission to leave, using them as hostages and at times using their presence as a strategic human buffer between themselves and the advancing SLA [...].

(b) *Killing civilians attempting to flee LTTE control.* From February 2009 onwards, the LTTE instituted a policy of shooting civilians who attempted to escape the conflict zone [...]. It positioned cadre along points where civilians were trying to escape and shot at groups of men, women and children whom in their

²⁶⁸ *Ivi*, p. 49 et seq.

desperation were prepared to wade through the lagoon or cross minefields to try to reach Government-controlled areas [...].

(c) *Using military equipment in the proximity of civilians.* The LTTE fired artillery from the NFZs, in proximity to IDP populations, and fired from or stored military equipment near IDPs or civilian installations such as hospitals. [...] Sometimes they fired from among civilians before quickly moving away, leaving the civilians on the receiving end of the return fire.

(d) *Forced recruitment of children.* The LTTE operated a policy of forced recruitment throughout the war, [...] including children as young as fourteen. It recruited more than one child per family and beat relatives who tried to resist, in a desperate attempt to prevent their children from being carried away from them to an almost certain death [...].

(e) *Forced labour.* The LTTE forced civilians to bolster their defence lines through digging trenches and other emplacements used for its own defences, thereby contributing to blurring the distinction between combatants and civilians. It thereby exposed civilians to additional harm from shelling.

(f) *Killing of civilians through suicide attacks.* During the final stages of the war, the LTTE continued its policy of suicide attacks outside the conflict zone [...]»²⁶⁹.

The allegations made to both the Sri Lankan Government and the LTTE are evidently of extreme seriousness and imply violations of international humanitarian law and human rights law. In fact, as the Report explains, international humanitarian law «[...] applies because the hostilities clearly met the threshold for an internal armed conflict [...] [and] international humanitarian law is the law against which to measure the

²⁶⁹ *Ivi*, p. 50 et seq.

conduct in the conflict of both the Government and the LTTE»²⁷⁰. With regard to international human rights law, the Panel applies its rules «[...] to the credible allegations linked to the armed conflict, recognizing that many of these will also constitute violations of human rights»²⁷¹. Moreover, Sri Lanka is party to many international human rights treaties and, as a consequence of its legitimization of the contents of the treaty, has to follow the rules contained therein. With regard to the LTTE, «[...] although non-state actors cannot formally become party to a human rights treaty, it is now increasingly accepted that non-state groups exercising de facto control over a part of a State's territory must respect fundamental human rights of persons in that territory»²⁷². Therefore, even the LTTE can be considered accountable of actions committed in violations of international humanitarian and human rights law, since it undoubtedly occupied a part of Sri Lanka during the war.

All the unlawful acts, mentioned above, committed by both the SLA and the LTTE violate principles of international humanitarian and human rights law, as for example the right to life of the person, the requirement of distinction between combatants and civilians, the requirement of precautions before and during the attacks and that of special protection to medical and humanitarian personnel and objects, the bans on attacks on civilians or civilian objects, on indiscriminate or disproportionate attacks against civilians, on enforced disappearances, on arbitrary detention, on forcible recruitment of children and on forced labour, the special protection of women, families and children and so on²⁷³. Most of these violations amount to war crimes and to crimes against humanity as carefully explained by the Report²⁷⁴.

²⁷⁰ *Ivi*, p. 52.

²⁷¹ *Ivi*, p. 53.

²⁷² *Ivi*, p. 54.

²⁷³ *Ivi*, p. 56 et seq.

²⁷⁴ *Ivi*, p. 67 et seq.

With particular regard to the issue of discrimination of Tamil people – which, as explained in the first chapter, was the triggering cause of the war – the Report’s data affirm «[...] that it is reasonable to conclude that Sri Lanka’s Tamil community was subjected to extermination and persecution by the Sri Lankan government in the latter’s final war against the (LTTE) [...]. The report states that Tamils were targeted for being Tamils, for political reasons, on ethnic grounds»²⁷⁵. The last part of this chapter will analyse how this continued discrimination creates huge issues in terms of unrest and prospects of peace.

The Report then goes into a copious description of the Sri Lankan legal system and the processes of accountability established by the Sri Lankan Government. In particular, it deals with the Lesson Learnt and Reconciliation Commission (LLRC) established by the Government in 2010 with the mandate of examining all the events that occurred from 2002 until the end of the conflict. The LLRC mission was that of addressing the internationally raised accountability issues. The Panel of Experts wanted to establish a cooperative relationship with the LLRC, but this turned out to be impossible because of the denial of visits to Sri Lanka and of engaging with the LLRC. The Panel affirms that the LLRC was «[...] seriously deficient with regard to its composition when held against international standards to ensure the independence and impartiality of accountability mechanisms. Its composition calls into question its independence and impartiality, especially regarding conduct that could implicate the Government and the security forces in the final phases of the war, and weakens its legitimacy as a body to advance

²⁷⁵ GURUPARAN, *Some Reflections on The Relationship Between ‘Peace’ And ‘Justice’ in Post-War Sri Lanka*, Oxford Transitional Justice Research Working Paper Series, 2011, p. 1, retrievable online.

accountability»²⁷⁶. Moreover, the Panel strongly criticizes other aspects of the LLRC activity, among which stand the lack of a victim-centred approach, witness intimidation and inadequate witness protection, media and civil society harassment and so on²⁷⁷.

The Panel of Experts, after having dealt with the crimes committed by both the parties to the conflict, focuses on the UN action in Sri Lanka and «in addition to its conclusions regarding the need for accountability [...], the Panel of Experts also concluded that there was a need for the UN to review its own actions»²⁷⁸. In fact, as already seen in the subchapter 3.1., dealing with the UN action in the Sri Lankan Civil War, an Internal Review Panel was established in order to analyse the flaws of the UN action and to recommend not to repeat the same mistakes in the future. Having described the Panel of Experts as the first relevant step in the process of transitional justice in Sri Lanka, it is now the turn of the second one – in chronological order – which is represented by the HRC Resolution 25/1 on accountability and human rights in Sri Lanka and the following establishment of the OHCHR Investigation in Sri Lanka (OISL).

4.1.2. HRC Resolution ‘Promoting reconciliation, accountability and human rights in Sri Lanka’ and the OHCHR Investigation in Sri Lanka (OISL)

The Human Rights Council (HRC), by the time of writing, has already adopted 4 resolutions on ‘Promoting reconciliation, accountability and

²⁷⁶ UNITED NATIONS, *Report of Secretary-General’s Panel of Experts on Accountability in Sri Lanka*, 31 March 2011, p. 86, retrievable online.

²⁷⁷ *Ivi*, p. 91 et seq.

²⁷⁸ UNITED NATIONS, *Report of the Secretary-General’s Internal Review Panel on United Nations Action In Sri Lanka*, November 2012, p. 4, retrievable online.

human rights in Sri Lanka': 19/2 of March 2012, 22/1 of March 2013, 25/1 of March 2014 and 30/1 of October 2015. The most relevant with regard to the process of transitional justice in Sri Lanka was the HRC Resolution 25/1 of 2014. In fact, through this Resolution «[...] adopted by a vote of 23 in favour, 12 against and 12 abstentions, the Council requests the Office of the High Commissioner to undertake a comprehensive investigation into alleged serious violations and abuses of human rights and related crimes by both parties in Sri Lanka during the period covered by the Lessons Learnt and Reconciliation Commission, and to establish the facts and circumstances of such alleged violations and of the crimes perpetrated with a view to avoiding impunity and ensuring accountability, with assistance from relevant experts and special procedures mandate holders»²⁷⁹. Almost needless to stress that, among the 12 states against the Resolution there were also China, India, Pakistan and the Russian Federation.

The Resolution, among the various statements, welcomes the progress made by Sri Lanka in terms rebuilding infrastructure, appreciates the open access provided to the High Commissioner for Human Rights by Sri Lanka and, dealing with transitional justice, it states the need for a

«[...] comprehensive approach to transitional justice incorporating the full range of judicial and non-judicial measures, including, inter alia, individual prosecutions, reparations, truth-seeking, institutional reform, vetting of public employees and officials, or an appropriately conceived combination thereof, in order to, inter alia, ensure accountability, serve justice, provide remedies to victims, promote healing and reconciliation, establish independent

²⁷⁹ UNITED NATIONS, *Human Rights Council adopts a resolution on reconciliation, accountability and human rights in Sri Lanka*, 27 March 2014, retrievable online.

oversight of the security system, restore confidence in the institutions of the State and promote the rule of law in accordance with international human rights law, with a view to preventing the recurrence of violations and abuses [...]»²⁸⁰.

Moreover, and of extreme importance in the process of transitional justice, the Resolution requests to the Office of the High Commissioner for Human Rights to «[...] undertake a comprehensive investigation into alleged serious violations and abuses of human rights and related crimes by both parties in Sri Lanka during the period covered by the Lessons Learnt and Reconciliation Commission (LLRC) and to establish the facts and circumstances of such alleged violations and of the crimes perpetrated with a view to avoiding impunity and ensuring accountability, with assistance from relevant experts and special procedures mandate holders»²⁸¹.

To fulfil its mandate, the OHCHR – headed by the then-High Commissioner Navanethem Pillay – established its Investigation on Sri Lanka (OISL) – a human rights investigation and not a criminal one²⁸². The investigation covered the period going from the Ceasefire Agreement of 2002 until 2011 – actually following the indication of the HRC Resolution of covering the same period of the LLRC. The OISL efforts were hampered by the Rajapaksa's Government, which was unwilling to cooperate and rejected the investigation. From the practical point of view, this meant no access to Sri Lanka for the investigators until December 2014 and a Governmental «[...] campaign of intimidation, harassment, surveillance, detention and other violations against human

²⁸⁰ HUMAN RIGHTS COUNCIL, *Resolution 25/1, Promoting reconciliation, accountability and human rights in Sri Lanka*, 26 March 2014, p. 3, retrievable online.

²⁸¹ *Ivi*, p. 4.

²⁸² HUMAN RIGHTS COUNCIL, *Report of the OHCHR Investigation on Sri Lanka (OISL)*, 16 September 2015, p. 5, retrievable online.

rights defenders and others, which was clearly intended [...] at deterring engagement with OISL»²⁸³. The Government elected after Presidential elections in January 2015 – won by the President Sirisena – did not really change attitude towards the OISL, but at least «[...] it engaged more constructively with the High Commissioner and OHCHR. [...] [It] also made commitments related to accountability for the violations allegedly committed [...]»²⁸⁴.

With regard to the contents of the OISL Report, it is even more complete and accurate than the Panel of Experts' Report in the description of the crimes committed. It is organized in thematic chapters that deal with «[...] unlawful killings, violations related to the deprivation of liberty, enforced disappearance, torture, sexual and gender-based violence, the abduction and forced recruitment of adults and the recruitment and use of children in hostilities [...], the impact of hostilities on civilians and civilian objects in the final few months of the conflict, as well as controls on movement and the denial of humanitarian assistance, [...] the screening and deprivation of liberty of internally displaced persons (IDPs) in military-guarded closed camps»²⁸⁵.

