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## INHUMANITY AND HUMANITARIAN ACTION

*Protection Failures in Sri Lanka*

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## **Cover Photo**

Village near Mullaitivu

Credit: Norah Niland, July 2012

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*Extending a hand to those caught in trouble, rescuing the dying and helping the injured is a form of humanitarianism, unrelated to love of country or people.*

*. . . we need to face up to the way the world works. The true misfortune of the dead lies in the unconsciousness and apathy of the living . . . in our numbness toward the right to survival and expression, in our distortions of justice, equality, and freedom.*

—Ai Weiwei, May 2008



## I Introduction

In May 2009, after more than a quarter century of armed conflict and a number of failed peace initiatives, Sri Lanka's civil war came to an end on the blood-soaked beaches of Mullaitivu. An estimated 40–70,000 civilians were killed in the final months of the war.<sup>1</sup> Thousands of ordinary citizens were forcibly disappeared and have not yet been accounted for.<sup>2</sup> Some 300,000 of the war's survivors were held in brutal conditions in closed military-run camps that flouted all humanitarian principles.<sup>3</sup>

Other crises, such as Syria and South Sudan now dominate news reports of massacres and means of warfare that maximize the suffering of civilians to advance military agendas. The cessation of hostilities in Sri Lanka, however, did not bring an end to the marginalization of Tamils and other minorities. The government is no less reluctant than before to harass or threaten those who challenge a well-documented pattern of continued human rights violations. Nonetheless, the humanitarian community has, effectively, moved on and has done so with few, if any, backward glances. The experience of the humanitarian system during the end phase of the war, when the bloodletting was most intense, has not received the type of reflection or examination that occurs, more or less routinely, in other crisis settings. The reluctance or lack of interest in using hindsight to identify lessons that could inform humanitarian action in other war zones poses obvious questions about the commitment of the relief system to being accountable to those it claims to serve. It also poses questions about the commitment of the humanitarian community to face up to the protection challenges inherent in to-day's war zones.

Most relief actors have a long history of being less than enthusiastic about acknowledging, or acting on, their responsibility to address or mitigate the impact of practices that endanger the safety

and dignity of war-affected civilians. The agreed definition of "protection" in the context of humanitarian action is broad, lacks distinction, and its essence often gets lost in translation.<sup>4</sup> There is also a