The main new issues with respect to the Panel Of Experts Report regard enforced disappearance and torture; they were both already mentioned in the Panel Of Experts Report, but the OISL accords particular attention to these crimes. Chapter VIII of the OISL Report is entirely devoted to enforced disappearances, whose number in Sri Lanka was the second highest on the list of the Working Group on Enforced or Involuntary Disappearances (WGEID) by 2014²⁸⁶. Also according to Amnesty International «[...] Sri Lanka is second only to Iraq globally for

²⁸³ *Ivi*, p. 6.

²⁸⁴ *Ibidem*.

²⁸⁵ *Ivi*, p. 5.

²⁸⁶ *Ivi*, p. 81.

the number of cases of disappeared persons [...]»²⁸⁷. As the Report affirms, «Despite the scale of the issue, the Sri Lankan authorities have for the most part downplayed the phenomenon of enforced disappearances and have denied the involvement of the security forces»²⁸⁸. In its findings on enforced disappearances, the Report eventually affirms that «There are reasonable grounds to believe that enforced disappearances may have been committed as part of a widespread and systematic attack against the civilian population, given the geographical scope and timeframe in which they were perpetrated [...]»²⁸⁹.

Chapter IX is then focused on Torture and other forms of cruel, inhuman or degrading treatment. The OISL particularly focused on these crimes «[...] allegedly committed by Government security forces as one of its priority themes because of the scale and gravity of the allegations it received»²⁹⁰. The OISL deeply analysed the context in which torture took place, dealing with the authors of these horrific actions and with the victims. It individuated many cases in which the Sri Lankan Forces had tortured civilians, especially when allegedly linked with the LTTE, and fewer cases perpetrated by the LTTE²⁹¹. In its final findings, the OISL Report strongly affirms that «If established before a court of law, these acts of torture may, depending on the circumstances, amount to crimes against humanity if committed as part of a widespread or systematic attack, and as war crimes if a nexus is established with the armed conflict»²⁹². Reference to war crimes and to crimes against humanity was

²⁸⁷ CENTRE FOR POLICY ALTERNATIVES, *Transitional Justice in Sri Lanka and Ways Forward*, 2015, p. 21, retrievable online.

²⁸⁸ HUMAN RIGHTS COUNCIL, *Report of the OHCHR Investigation on Sri Lanka (OISL)*, 16 September 2015, p. 83 et seq., retrievable online.

²⁸⁹ *Ivi*, p. 221.

²⁹⁰ *Ivi*, p. 109.

²⁹¹ *Ivi*, p. 116.

²⁹² *Ivi*, p. 222.

made, in the OISL Report, also with regard to the other crimes already mentioned above, stating that – if at each case correspond precise conditions and features stated in the Report itself – these crimes can amount either to crimes against humanity or to war crimes.

Throughout the Report, there emerges evidence of the incapability or, in some cases, unwillingness of the domestic mechanisms, institutions and bodies to provide the victims with the fair degree of justice they deserve. Moreover, it admits that for national legal systems it can be difficult or even impossible to accurately address international crimes. In fact, «Most domestic courts are not familiar with the international criminal jurisprudence that has evolved, and may have no experience of dealing with complex criminal trials involving crimes under international law»²⁹³. Having proved the inadequacy of the domestic legal system, the OISL concludes that Sri Lanka needs an international mechanism and it «[...] should draw on the lessons learnt and good practices of other countries that have succeeded with *hybrid special courts* [emphasis added], integrating international judges, prosecutors, lawyers and investigators. Such a mechanism will be essential to give confidence to all Sri Lankans, in particular the victims, in the independence and impartiality of the process, particularly given the politicization and highly polarized environment in Sri Lanka»²⁹⁴.

The next subchapter will precisely deal with the United Nations call for the establishment of the hybrid special court combining national and ‘international judges, prosecutors, lawyers and investigators’ mentioned above. Moreover, it will show how the Government of Sri Lanka, even having already accepted to have this foreign participation, is now opposing it.

²⁹³ *Ivi*, p. 242.

²⁹⁴ *Ivi*, p. 247.

4.2. UN call for the establishment of a hybrid special court

As mentioned above, the OHCHR calls for the establishment of a hybrid special court in order to provide the victims with an independent and impartial transitional justice process and to try the alleged war crimes and crimes against humanity. Also the Report of the WGEID supports this proposal, and further specifies that «in considering the integration of international elements into the judicial accountability mechanism, Sri Lanka should guarantee that all investigations are properly and professionally conducted. A vetting process should be put in place for all judicial and other officials of the envisaged mechanism so as to guarantee the expertise, independence and impartiality of those involved in the whole judicial accountability mechanism [...]»²⁹⁵.

The ad hoc hybrid special courts have been created since the end of the 1990s and the term has been used to refer to «[...] the special panels of the district courts of Dili [in East Timor], the court for Sierra Leone [and] the extraordinary chambers in the courts of Cambodia. [...] They are composed of independent judges, working on the basis of predetermined rules of procedure, and rendering binding decisions. [...] In some cases they are part of the judiciary of a given country, while in others, they have been grafted onto the local judicial system. But in all cases their nature is mixed, incorporating at the same time international and national features»²⁹⁶. They are usually established in countries living

²⁹⁵ HUMAN RIGHTS COUNCIL, *Report of the Working Group on Enforced or Involuntary Disappearances on its mission to Sri Lanka*, July 2016, p. 12, retrievable online.

²⁹⁶ THE GRADUATE INSTITUTE GENEVA, *International Tribunals: Hybrid Courts*, 2016, retrievable online.

a period of turmoil – as post-war periods – in order to «[...] ensure accountability for crimes committed during that period»²⁹⁷.

Sri Lanka post-war situation perfectly embodies a fertile ground for an ad hoc special hybrid court; it is a post-war period – undoubtedly marked by turmoil, anxiety of the victims, need for stability – and its people desperately need justice to be done. The OHCHR recommendation to create such a court in Sri Lanka is in compliance both with the recent trend to entrust the process of transitional justice to these special hybrid courts and with the actual needs of the country.

As a matter of fact, the Sri Lankan Government response to the OISL Report was that of co-sponsoring a «[...] consensus resolution setting forth the building blocks of a comprehensive transitional justice program. In addition to political reforms focused on good governance, the devolution of power, security sector reform, the demilitarization of Tamil areas, and the rule of law, the future transitional justice process will reportedly involve four main pillars: a truth and reconciliation commission; a reparations process; an office to investigate and resolve disappearances; and an accountability mechanism»²⁹⁸. These last steps principally constitute the path to be undertaken domestically by Sri Lanka, but the resolution calls for international involvement.

As the human rights activist Ruki Fernando explains: «The reasons why international judges are needed are firstly trust and confidence and secondly competence. We simply do not have enough judges and enough experience in war crimes and crimes against humanity. These are not even crimes under the Sri Lankan law, therefore how can you domestically prosecute criminals of crimes not recognized

²⁹⁷ DE JONGE, *An Ad Hoc Hybrid Special Court for Sri Lanka: What Does It Take?*, 25 September 2015, retrievable online.

²⁹⁸ VAN SCHAACK, “*More Than a Domestic Mechanism*”: *Options for Hybrid Justice in Sri Lanka*, 2016, p. 1, retrievable online.

under domestic law?»²⁹⁹. The High Commissioner of Human Rights Prince Zeid bin Ra'ad particularly highlights, among the reasons for the need to establish an ad hoc special hybrid court, the mistrust of the Sri Lankan people in national institutions. Referring to this mistrust, he said « [...] it is for this reason that the establishment of a hybrid special court, integrating international judges, prosecutors, lawyers and investigators, is so essential. A purely domestic court procedure will have no chance of overcoming widespread and justifiable suspicions fuelled by decades of violations, malpractice and broken promises»³⁰⁰.

In joining and sponsoring the resolution, Sri Lanka has automatically given its consensus and approval to the provisions contained therein and, as a consequence, has accepted foreign involvement. However, the current Sri Lankan Government seems to be retracting its commitment, as the next subchapter will explain.

Dealing with the establishment of this court, it is important to recall the fact that, in order to create it, negotiations between the parties are needed. Accordingly, «these negotiations must be as inclusive as possible and should involve representatives of the international community, the government of Sri Lanka, representatives of both parties and their victims – through NGOs and civil society. It is important that all these parties are involved in the negotiations on a hybrid tribunal, to ensure that any future court can receive their full support. After an agreement on the creation of a court is reached, a full examination and assessment of the Sri Lankan system must follow»³⁰¹.

The details with regard to the establishment of the ad hoc special hybrid court in Sri Lanka – as the composition of the court, the number of national and international judges, prosecutors and so on – have not

²⁹⁹ Appendix A, *Integral Version of a personal interview to Mr. Ruki Fernando*, Human Rights Activist in Sri Lanka, 25 July 2016, Colombo, Sri Lanka.

³⁰⁰ VAN SCHAACK, *op. cit.*, p. 3.

³⁰¹ DE JONGE, *op. cit.*

been specified yet. First of all, the mechanism for selecting the personnel of this court must be chosen. As Ms. Beth Van Schaack – former Deputy to the US Ambassador-at-Large for War Crimes Issues – affirms, the international experts of the court «[...] should be identified by way of a rigorous selection process that accounts for gender and ethnic parity and includes appointing personnel with experience in international criminal law, human rights, and gender [...]. In addition to being chosen for their expertise, individuals can be appointed who are known internationally for their professionalism, humility, adaptability, impartiality, and integrity. For judicial processes to contribute to reconciliation and to respond to felt needs for justice, it is vitally important that all stakeholders have faith in the integrity and fairness of both the process and the actors involved»³⁰². Mr. Ruki Fernando, in the personal interview with the author of this thesis, suggested a way in which the selection of the judges could take place and highlights the importance of details: «Maybe we can have an arrangement where the High Commissioner for Human Rights can nominate 10-15 names from different parts of the world on the basis of their competence and then the Sri Lankan Constitutional Council could pick 5 or 7 from these names. First of all, we have to reach an agreement domestically about the proportion of foreign and domestic judges. We need to look very deeply into the details of the process of transitional justice; details create practical reality then»³⁰³. An in-depth analysis of the specific context must be carried on in order to define the details of the Sri Lankan ad hoc special court and to avoid pitfalls in the system. Without going too further into the issue, the previous ad hoc special courts have been – in a way or another – subject to criticism because of some flaws in their design and functioning. These flaws being

³⁰² VAN SCHAACK, *op. cit.*, p. 3.

³⁰³ Appendix A, *Integral Version of a personal interview to Mr. Ruki Fernando*, Human Rights Activist in Sri Lanka, 25 July 2016, Colombo, Sri Lanka.

avoided by learning from past experiences, «[...] the international community [...] may be able to ensure accountability for the crimes committed in Sri Lanka»³⁰⁴.

The next subchapter will deal, as mentioned above, with the opposition by the current Sri Lankan Government – headed by President Sirisena – to the establishment of the ad hoc special hybrid court in Sri Lanka.

4.2.1. Current opposition by the Sri Lankan Government

The current President of Sri Lanka, Maithripala Sirisena, in an interview to the Sri Lankan newspaper *Sunday Times*, recently said about the UN recommendation of establishing an ad hoc hybrid court: «Very clearly we do not need foreign judges. We can resolve any problem within the country without foreign intervention. If necessary we can obtain foreign technical support. That again will be without any commitment or conditions attached»³⁰⁵. This statement definitely goes against the Sri Lankan co-sponsoring of the HRC Resolution above mentioned, in which the country accepted international involvement in the transitional justice process.

The author asked to both the Sri Lankan journalist Mr. Ferdinando and to the human rights activist Mr. Fernando – already quoted in this thesis – to give their opinion about this sudden change of policy of the President and the Government, its implications and reasons. Here follow their answers, which seem to be explicative of the situation:

³⁰⁴ DE JONGE, *op. cit.*

³⁰⁵ THE SUNDAY TIMES, *President promises urgent action to reduce CoL, vows to strengthen economy*, 12 June 2016, retrievable online.

« My opinion is that he [President Sirisena] cannot say that now. His government has agreed, so he cannot say no. We have nothing to hide, even if some excesses occurred. There is no question: we should face international judges. The issue of accountability is something we must address; we cannot run away. Those who made allegations, nevertheless, must prove their case».³⁰⁶

[Journalist Mr. Ferdinando]

«[...] This is an issue of terminology. On October 1, 2015 the Sri Lankan Government agreed officially to have the participation of international judges, prosecutors, defence lawyers and investigators and to have a judicial mechanism with a special prosecutor office. However, the crucial word is *participation* [emphasis added]. My understanding of participation is that judges do judge, prosecutors do prosecute, defence lawyers appear on behalf of their clients and investigators do investigate. However, technically, someone can argue that observing, advising and training is also a form of participation. To me this is a bit far-fetched and quite a manipulation, but this is possible. I think this is what the Sri Lankan Government is doing, because they have already officially committed to have international participation, there is no going back on this. Therefore, they are using this stratagem».³⁰⁷

[HR Activist Mr. Fernando]

The current Government and President's opposition to international interference in the process of transitional justice is also due to the fact that the previous Government strongly campaigned against the presence of international judges. In fact, «the rhetoric and the propaganda of the

³⁰⁶ Appendix B, *Integral Version of a personal interview to Mr. Shamindra Ferdinando*, Journalist of the Sri Lankan Newspaper The Island, 22 July 2016, Seeduwa, Sri Lanka.

³⁰⁷ Appendix A, *Integral Version of a personal interview to Mr. Ruki Fernando*, Human Rights Activist in Sri Lanka, 25 July 2016, Colombo, Sri Lanka.

previous government affirming that foreign judges would come and use the electric chair against the criminals - even if this possibility is completely excluded in the international context – have been so strong that people, mainly Sinhalese Buddhist, do not want international judges»³⁰⁸. As a consequence, sponsoring international presence is now counterproductive for the Government, since receiving the support of the majority would now be difficult, given the image of international judges conveyed by the previous Government. Votes could go lost and it could be complex to stay in power; politicians seem to care more about this than about honouring promises made. At the time of writing, there has been no tangible development in the establishment of the ad hoc special hybrid court in Sri Lanka.

The next and final subchapter will give an overview of the future prospects of peace and justice in Sri Lanka, focusing on the still existing need to adequately address the root causes of the ethnic conflict – discrimination of Tamil people and Tamil’s request of an independent state – and on the prospect of justice that Sri Lanka is likely to witness, in case an ad hoc hybrid court is established or through an alternative path of transitional justice, which will be analysed.

4.3. Future prospects of peace and justice

Given the description of the elements that constitute the transitional justice process of Sri Lanka and having highlighted the main issues at stake, a look must be given to the likely prospects of peace and justice in the post-war context of the country.

³⁰⁸ *Ibidem*.

First of all, the various issues of the ethnic conflict – from which everything started – must be addressed. Since one of the main causes of the war has been identified in the discrimination of Tamil people and in the subsequent conflict between Tamil and Sinhalese, it is necessary to understand whether the seed of the resentment between the two can really be considered eradicated or whether it is still hidden under the veil of an unstable peace. In fact, it must be noticed that there exists a «[...] fundamental distinction between the end of violent hostilities and the end of the ethno-political conflict. The distinction opens up the transitional justice agenda in Sri Lanka, as it shows that the country must go beyond the immediate physical violence and rights violations of the war and contend with the systemic and attitudinal violence and rights violations that gave rise to the violence. Undoubtedly, many of the systemic injustices of the past have been addressed at various points in the history of the conflict»³⁰⁹. For example, one of the most crucial steps in the discrimination of Tamil people was the Official Language Act of 1956 – as already seen in Chapter 1 – that made Sinhala the only official language, giving birth to deep marginalization of Tamil-speaking people. Through some amendments to the Constitution, Tamil language has been made official as well and some policy directives have been issued to address language disparities. Nevertheless, Tamil people are still subject to disadvantages in the working field – especially in the public sector. The following quote is explicative of the content of these language parity issues and of their implications:

«[...] there is still some distance to go in implementing the full spirit of these reforms. [...] the lack of sustained political will combined with the lack of commitment among middle- and lower-

³⁰⁹ ANONYMOUS, *Against the Grain: Pursuing a Transitional Justice Agenda in Postwar Sri Lanka*, in *International Journal of Transitional Justice*, p. 49, retrievable online.

level bureaucrats [...] hampers the full implementation of the country's constitutional safeguards and policy directives on language. Full implementation would mean that the different ethnolinguistic communities in the country [...] would be able to access public and state services [...] and university education in their vernacular languages [...]. A concerted effort to ensure language parity in the postwar arena will certainly demonstrate the country's commitment to 'dealing with' at least one of the root causes of the ethno-political conflict»³¹⁰.

To conclude on this issue, Tamil discrimination – in the form of official acts, government's policies and so on – has decreased with respect to the period before the outbreak of the conflict. Nevertheless, many forms of discrimination against Tamil still persist in Sri Lanka, and definitely have to be addressed in order to eradicate the seed – mentioned above – of hostilities between the two peoples. Further inclusion and integration of Tamils in the society is an essential ingredient for long-term peace. Not only inclusion in the society is fundamental, but also inclusion in the governance. Tamils call for more self-determination of their minority and see this as the only salvation from the recurrence to violence.

Another fundamental problematic that must be looked at concerns the LTTE request for an independent state for Tamil people – request considered legitimate also by many Tamil not belonging to the LTTE. The war ended without the creation of a separate state of Tamil and also without significant devolution of powers to Tamils, not to mention of land. Therefore, the government should bear in mind that the possibility of a resurgence of this claim is not that unlikely. Mr. Ruki Fernando – already cited in this chapter – when asked by the author of this thesis his thoughts about this possibility, said:

³¹⁰ *Ibidem.*

«This is quite possible. This is why I think that it is important that we try to get as much measures of political economy, criminal justice and reparations as possible for Tamils as well as for Muslims. In reality, beyond Vavuniya, there was a de facto state of Tamils [...] However, there was a failure in this state: it was very authoritarian. Tamil people were not well treated [...]. Therefore, it is extremely unlikely that [...] the international community will ever accept even the idea of a separate Tamil State [...]. No separate state can be created without the acceptance of the international community, and this prospect is very unlikely according to me. Therefore, I feel that the most viable way for the Tamils now is that of seeking autonomy while staying in the united state of Sri Lanka. I think that the Tamil community deserves a substantial degree of autonomy and devolution of powers by the Sri Lankan government not only because of the legitimacy of this democratic request, but also because it is something practical. Tamil people for decades have voted for Tamil parties; they want to be mainly represented by their people, the party they vote for. Moreover they deserve restoration for the victims and for the abuses they were submitted to»³¹¹.

Given that the establishment of a separate Tamil state is increasingly unlikely, some sort of devolution of powers is what remains to Tamils to conquer. Many scholars suggest that a certain degree of autonomy should be granted to the Tamil population in Sri Lanka, either because it is a legitimate request, or because of the positive effects that this would have on the mitigation of ethnic hostilities or both. For example, according to the international journalist Hogg: «while Tamils in the north-east appear

³¹¹ Appendix A, *Integral Version of a personal interview to Mr. Ruki Fernando*, Human Rights Activist in Sri Lanka, 25 July 2016, Colombo, Sri Lanka.

resigned to a future that, for now, does not offer them equality or participation, there are signs that resentment, especially in the north is growing. Intense militarization and continuing rights violations, along with a lack of any meaningful participation in their political future, have the potential to create a fertile ground for militancy. In this context, the government has the dual responsibility of not only bringing truth, justice and reconciliation to all the communities in the country, but also ensuring that devolution of power to minorities is real, and meaningful»³¹².

Devolution of powers to Tamil people and ensuring that justice is done can be considered as two necessary pillars in the building of a long-term Sri Lankan peace.

Trying to figure the Sri Lankan future prospects of justice out, as already seen above, one possibility is the establishment of an ad hoc special hybrid court that mixes national and international judges, prosecutors, lawyers and so on. Some scholars have suggested alternatives to this mechanism of transitional justice, which – by some authors – is considered particularly flawed and inappropriate for the Sri Lankan case. Without entering into details of the pitfalls of the ad hoc special courts that have already existed, it is still important to analyse the alternative paths that Sri Lanka could go through in order to ensure that justice is done. Particularly articulated is the argument of the scholar Sujith Xavier, who – basing his analysis on other scholars' studies on the flaws and challenges of special hybrid courts in delivering justice – suggests a different transitional justice plan to be delivered in Sri Lanka, namely an access to justice model³¹³.

³¹² HOGG, *Sri Lanka: Prospects for Reform and Reconciliation*, Asia Programme Paper, Chatam House, October 2011, p. 13, retrievable online.

³¹³ XAVIER, *Looking for 'Justice' in All the Wrong Places: An International Mechanism or Multidimensional Domestic Strategy for Mass Human Rights Violations in Sri Lanka?*, Osgoode Legal Studies Research Paper Series, 2015, p. 22 et seq., retrievable online.

As Xavier explains, access to justice has undergone many transformations in the last decades and it «[...] is now conceived of as substantive justice, procedural fairness, and equal access to institutions. [...] [T]wo basic strands of the access to justice strategy can be articulated: a multidimensional approach to access to justice and a legal pluralistic understanding of where law is produced, applied, and enforced»³¹⁴. According to the author, these two ‘legal techniques’ can be used in the Sri Lankan case to deal with mass human rights violations, avoiding the establishment of an ad hoc special hybrid court – considered too flawed and possibly unsuccessful by Xavier. With regard to the multidimensional approach to access to justice, this entails a particular emphasis on «[...] domestic access to courts and other available tools. [...] Nonetheless, emphasis must be made to secure the de-politicization of the Sri Lankan judiciary and the legal profession»³¹⁵. Xavier suggests a model of access to justice principally based on «[...] providing access to legal institutions, legal education, the judiciary, and public institutions for the marginalized. It specially moves away from a top down process (imposition of rule of law from Western donors) to one that is much more holistic with an emphasis on grassroots mobilization»³¹⁶. In his model of access to justice, international involvement is not excluded. In fact, he encourages the «[...] the utilization of existing international institutions to promote an accountability agenda. [...] The international community can play a pivotal role in supporting local stakeholders [...] [and it] can and should utilize existing tools, such as the referral mechanism within the ICC, as a way to leverage Sri Lanka’s compliance with an access to justice policy to strengthen domestic institutions»³¹⁷. In other words, while the promoters of the establishment of an ad hoc

³¹⁴ *Ivi*, p. 24.

³¹⁵ *Ibidem*.

³¹⁶ *Ivi*, p. 25.

³¹⁷ *Ivi*, p. 26.

special hybrid court see international involvement as the only possibility for Sri Lanka to do justice for the mass human rights atrocities occurred during the war – because of the alleged inadequacy of the domestic justice system – Xavier sees international participation as a source of help available to the domestic institutions, which however continue to play the leading role in the delivering of justice.

The alternative approach proposed by Xavier provides insightful observations and good food for thought. The strengthening of domestic judicial and legal institutions is undoubtedly a fundamental step to be made by Sri Lanka in the perspective of long-term justice and stability. Moreover, the point made by Xavier on the need for access to justice by the marginalized is another crucial aspect of the transitional justice process and must be addressed. The most convincing argument of his critique to the establishment of a special hybrid court in Sri Lanka is probably the one that regards the lack of local knowledge of the international judges usually appointed in the ad hoc special hybrid courts. In fact, he recalls Baylis' coined term 'known unknowns' to label the «[...] lack of local knowledge of post-conflict settings, whether that is knowledge of the local legal system, local facts, local culture or any other relevant information. [...] [T]hese known unknowns are notoriously hard to deal with due to lack of timing, false expertise, complexity and geographic size of the local context»³¹⁸. This is one of the reasons that, according to Xavier, make the domestic judicial system more adequate than an international mechanism to the purpose of ensuring justice.

In the perspective of the need for long-term justice, this thesis supports the idea that both the strengthening of domestic legal institutions and the establishment of an ad hoc special hybrid court should be carried on. In fact, even accepting the points made by Xavier –

³¹⁸ *Ivi*, p. 19.

especially with regard to the criticism towards the flaws of the previous ad hoc courts and the new trend of delivering international justice – there remains the deep concern about the inadequacy of the current judiciary and legal system of Sri Lanka. Not only this system is considered inadequate because of its high politicization and subsequent lack of independence, autonomy and impartiality, but also because – as already mentioned above – the crimes to be judged are necessarily considered ‘too big’ to deal with, as crimes against humanity and war crimes. Therefore, some reforms of the Sri Lankan judiciary and legal systems aimed at solving the pitfalls mentioned above should be implemented both in a short- and long-term perspective, but at the same time the international community should make all the efforts needed for the creation of the ad hoc special hybrid court, able – probably in a longer term – to guarantee to the victims access to justice and to end impunity for the crimes committed in the war period.

Conclusions

The conclusions will sum up the main findings and suggestions of this thesis. First among the other arguments, this dissertation has backed the idea that the international response to the Sri Lankan Civil War – both on the part of foreign states and on the part of the United Nations – was inadequate in many aspects.

In fact, the foreign states involved in the conflict have been, for different sets of reasons, either unwilling or unsuccessful to promote and achieve a political and peaceful solution to the conflict. The most powerful state in the region during the conflict – namely India – was dramatically incoherent in its behaviour with regard to the Sri Lankan war. It firstly trained the LTTE, then it established its military presence in Sri Lanka to solve the conflict, fought against the LTTE and ended in nothing and, after this failure, it started following a policy of non-interference, which in reality meant abandoning the country. These continuous changes in Indian policy towards Sri Lanka reflected changes in its own geo-political interests; India always followed a self-oriented strategy with regard to the Sri Lankan conflict. Other foreign states intervened in the conflict: Norway – which played the role of third party facilitator in peace negotiations between the LTTE and the Sri Lankan Government – and then Japan, the US, the EU, China, Pakistan and Iran. These states' actions in response to the Sri Lankan conflict differed on the bases of labelling – or refraining from doing it – the LTTE as a terrorist organization, of the degree of economic and humanitarian assistance to the country, of support or opposition to the actions of the Sri Lankan Government in the last phase of the conflict and to the establishment of accountability mechanisms for the alleged crimes committed during the war – as independent investigations and an ad hoc

special hybrid court. Moreover, some of these states decided to link their assistance and support to Sri Lanka to the improvement of peace talks and of the protection of human rights, while others – as China – continued to ensure their military and economic assistance, regardless of the allegations of war crimes and crimes against humanity committed during the war.

On the side of the United Nations (UN), this thesis has supported the idea that it dramatically failed in Sri Lanka, considering its supposedly leading role in the international maintenance of peace and security. The first UN action raising concerns about its effective capability or willingness to protect the population caught up in the conflict corresponded to the UN abandonment of the war area in September 2008, officially exhorted by the Sri Lankan Government to do so. Expectations of civilians living in that area on the help they would have continuously received by the UN were high and were definitely disappointed. Later on, when the conflict reached its apex and there was evidence of the unfolding humanitarian disaster, the UN failed again in that it was unable to formally insert Sri Lanka in the Security Council agenda. The reaction of the UN to the conflict was definitely too little too late, as proved in this thesis. The Security Council remained blocked because of Russia and China, which would have not hesitated to make use of their veto power in case a resolution warning Sri Lanka to restrain its forces tried to be passed. The application of the Responsibility to Protect (R2P) principle – formally adopted by the United Nations in 2005 and promoted thereafter – miserably failed in Sri Lanka in both its tasks of prevention of conflict and of responsibility to react to humanitarian crises. The implementation of the R2P in its interventionist stage being dependent on the multilateral consensus of the Security Council, the responsibility to intervene in Sri Lanka fell on the shoulders of its members. As demonstrated above, there was neither enough interest in

getting involved in the Sri Lankan situation nor enough willingness to compromise other geo-political interests by intervening in the country. The result was that the international community left the Sri Lankan people to fend for themselves in the worst period the country had ever experienced.

Among the many flaws of the international mechanisms for peace and security that emerged while observing the international community's response to the Sri Lankan Civil War, possibly the worst and most difficult to be overcome continues to regard the influence that the five Permanent Members of the Security Council can exert on its decisions. The five permanent members, in fact, can use their exclusive veto power in order to oppose and block any Security Council. One permanent member's contrary vote is already enough to block a SC decision. There have already been various proposals of reform regarding the elimination or the extension to other members of the veto-power, but the SC members did not welcome these proposals. When the R2P was discussed, new reform proposals were made according to which – at least in the event of a humanitarian disaster unfolding in a state that was unwilling or unable to solve it – permanent member states should refrain from using their veto power in order to allow third-party intervention in the above-mentioned state. Permanent members rejected even these proposals.

In the specific case of Sri Lanka, the fact that China alone, or Russia alone could decide on the application or non-application of on-ground Responsibility to Protect intervention, while a humanitarian crisis was evidently occurring, creates many doubts concerning the capability of the international community to be effectively helpful in this type of circumstances. The UN failed, as already explained, and as it, itself, admitted in one of its Reports on its action in Sri Lanka. This dissertation supports the idea that, until the Security Council is reformed in the sense of reducing the power of the five permanent members – either by

eliminating the veto power, or by prohibiting its use, especially when dealing with humanitarian crises' decisions – the R2P doctrine will continue to be too difficult to be applied and more and more failures in humanitarian crises' situations will occur. The United Nations' mechanisms remaining the same, the international community will continue to be inadequate in its response to mass violations of human rights and breaches to peace.

With regard to the Sri Lankan post-conflict situation, this thesis examined the fundamental role of the transitional justice process in order to achieve long-term peace and justice. As soon as the war ended, the international community started evoking the establishment of accountability mechanisms in Sri Lanka. The UN mobilized in order to investigate the unlawful actions committed during the Sri Lanka conflict and it produced various official reports that proved the commitment of war crimes and crimes against humanity both by the LTTE and by the Sri Lankan forces. In addition to the analysis of the gross violations of international humanitarian and human rights law, the UN – more specifically the OHCHR – focused on the incapability or unwillingness of the national system to provide for justice. Therefore, it suggested reforms to be implemented at the national level in order to improve the legal and judiciary systems and it proposed the establishment of an ad hoc special hybrid court – combining national and international judges, prosecutors, lawyers and investigators – in order to try the alleged war crimes and crimes against humanity. At the time of writing, the Sri Lankan Government is opposing the presence of foreign judges in the country and the process for the establishment of the hybrid court seems to be stalled. This thesis not only suggests that the proposed ad hoc special hybrid court is established in Sri Lanka, but also that a comprehensive reform of the national legal and judiciary institutions is carried out in order to improve their autonomy and independence and to

restore faith and confidence in the domestic system of justice. Moreover, it is recommended that the root causes of the conflict be addressed in the interest of realizing long-term peace between Tamil and Sinhalese peoples. Therefore, the seed of discrimination of Tamil people should be eradicated and some degree of autonomy conceded to this people.

In light of the above, this thesis concludes that the international community should take into consideration the mistakes it made in its response to the Sri Lankan conflict – which supposedly led to the death of approximately 40,000 civilians only in its last stage, as the UN affirmed. The shortcomings that still pervade the international mechanisms of peace and justice must be remedied, both at national and international levels. The responsibility to avoid such a humanitarian disaster in the future lies with the international community as a whole; the world should never stay back and watch again when a catastrophe as the Sri Lankan one is unfolding.

Appendix A

Integral Version of a personal interview to Mr. Ruki Fernando, Human Rights Activist in Sri Lanka (25 July 2016). Colombo, Sri Lanka.

Introduction to the interview:

I have read some of the articles you published in the last 10 years. Some of the topics you dealt with the most were Disappearances, Denial of Freedom of Expression and of other basic human rights in Sri Lanka.

As you probably saw from the Index of my thesis, the main argument I support is that the International Community reaction and response to the Sri Lankan Civil War seems to have been inadequate and possibly “too little and too late”

Q: Starting with the role played by foreign countries in the Sri Lankan conflict, what is your own perspective on the help provided by India with the IPKF? Dealing with the India, some of the people I already interviewed feel that Indian behaviour was one of the main causes of the conflict since its origin. Do you think the same?

A: I very strongly feel that the causes of the conflict that led to the war were the discrimination, marginalization and harassment of the Tamil community by the majority of the Sinhalese State. There are many signs of this: the standardization of education, the Official Language Act, the colonization of the dominantly Tamil areas. Even when the Tamils in the 60s-70s started campaigning in a democratic and a peaceful manner for a degree of autonomy of the areas in which they constituted the majority, there was a brutal breakdown by the Sinhalese dominated state. The Sinhalese showed insensitivity to the Tamil community’s requests, which

at that time were peaceful and democratic and were not demanding for a separate state but for some degree of independence and autonomy—notice that the name of the Tamil party was the Federal Party. If the Sri Lankan governments had accepted at least some of their democratic and peaceful requests, this war would have been unlikely. Ironically, now that the LTTE has been literally annihilated, the Sri Lankan government is willing to discuss power sharing with the Tamil political leadership, which is exactly what the Tamil people were asking in the 1960s. What is happening now is what was desirable in the '60s, discussing with the democratic Tamil Party about the degree of autonomy to be given to Tamil areas. Of course there are different opinions regarding the degree and the nature of autonomy – federal, confederal, union of states. What is happening now is that, eventually, there is debate: you have it only now, after the nation's destruction.

Answering to your question on India's role, it has been quite different from that of other states. India developed the great mixed state of Tamil Nadu and Tamils of Sri Lanka felt some sort of identification with that state. At the beginning, in the early 1970s, the Tamils took up arms and India trained various Tamil militant groups, not only the LTTE.

Then they came back and forth to Sri Lanka and the IPKF came to Sri Lanka as a result of an agreement between the Sri Lankan and the Indian governments. The LTTE was not fully part of this agreement; they were coerced at the beginning to accept it by India but I do not think this was something the LTTE wanted.

Q: Why do you think that the Sri Lankan state did not perceive the likelihood of such a war in case it did not consider even debating with the Tamils?

A: The state in Sri Lanka always saw itself as a Sinhalese Buddhist State, and this perception was reinforced by the Sinhalese Buddhist society. I am Christian Sinhalese, but our society has always predominantly thought that this is principally a Buddhist state. It is very sad to see that we are at the same stage we were in the 1960s.

Q: Did the UN, according to you, have a firm and prompt reaction to the Sri Lankan Civil War? Have there been any flaws in its way of dealing with the conflict?

A: I think we cannot talk of the UN as a whole; it is such a big organization with different components. However, as a whole, the UN clearly failed at the height of the conflict. The first failure was when they left in September 2008: they did not really try to negotiate their requested departure by the Sri Lankan government. The second failure was that they did not speak out about what they already knew was happening strongly enough. The only one who tried to speak out was the High Commissioner for Human Rights in Geneva, Mrs Navy Pillay, but I feel that the one time Department of Political Affairs tried to shut her up while she was trying to speak up. This is confirmed in a UN report, it is not something I just affirm.

The UN is a lot about member states. Membership to the UN is not about Ban-Ki Moon or the Secretary Staff; it is about countries. Therefore, member states have the primary responsibility. They failed with Sri Lanka. For example, in 2007, I and other several human rights activists from Sri Lanka and from international HRs organizations were lobbying to establish a UN Human Rights Office in Sri Lanka to monitor and report violations. The decision to establish it depended on the member states and eventually it was not created.

The western block was interested to pursue some action, but other countries were not. The Western block could not do it alone and, for example, it had to have support of Russia and China in the UN Security Council. There was not enough political support beyond the Western block to intervene.

By 2012 there was a turnaround because some Latin American, African and Asian countries were willing to take some action, but this reaction emerged only once the violations had been already committed and the war ended. In any case, the Western countries did not push enough to gain the support of other countries. We, as activists, are very used to work behind the Western block, not with Asian or African countries, but we as well did not manage to gain the support of the others, which was crucial.

Q: Why, according to you, did the UN accept the Government invitation to leave the War Zone in September 2008?

A: I cannot fully understand why. It is not really about their leaving, it is about the way in which they left. They really did not give a fight; their job was to stay there and protect civilians. The UN staff on the field did not consider protecting civilians as an important part of their work; they thought that providing water, shelter, tents or medicine was the most important part of their work.

Q: Do you feel that this government's request was actually determined by the incapability to protect UN staffers? Is there any other reason hidden behind this request according to you?

A: Of course the real reason was to have no longer international observers on the ground.

Q: Another issue that predominantly emerges while studying the Sri Lankan Civil War is that of the figure of people died during the conflict. In the international community's documents and reports on the war in Sri Lanka, there has been no clear agreement on the figure of dead civilians: some affirmed 10 thousand, some 40 and some 100.

Do you think that this disagreement has worked in favour of the Sri Lankan governments since they can react by saying that they don't know which allegations they have to respond to?

A: This is the most controversial thing. This is an issue of terminology. The first UN report by the Panel of Experts said "up to 40 thousands may have been killed". This is not equal to saying that 40 thousands were killed: it is far from it. The second report is the UN Internal Report, which says that up to 70 thousands may have been killed but again they have not categorically said that 70 thousands have been killed. These are the two UN figures. The third figure is about 98 thousands supported by the Sri Lankan ? that is a very highly regarded human rights organization in Sri Lanka. They used a mathematical figure to calculate the number of deaths and I think that this is the most credible figure.

Then the highest figure is about 146,679 dead, based on government statistics. The OISL last investigation did not deal with the numbers.

To conclude, dealing with numbers is a very sensitive issue.

Q: Should both the government and the LTTE be liable of investigation, no matter the exact number of people killed?

A: Of course they should. The governments, both the previous and the current ones, are interested in downplaying the numbers of people killed.

They have not been and are still not genuinely interested in having a real independent investigation to determine how many people died.

Q: In fact, something I also wanted to ask you is how do you feel about the continuous opposition by the actual President Sirisena towards the establishment of an hybrid special international court? Why, according to you, does he refuse to welcome foreign judges in Sri Lanka, also given the fact that the Sri Lankan Government already accepted – black on white – foreign judges and investigators’ participation?

A: Again this is an issue of terminology. On October 1, 2015 the Sri Lankan Government agreed officially to have the participation of international judges, prosecutors, defence lawyers and investigators and to have a judicial mechanism with a special prosecutor office. However, the crucial word is *participation* (emphasis added). My understanding of participation is that judges do judge, prosecutors do prosecute, defence lawyers appear on behalf of their clients and investigators do investigate. However, technically, someone can argue that observing, advising and training is also a form of participation. To me this is a bit far-fetched and quite a manipulation, but this is possible. I think this is what the Sri Lankan Government is doing, because they have already officially committed to have international participation, there is no going back on this. Therefore, they are using this stratagem.

Q: Do you think that, at the end, foreign participation will be just in the form we just spoke about?

A: I think this is the likely scenario. If the Sri Lankan Government does not fully agree to an active foreign and independent participation, no one can forcibly parachute judges here in Sri Lanka.

Q: Don't you think that in this way they convey the idea they have something to hide to the people?

A: These are politicians; therefore their first priority is not to do what is correct or what is just, but to stay in power. And to do so, they need the support of a significant number of Sinhalese. The rhetoric and the propaganda of the previous government affirming that foreign judges would come and use the electric chair against the criminals - even if this possibility is completely excluded in the international context – have been so strong that people, mainly Sinhalese Buddhist, do not want international judges.

If the President, the Prime Minister and the government now agree to have full participation of international judges, they will find it very difficult to stay in power and to be voted again. They should be able to do public outrage to convince the Sinhalese-Buddhist population on why international judges are needed. This is unlikely to happen but it can and should be done.

The reasons why international judges are needed are firstly trust and confidence and secondly competence. We simply do not have enough judges and enough experience in war crimes and crimes against humanity. These are not even crimes under the Sri Lankan law, therefore how can you domestically prosecute criminals of crimes not recognized under domestic law?

Efforts must be made in order to convince the Sinhalese-Buddhist population; Muslims and Tamils are not difficult to convince on the need of international judges and prosecutors – it is quite the opposite actually.

There is another important issue dealing with the process of transitional justice. In fact, assuming that the President agrees to the presence of foreign judges, what if then the President decides to appoint the foreign

judges himself, as he wants? This would not help us to get an independent mechanism of justice.

Therefore to have foreign judges is the necessary but not sufficient condition. Rhetorically, calling for foreign judges without looking at the details and complications does not help us at all.

Q: How should this court be established according to you? Which mechanisms should be implemented in order to create a real independent, just and fair court?

A: Maybe we can have an arrangement where the High Commissioner for Human Rights can nominate 10-15 names from different parts of the world on the basis of their competence and then the Sri Lankan Constitutional Council could pick 5 or 7 from these names.

First of all, we have to reach an agreement domestically about the proportion of foreign and domestic judges. We need to look very deeply into the details of the process of transitional justice; details create practical reality then.

Moreover, you still have to consider that, at the moment, Western countries are not so interested to the process of accountability in Sri Lanka, particularly Americans. They now care about investments and trade in Sri Lanka; they dropped the ball in terms of accountability. This is the international reality. Therefore we have to find a way to mix the domestic and the international political realities.

Talking only on principles is nice, but not useful. I and other activists lobbied to get international investigation, and we got it in 2014. It was limited in scope, but still it happened. We thought this would have never happened but in 2014, only 5 years after the end of the war – which is quite a record of time considering other international experiences as Rwanda, Peru, Cambodia, etc. – it occurred in Sri Lanka. Of course this

was not fast enough for victims, survivors or families but at least it was something.

Now we are at the next step. In fact, the international human rights investigation came up with certain findings and allegations, so the next stage must be the criminal investigation leading to prosecutions. We need to find a way now to have a formal official tribunal. We need an agreement between the Sri Lankan Government and other governments.

There have already been some little achievements in the provision of justice to survivors, victims and their families. For example, in the last year, 4 SLA soldiers were convicted to the maximum punishment for the rape of a Tamil woman. There are several other soldiers and policemen who were arrested last and this year for the disappearance of a journalist and for the killing of a Tamil politician. We never thought this would have ever happened, but it happened. I try to be realistic. We have a really small, incomplete and imperfect degree of justice, but from the victims' perspective that small degree is better than 0. For us, as activists, academics or students, principle positions on perfect justice are maybe more important than even small, incomplete forms of justice.

We can wait forever for the Sri Lankan establishment of a special international court, but victims do not want to wait forever. So do we prefer zero justice now and perfect justice maybe in 30-40 years, or do we prefer small achievements of justice while waiting for the perfect one? I would choose the second option and the victims I deal with everyday are likely to choose the same.

The arrests that already occurred are because of heavy international pressure and campaigns by the victims' families, but also thanks to the order of the Sri Lankan magistrate, due to investigations done by the Sri Lankan police. A few cases were solved locally and arrests came from local judges and courts. So, by now – and according to me also for the

next 5-10 years – the help we received from the international judges amounts to zero. We must push for the maximum we can obtain through international participation, but in the meanwhile we have to accept what we get, otherwise we lose everything.

Q: Tamils requests, before the war and during the war, were not satisfied at all at the end. Do you think that a sense of revenge can emerge and come up with a new conflict in the future?

A: This is quite possible. This is why I think that it is important that we try to get as much measures of political economy, criminal justice and reparations as possible for Tamils as well as for Muslims.

In reality, beyond Vavuniya, there was a de facto state of Tamils, with customs, security points, immigration, traffic police, bus service and banks. They had most things that a state has. For me it was a de facto state ruled by the LTTE. However, there was a failure in this state: it was very authoritarian. Tamil people were not well treated in this de facto state; there was no freedom of expression, or of assembly, or of association. There were no bodies that were allowed to function that could criticize that LTTE-led state. At the end, this LTTE de facto state behaved in the same way the Rajapaksa's state was behaving.

That experiment of the de facto state was a complete failure. The Muslim population was evicted by the LTTE in 1990 and Sinhalese were compelled to leave, so at the end there were no more minorities in this state. It was monolithic. Therefore, it is extremely unlikely that any foreign government and, more generally, the international community will ever accept even the idea of a separate Tamil State, because the previous de facto state was definitely a failure. The LTTE did never demonstrate any progress in the levels of development and freedom for the Tamil population. No separate state can be created without the

acceptance of the international community, and this prospect is very unlikely according to me. Therefore, I feel that the most viable way for the Tamils now is that of seeking autonomy while staying in the united state of Sri Lanka. I think that the Tamil community deserves a substantial degree of autonomy and devolution of powers by the Sri Lankan government not only because of the legitimacy of this democratic request, but also because it is something practical. Tamil people for decades have voted for Tamil parties; they want to be mainly represented by their people, the party they vote for.

Moreover they deserve restoration for the victims and for the abuses they were submitted to.

Q: What do you think about the role of NGOs – both national and international – in the Sri Lankan Civil War?

A: Many international NGOs were helpful in highlighting human rights abuses and to protect human rights activists. They raised visibility and they firstly pursued the establishment of the international hybrid court. Some of us activists faced a lot of trouble during the Rajapaksa time – me too. I was arrested and then released after two days especially thanks to the international reaction to my detainment – both NGOs and diplomacy. We continued to pursue our goals as activists also in that dangerous period for us because we knew that even if we had been in trouble, someone would have protected us. Not only international NGOs helped us, but also the media (Al Jazeera, Channel 4 films etc.) and published books as those by Frances Harrison or Gordon Weiss. All these materials were instrumental to determine the shift between support to the Sri Lankan government and its denial by the international community – the shift can be easily noticed in the sharp drop of votes in favour of the Sri Lankan Government in the Special sessions of the UN Human Rights

Council. In its first session, in May 2009, 29 out of 47 countries voted in favour of the Sri Lankan Government; by March 2012, only 15 out of 47 countries voted in favour.

International NGOs work on the shoulders of national NGOs, whose role is therefore fundamental. There are many who criticize the fund raising role of NGOs. Nevertheless, everyone must be paid for the work he or she does. This is a ridiculous argument. In any case, also NGOs must be looked at in a critical way.

I also feel that there have also been cases in which many NGOs have failed. For example, we as NGOs campaigned a lot to have the HRs Special Session in 2009, but this was a mistake because it was too early.

Q: How do you feel about the definition of the LTTE as a terrorist organization?

A: Both the LTTE and the Sri Lankan government committed terrorist actions. If you define the LTTE as a terrorist organization, then you have to define the Sri Lankan actions as state-terrorism.

The initial discrimination by the dominant Sinhalese state of Tamil people was the reason why Tamil militancy was born. Then, the latter escalated into acts of terrorism. Tamil militancy could have existed without being so brutal I think, if it wasn't for Prabhakaran's brutal nature. I think that LTTE brutality and Sri Lankan brutality are not correlated.

What I mean is that just because the Sri Lankan government massacred Tamil civilians in the 1950s-60s, it does not necessarily mean that the LTTE had to massacre Sinhalese civilians later on. The Sri Lankan government was the first to become so inhumane and brutal; LTTE's brutality came as a reaction, even if it is not justifiable in any case. Nevertheless, at the beginning of the vicious cycle stands the Sri Lankan Government.

Even today, if the Sri Lankan government was more reasonable – without going around and arresting, torturing people, occupying people’s land and all that – then I think that Tamils in the North would be much more friendly to this Government and to President Sirisena. Since the Sri Lankan government is not very sensitive to the Tamils, those groups that are sympathetic to the LTTE can gain support. Everything can happen again if Tamils continue to be discriminated and to feel frustrated by the Sri Lankan government.

Appendix B

*Integral Version of a personal interview to Mr. Shamindra Ferdinando,
Journalist of the Sri Lankan Newspaper The Island (22 July 2016).
Seeduwa, Sri Lanka.*

Q: In many of the articles you published for the newspaper The Island, you seem to affirm that India represented one of the main causes of the Sri Lankan Civil War. Is this your actual view?

A: India is not only one of the causes of the War; it is its main cause. India's Foreign Secretary, J.N.Dixit released the book 'Makers of India's Foreign Policy'. In this book, the author basically explains why India intimidated Sri Lanka. During the conflict between the US and the Soviet Union in the 1980s, India took the side of the latter, while Sri Lanka was on the side of the US. Therefore, the Indian decision to destabilize Sri Lanka is based on that. No lesser person than the Foreign Secretary of India blames the then Indian Prime Minister for that. (information to be retrieved in the book "Makers of India's Foreign Policy" by J.N.Dixit). All the people who want to study the Sri Lankan case, must first study this issue because it all started from that. This is the foundation of our conflict.

Q: As far as India concerns, how would you resume its role from the beginning till the end?

A: At the beginning India trained and armed the LTTE. As Dixit said, India felt threatened by Sri Lanka's friendship and partnership with Pakistan, Israel and the US. China at that time was not involved at all.

Then Dixit says that India decided to intimidate Sri Lanka. India recruited Tamils from Sri Lanka, brought them to India, trained them and then sent them back to Sri Lanka through boats from 1983 up to 1987.

Therefore, India organized terrorism in this country. The Indian Government did not come here to fight the LTTE. Initially it trained more than 6 Tamil groups, from 1983 to 1987. In June 1987, the Indian government created the situation for its intervention when the former Sri Lankan government said that it had to destroy the LTTE in the Jaffna Peninsula. They sent the Indian Army (through the IPKF) from July to October 1987. They tried to under control the situation, they asked the LTTE to put down their weapons but it refused. Then the war was between the LTTE and the Indian Army, which lasted until March 1990. The Indian IPKF then left without solving the conflict, and this means that they just wanted to intervene in Sri Lanka to intimidate it.

I compared the Indian training of Tamil Tigers in Sri Lanka with the US training Talebans in Afghanistan. It's the same situation: they wanted to control Talebans against the Soviet Union, then things went out control, then chaos. You take the ISIS, they wanted to use it against Syria, and then things went out of control, then chaos. Iraq and Libya are other examples of this.

I feel that Indian accountability must be addressed as well as the Sri Lankan one.

Q: The other state I would like to have information about from you is Norway. Why, according to you, was Norway so interested in solving the Sri Lankan conflict?

A: Norway, being a member of the NATO, wanted international recognition; it did not have a great military power, so it thought that – by picking a situation in which it could show its involvement and power – it

could demonstrate how powerful it was. Norwegian rule here been underwritten by 3 other countries or groups of countries: USA, EU, Japan. Norway achieved international recognition through its intervention in Sri Lanka, even if it pathetically failed in Sri Lanka (as it did in the Israel-Palestinian conflict). Norway's problem was that it thought that it could buy peace by giving money to the right people. I have mentioned in my articles how some Sri Lankans obtained money from Norway. There was one person who obtained \$6 millions by Norway. In a 3-years period, they provided a total of \$28 million, but they did not build hospitals or schools or roads. They just issued statements to the media.

Q: I have read in the book “The Twilight of the Tigers” by the Sri Lankan academic G. H. Peiris, that the Ceasefire Agreement of 2002 written and sponsored by the Norwegians was – according to the author – particularly flawed and, in many aspects, went against the Sri Lankan Government in favour of the LTTE. Do you support this argument?

A: The Ceasefire Agreement of 2002 was prepared in Norway and the former government of Sri Lanka agreed with it. Therefore, I do not blame Norway. We have supported and signed this agreement. For the first time, that agreement recognized that a part of the country was under LTTE control.

Q: Do you think that both Norway and Sri Lanka agreeing on this Ceasefire Agreement left too much space to the LTTE?

A: Certainly. Even the former President Rajapaksa has sit and talked with the LTTE. He made an attempt to speak to them and tried his best. I feel that president Rajapaksa believed that the Sri Lankan Army was

incapable of defeating the LTTE. He undervalued the strength of the SLA, but if you go through the American Defence Report, prepared by the US Defence Department, it assessed that if you provided the SLA with the right weapons and equipment, they could have surely defeated the LTTE.

Q: Sri Lanka has recently been under investigation for the alleged commitment of war crimes. Can you provide your personal opinion on this issue, starting with the number of victims caused by the War?

A: If you read article 137 of the Report of the Secretary-General's Panel of Experts on Accountability in Sri Lanka (31 March 2011), it says: "Two years after the end of the war, there is still no reliable figure for civilian deaths, but multiple sources of information indicate that a range of up to 40,000 civilian deaths cannot be ruled out at this stage". Amnesty International, in September 2011 – just a few months after the Report mentioned above – released another report in which it says that only 10 thousands civilians died. So, if the sources are the same, how can there be such a huge difference in the number of civilians killed? The British Parliament further affirmed in September 2015 that the SLA killed 100 thousand people. If the allegations are true, there cannot be different figures because they come from the same sources. Evidence cannot come out from different figures of civilians killed. Such a huge difference among figures is not possible. For 20 years evidence cannot be checked and verified according to the UN report.

Q: As you probably know, the current President of Sri Lanka, Mr. Sirisena, recently commented, in an interview by Sunday Times, on the UN recommendation of establishing an international hybrid court by saying that: "Very clearly we do not need foreign judges. We can resolve

any problem within the country without foreign intervention. If necessary we can obtain foreign technical support. That again will be without any commitment or conditions attached”.

The idea of this court was that of including independent foreign judges in the investigations in Sri Lanka probably because the domestic judicial order is considered not capable. Why do you think that the current President supports the idea that foreign intervention is not needed?

A: My personal opinion is that I would have no objection to see foreign judges dealing with this case, absolutely no issue. However, the people who made allegations must come in Court as well. You cannot simply make allegations to a country without coming forward. Our country agreed with the establishment of this Court in Geneva in 2015, provided that the people who alleged that the SLA killed 40 thousands of people come into Court as well. How can you have an international inquiry without people making the allegations coming forward?

If you want to investigate, the people who made these allegations must come into Court.

Q: Couldn't these people be afraid of coming to Court given the allegations they made?

A: So you cannot make allegations. Why should we accept allegations made by people who are not coming to Court and who do not even agree on the figures of the number of victims?

Q: Don't you think that this rejection of foreign judges by the Sri Lankan Government can convey to the international arena the impression that it has something to hide? Why doesn't Sri Lanka want to defend itself in

front of international and independent judges from the accusations it is subject to?

A: How can you defend yourself if you do not know who is making the allegations? Do we have to defend from the allegation of having killed 10, 40 or 100 thousand people? Who do we have to respond to?

In any case I think that the government is divided on this issue. We have agreed to establish this court, so in reality we cannot say no. The country, I believe, will accept.

Q: Therefore, since the Sri Lankan government accepted to have international involvement in order to provide for justice to victims, why according to you does President Sirisena repeatedly say that he will not accept foreign judges?

A: My opinion is that he cannot say that now. His government has agreed, so he cannot say no. We have nothing to hide, even if some excesses occurred. There is no question: we should face international judges. The issue of accountability is something we must address; we cannot run away. Those who made allegations, nevertheless, must prove their case.

For example, the High Commissioner for Human Rights, Mr. Zeid Ra'ad Al Hussein, recently said that they have fresh evidence that the Sri Lankan military used cluster missiles. This is something we have repeatedly denied. We did not use them even if the US State Department advised Sri Lanka to use cluster missiles. How can you now accuse Sri Lanka of having killed many civilians with something that no one lesser than the US Government advised us to be us? This seems ridiculous.

Q: Why should the states and especially the UN be so interested in going against the Sri Lankan Government if the allegations, as you said, are false?

A: There are many issues on this. The US, for example, used to work very close to the Sri Lankan Government. Then Sri Lanka engaged in close relationships with China and the US was unhappy with this. The Sri Lanka – China relationship has damaged the Sri Lanka – US one.

Why do they all care about Sri Lankan accountability, which of course must be addressed, and no one cares about the accountability of India, which created terrorism in our state?

Sri Lankan people are very unhappy, because they understood that Western powers adopt double standards. Take as an example the investigation by the UN in Sierra Lion. The former Liberian President Charles Taylor was sentenced to 50 years in prison. The UN Court found that he was guilty for destabilizing the neighbouring country by arming and killing children etc. If you take Sri Lanka, you see that India did the same here, but no one is asking and investigating about this.

Q: As far as what I have understood from your articles, you affirm that the worst Sri Lankan mistake was that of not defending enough itself from allegations made against it. How do you think that Sri Lanka should have defended itself and should do it now? Which are the steps to be made?

A: If you read once again the Report of the Secretary-General's Panel of Experts on Accountability in Sri Lanka, they made these main allegations against the former government of Sri Lanka: first, the indiscriminate use of heavy hard fire on civilians; second, the done on purpose deprivation of the Tamil population of food and medicine.

With regard to latter, I have proved that this is not true in my article named “Charge of depriving Vanni population of food and medicine: fact and fiction” (The Island, 19/07/2016). The ICRC and the WFP can confirm the amount of food brought by the Sri Lankan Government to the Tamils. The other major allegations must be, once again, seen in the light of the figure of number of victims: 10 thousands, as the Amnesty International report affirmed, or 40 thousands as the UN said or 100 thousands as the British Parliament said? Who should we respond to? Previous governments should have asked the international community to give us a figure. You cannot respond to different allegations with different figures to different people during the same year.

Many foreign media, not all, supported the LTTE cause. The media received information from some diplomatic missions in Colombo and they based their assessment on such information. They believed that the LTTE could not be defeated: they were 100% sure. However, the UN mission in Colombo in 2008 initiated a study, the most comprehensive one undertaken by the UN in Sri Lanka. In this report, published in 2011, the UN establishes a figure: from August 2008 up to May 2009 they have recorded every death of civilian and of Tamil cadre and the figure comes to 7721 killed. Then the UN refused to acknowledge its own report. Not only the UN, but also some NGOs, the clergy and the ICRC prepared this report. When I asked the UN why they did not recognize any longer their own report, they answered that the figure of 7721 is not enough. So do we have to kill 40 thousand people to make them happy? The problem is that our idiotic politicians failed to use this information to defend from following allegations.

What did you expect from the SLA at the end? Did you expect it would have stopped its offensive against the LTTE that was attacking?

Q: Even accepting the idea that the offensive was necessary at the end, why did the Government of Sri Lanka establish No Fire Zones and then shell them?

A: The Government of Sri Lanka did never establish NFZs.

When the LTTE forced people to cross the A9 road and go to the East, many civilians were kept in a very small area. The Government did not announce that this area was a NFZ. The people went there and then the SLA was instructed by the Sri Lankan Government not to use heavy weapons on those areas. They used heavy weapons anyway, but not deliberately on the civilians.

People talk about a war without witnesses. The Government of Sri Lanka, in 2008, asked the UN to leave the war zone. However, some people from the ICRC and the UN were allowed to stay.

Q: Do you think that the true reason of the request of the Sri Lankan Government to the UN to leave the war area was really that of the inability to protect UN staffers any longer? Many support the idea that the hidden origin of this request was the will to have no more international observers in the field and, subsequently, no witnesses.

A: In 2008 there was a huge battle for Kilinochchi town. The UN observers were in the middle of the fight. How could the Sri Lankan Government leave them there? If they wanted to stay and get killed it was their problem, but they left.

Q: I also read in your articles that you fiercely criticized the documentary “Sri Lankan Killing Fields” from the British Channel 4 by affirming, for example, that it propagates lies regarding the shelling of NFZs by the Sri Lankan Government, that it undervalues the military power of the LTTE

compared to that of the Government and so on. In general, it seems that you say that the UK media just looked at the SLA side instead of giving evidence also of the LTTE side with regard to war crimes. Given that, my question is how do you feel about clear images and videos shown in the report by Channel 4 in which the SLA soldiers rape women, even dead ones, and execute prisoners? How would you justify these actions?

A: How can you recognize that they are Sri Lankan soldiers? Is it just because they are wearing a uniform similar to that of the SLA? It can be anyone. In the case of Iraq, the media and the CIA built an image of Iraq in order to have the legitimization to invade the country in 2003. The British media made allegations similar to those made against Sri Lanka to Iraq as well in 2003. I contacted Channel 4 people during the Commonwealth meeting in Australia. Of course there can be isolated cases: the British Army did it, the Italian Army as well, the Russian did. It would not be the first time. If there is someone responsible for this, this must pay for violations, even judged by an international court as I said before. If there were these cases, they must be addressed without any doubt. However, how can you make allegations without verifying evidence?

The US Defence Advisor in Colombo, who had been stationed in Colombo throughout the war, said that there were no bases for allegations according to which the Sri Lankan Army killed people who were surrounded. I told this story, and this was denied by the US State Department, which said that the Defence Advisor was making personal explanations and statements. However, he said the truth.

The previous Sri Lankan Governments did not have the brains: they did not go through all this and this was a big mistake. They had a plenty of time to face all these allegations, but they did not. This was stupid.

Q: As you saw from the index of my thesis, I support the argument that the international response to the war was inadequate and possibly too little too late to solve the conflict. Do you think that this is true?

A: The international community and the Western powers tried to appease the LTTE. To give you an example of this, in 2007 two UN staffers were detained by the LTTE because it did not want them to let Tamils flee from the war zone. The UN kept this happening secret and did not report the kidnapping by the LTTE of these two UN staffers. They did so exactly to appease the LTTE. The UN system here did not want people of this country to know that the LTTE was treating UN people in the same way as they treated their enemies.

There were a lot of flaws in the behaviour of the international community dealing with our conflict. It failed to restrict the LTTE: they could and should have forced the LTTE to surrender.

The international community, which I intend as the UN and Western powers, did not constrain the LTTE power on time and from the 1980s, when India started intimidating Sri Lanka, they did not do anything. They just turned the other way. This was a clear example of a big power intimidating a smaller neighbour country by introducing terrorism in it. There is not even a single step the international community made to stop Indian intimidation in Sri Lanka. This happened because they had important trade relationship with India. Moreover, since terrorism settled in Sri Lanka, the main suppliers of weapons to Sri Lanka turned the other way because of Indian power, especially the UK, France, Germany from which we were used to obtain weapons for the SLA. Italy was the only European country in the 1980s that continued to sell us the aircraft.

Sri Lanka received no help because of the Indian influence. Initially Israel, with the understanding of the US, Pakistan, China, South Africa, Iraq, Czechoslovakia, Russia provided Sri Lanka with big support. The

US did not provide support for a period, but then after 1995 it sold us 4 vessels to face the LTTE and it trained the Army.

The UN should have stopped the intimidation of India from the beginning. The Sri Lankan government under the Presidency of Premadasa did a big mistake when the Indian Army wanted to destroy the LTTE and, instead, the Sri Lankan Government decided to initiate a process of understanding of the LTTE. It foolishly requested India to draw its army from Sri Lanka in 1990, March. If it didn't, the Indian Army from that moment on should have taken care of the LTTE. The UN, even in this case, did not take up this issue at all. India was allowed to do anything. Since the UN had interests in India, they did not intimidate India for its actions in Sri Lanka.

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FACULTY: POLITICAL SCIENCE

Chair: International Organizations and Human Rights

Abstract

THE SRI LANKAN CIVIL WAR
AND THE INADEQUACY OF THE
INTERNATIONAL RESPONSE

SUPERVISOR
Prof. Francesco Cherubini

CANDIDATE
Sara Del Debbio
ID 625322

CO-SUPERVISOR Prof.ssa Maria Rosaria Mauro

ACADEMIC YEAR 2015/2016

About the thesis and research methodology

Before focusing on the subject of this research work, it seems important, to the author, to outline the reasons that triggered her interest in the Sri Lankan Civil War and the research methodology used in order to deal with it.

The conflict – which lasted 26 years – has received little international attention until its very last stages, when the humanitarian crisis was evidently unfolding. The limited attention accorded to Sri Lanka – especially when compared to the extensive media coverage of other internal conflicts – aroused the author's interest in the dynamics that pushed this conflict in a shadow zone. The study of the Sri Lankan Civil War turned out to be extremely interesting – to a student of International Relations – not only because of the peculiarity of the domestic context, but even more due to the role played by the international community in this specific conflict, as the thesis will show.

With regard to the research methodology, this work – apart from being based on the study of various scholars' works on Sri Lanka, ethnic conflicts, international relations, international organizations and human rights, United Nations' official reports and so on – is also based on the direct experience of the author in the country. In fact, she recently had the chance of studying the issue directly in Sri Lanka for a period of time. This field research was extremely useful in terms of the accounts of experiences received by local people who personally witnessed the war period. The thesis will make particular use of two interviews done on the field to a famous Sri Lankan journalist and to a human rights activist.

The Sri Lankan Civil War – History of an ethnic conflict

This thesis will focus on the Sri Lankan Civil War, which covered the period between 1983 and 2009 and was fought by the Sri Lankan Army and the separatist Liberation Tigers of Tamil Eelam (LTTE). The aim of this thesis is to demonstrate the inadequacy of the international community's response to the Sri Lankan Civil War, given the seriousness of the crimes committed during the war and the humanitarian disaster that occurred in the last phase of the conflict and that implied too many civilian casualties.

The Sri Lankan Civil War was an ethnic conflict between the minority constituted by Tamil people and the Sinhalese-Buddhist majority. Once the British colonial rule had ended and the independence was gained by Sri Lanka in 1948, the race to dominance on the part of the Sinhalese started and, with it, the discrimination of Tamils on the basis of a pure Sinhalese nationalist feeling. The discrimination of Tamils – formalized by the policies implemented by the successive Sri Lankan Governments from independence until the outbreak of the war – provoked increasing resentment on their part and, as a consequence, calls for justice, inclusion and, in particular, equality of opportunities with respect to the Sinhalese majority started spreading. Initially, Tamils' requests were expressed in a peaceful manner, through non-violent protests for example. Nevertheless, these demands being rejected, anger and lack of faith in a sea change in Sri Lankan policies towards the Tamil minority emerged among Tamil people and led to a radicalization of some of its groups. By the end of the 1960s and beginning of the 1970s, 37 Tamil militant groups were formed and, since their establishment, they started clashing with the Sri Lankan Government. The LTTE particularly emerged among these groups and it eventually managed to become the only Tamil militant group on the scene able to pose

challenges to the national institutions. As this thesis will show, if the Sri Lankan Governments had addressed at least some of the initially peaceful Tamil quests, the violent conflict would have probably been avoidable.

The war broke out in 1983 and in no way it has been possible to reach a political and peaceful solution to the conflict. Violence continuously escalated since the beginning of the war, reaching its apex during its very last stage. An in-depth analysis of the root causes of the ethnic conflict and of the creation, structure and requests of the separatist LTTE will be provided. Only having this framework in mind the reader will then be able to approach and understand the various phases of the Sri Lankan conflict, which has been usually divided in the four Eelam Wars – meaning the wars for the creation of the independent state of Tamils in Sri Lanka. Having dealt with the parties to the conflict and with the timeline of its events, the central section of this work will focus on the Sri Lankan Civil War in an international perspective, analysing the role played by foreign states and by the United Nations in the conflict. It is precisely from this analysis that the argument of the inadequacy of the international response to the conflict emerges.

The Inadequacy of the Response of Foreign States' to the Conflict

The foreign states involved in the conflict have been, for different sets of reasons, either unwilling or unsuccessful to promote and achieve a political and peaceful solution to the conflict between the LTTE and the Sri Lankan Government.

The first foreign state to be taken into account with regard to the intervention in the conflict is India, which played the role of most powerful state in the region during the war. India was dramatically incoherent in its behaviour with regard to the Sri Lankan war. At the beginning, it supported the Tamil cause, also because of the strong link

that tied together Indian and Sri Lankan Tamils, and even supported and trained the LTTE. Subsequently, India tried to induce negotiations between the parties to the conflict and, this attempt having failed, it signed the Indo-Sri Lanka accord, which implied the deployment of the Indian Peacekeeping Force (IPKF) in Sri Lanka. In other words, India militarily intervened in the country in order to solve the conflict and passed from supporting the LTTE to fighting against it. This intervention turned out to be a complete failure and, after the withdrawal of the IPKF from Sri Lanka, India changed its policy again and decided to adopt a 'hands off policy' towards the ethnic conflict, until the last phase of the conflict. During the latter, in fact, India transformed its role again, becoming a supporter of the Sri Lankan Government in its fight against terrorism. In general, it appears that India – through its continuous changes of policy – normally followed a self-oriented strategy with regard to the Sri Lankan conflict.

Norway's involvement in the conflict was second only to India with regard to its relevance. In fact, Norway played the fundamental role of third party facilitator in peace negotiations between the LTTE and the Sri Lankan Government since the beginning of the 2000s. In 2002, Norway brokered a Ceasefire Agreement (CFA), between the two parties to the conflict, which was aimed at formalizing the suspension of the campaign of war of the LTTE and at establishing a dialogue between the parties in order to reach a peaceful solution to the conflict. The CFA conditions started to be violated soon after it entered into force and Norway was unsuccessful in achieving a peaceful resolution. Dealing with Norway, this thesis will particularly focus on its motivations for getting involved in the Sri Lankan issue as well as of Sri Lanka for the choice of Norway as facilitator of peace talks.

Other states played a more limited but still significant role in the Sri Lankan conflict, namely Japan, the US, the EU, China, Pakistan and

Iran. These states' actions in response to the Sri Lankan conflict differed on the bases of labelling – or refraining from doing it – the LTTE as a terrorist organization, of the degree of economic and humanitarian assistance to the country, of support or opposition to the actions of the Sri Lankan Government in the last phase of the conflict and to the establishment of accountability mechanisms for the alleged crimes committed during the war – as independent investigations and an ad hoc special hybrid court. Moreover, some of these states decided to link their assistance and support to Sri Lanka to the improvement of peace talks and to increased protection of human rights, while others – as China – continued to ensure their military and economic assistance, regardless of the allegations of war crimes and crimes against humanity committed during the conflict.

The Inadequacy of the Response of the United Nations to the Conflict

Having proved the inadequacy of the foreign states' response to the Sri Lankan conflict – because too little too late or even counterproductive – this thesis analyses the response of the United Nations to the war. The UN involvement in Sri Lanka was particularly relevant during the fourth Eelam War – from 2006 to 2009 – at the end of which the humanitarian crisis occurred. The actions – and in some cases inactions – of the United Nations raised concerns about its effective ability to pursue its goals and mission. This thesis supports the idea that the UN dramatically failed in Sri Lanka, considering its supposed leading role in the international maintenance of peace and security.

The first UN action raising concerns about its effective capability or willingness to protect the population caught up in the conflict corresponded to the UN abandonment of the war area in September 2008, when it was officially exhorted by the Sri Lankan Government to do so.

Expectations of civilians living in that area about the aid they would have continuously received by the UN were high and were definitely disappointed. Later on, when the conflict reached its apex and there was evidence of the unfolding humanitarian disaster, the UN failed again in that it was unable to formally insert Sri Lanka in the Security Council agenda and to take action. The reaction of the UN to the conflict was definitely inadequate, as proved in this dissertation. The Security Council remained blocked because of Russia and China, which would have not hesitated to make use of their veto power in case a resolution warning Sri Lanka to restrain its forces tried to be passed. The application of the Responsibility to Protect (R2P) principle – formally adopted by the United Nations in 2005 and promoted thereafter – miserably failed in Sri Lanka in both of its tasks of prevention of conflict and of responsibility to react to humanitarian crises. The implementation of the R2P in its interventionist stage being dependent on the multilateral consensus of the Security Council, the responsibility to intervene fell on the shoulders of its members. Nevertheless, there was neither enough interest in getting involved in the Sri Lankan situation nor enough willingness to compromise other geo-political interests by intervening in the country. The result was that the international community left the Sri Lankan people to fend for themselves in the worst period the country had ever experienced.

Among the flaws of the international mechanisms for peace and security that emerged while observing the international response to the Sri Lankan Civil War, possibly the worst and most difficult to be overcome continues to regard the influence that the five Permanent Members of the Security Council can exert on its decisions. The five Permanent Members, in fact, can use their exclusive veto power in order to oppose and block any Security Council decision. One Permanent Member's contrary vote is already enough to block a Security Council

decision. There have already been various proposals of reform regarding the elimination or the extension to other members of the veto-power, but the SC members did not welcome these proposals. When the R2P was discussed, new reform proposals were made according to which – at least in the event of a humanitarian disaster unfolding in a state that was unwilling or unable to solve it – Permanent Member States should refrain from using their veto power in order to allow third-party intervention in the above-mentioned state. Permanent members rejected even these proposals.

In the specific case of Sri Lanka, the fact that China alone, or Russia alone, could decide on the application or non-application of on-ground Responsibility to Protect intervention, while a humanitarian crisis was evidently occurring, creates many doubts concerning the capability of the international community to be effectively helpful in this type of circumstances. The UN failed, as already explained, and as it, itself, admitted in one of its Reports on its action in Sri Lanka. This work supports the idea that, until the Security Council is reformed in the sense of reducing the power of the five Permanent Members – either by eliminating the veto power, or by prohibiting its use in specific circumstances, as when dealing with humanitarian crises’ decisions – the application of the R2P doctrine will continue to be too difficult and more and more failures in humanitarian crises’ situations will occur. The United Nations’ mechanisms remaining the same, the international community will probably remain inadequate in its response to mass violations of human rights and breaches to peace.

After the end of the war, the United Nations action increased due to its willingness to ensure accountability for the alleged crimes committed during the war and to promote reconciliation in Sri Lanka. In other words, the UN tried – and is still trying – to be deeply engaged in the process of transitional justice in the country, as explained below.

The Transitional Justice Process in Sri Lanka

With regard to the Sri Lankan post-conflict situation, this work examines the fundamental role of the transitional justice process in order to achieve long-term peace and justice. As soon as the war ended, the international community started evoking the establishment of accountability mechanisms in Sri Lanka. The UN, under pressure of many of its member states, mobilized in order to investigate the unlawful actions committed during the Sri Lankan conflict and it produced various official reports that proved the commitment of war crimes, crimes against humanity and other serious human rights abuses both by the LTTE and by the Sri Lankan forces. Of particular relevance, with regard to the fostering of accountability in the country, was the role played by the UN Office of the High Commissioner of Human Rights (OHCHR). The analysis of the various UN Reports – on Accountability in Sri Lanka and on the Action of the UN in the conflict – provides the reader with the right framework in which the essential need for justice in the country should be understood.

In addition to the analysis of the gross violations of international humanitarian and human rights law that occurred during the island's conflict, the UN – more specifically the OHCHR – focused on the inadequacy of the national system to provide justice, either because of its incapability or unwillingness. Therefore, it suggested reforms to be implemented at the national level in order to improve the legal and judiciary systems, and it proposed the establishment of an ad hoc special hybrid court – combining national and international judges, prosecutors, lawyers and investigators – in order to try the alleged war crimes and crimes against humanity. The OHCHR recommendation to create such a court in Sri Lanka is in compliance both with the recent trend to entrust

the process of transitional justice to these special hybrid courts and with the actual needs of the country. The establishment of this hybrid court is suggested not only because of the evident flaws of the national legal and judiciary systems in terms of independence, autonomy and impartiality, but also because it is complex, for a domestic system alone, to deal with crimes that go well beyond national jurisdiction. War crimes and crimes against humanity constitute violations of international humanitarian law and human rights law. The judges appointed to try these crimes must have accurate knowledge of the international laws mentioned above and precedent experience in dealing with these cases. International judges could guarantee higher degrees of expertise, impartiality and independence than the national ones, especially when dealing with crimes committed by the national government itself.

At the time of writing, the details of the establishment of the ad hoc special hybrid court have not been defined yet and, more importantly, the Sri Lankan Government is currently opposing the presence of foreign judges in the country, leading to a stalemate in the process of transitional justice.

Prospect of Peace and Justice - Suggestions

The last phase of the Sri Lankan conflict was marked by the commitment of war crimes, crimes against humanity and other serious human rights abuses. The international community was too little too late in realizing the status quo of the humanitarian crisis that Sri Lanka was facing. As soon as the war ended, many countries and, in particular, the UN mobilized in order to investigate the crimes committed by both the LTTE and the Sri Lankan forces during the conflict, to prosecute the perpetrators of these crimes and to ensure justice to the victims. The transitional justice process in Sri Lanka is ongoing at the time of writing

and the future prospects of peace and justice in the country are still uncertain.

Nevertheless, this thesis recommends some courses of action to be undertaken by Sri Lanka and by the international community in order to foster long-term peace and justice. Firstly, it backs the idea that addressing the root causes of the conflict is the *conditio sine qua non* for the effective achievement of long-term peace between Tamil and Sinhalese peoples. The original cause of the conflict must be found in the discrimination of Tamil people by the Sinhalese-Buddhist majority and the seed of the resentment between the two must be eradicated in the interest of realizing real peace. Moreover, some requests of Tamil people that have been considered legitimate by the majority of scholars studying the ethnic conflict in Sri Lanka should be welcomed and satisfied. Among these, there is clear need for a certain degree of autonomy of Tamils, for real and significant devolution of powers to this minority and for equality of opportunities between Tamil and Sinhalese-speaking people. Further inclusion and integration of Tamils in the society is an essential ingredient for long-term peace. Not only inclusion in the society is fundamental, but also inclusion in the governance. Tamils call for more self-determination of their minority and see this as the only salvation from the recurrence to violence.

Apart from pleasing these requests as soon as possible, the other necessary condition for the building of long-term peace is that justice is done and accountability ensured with respect to the crimes committed during the war. In this regard, this thesis promotes the establishment of the ad hoc special hybrid court proposed by the UN High Commissioner for Human Rights, but it also argues that this must be accompanied by radical reforms of the judiciary and legal system of the country in terms of de-politicization, strengthening of autonomy and impartiality and increased access to justice for the marginalized. A comprehensive reform

of the national institutions dealing with justice must be carried out in order to restore faith and confidence in the domestic system.

Conclusion

In light of the above, this thesis concludes that the international community should take into consideration the mistakes made in its response to the Sri Lankan conflict – which supposedly led to the death of 40,000 civilians only in its last stage, as the UN affirmed. The shortcomings that still pervade the international mechanisms of peace and justice must be remedied, both at national and international levels. The responsibility to avoid such a humanitarian disaster in the future lies with the international community as a whole; the world should never stay back and watch again when a catastrophe as the Sri Lankan one is unfolding.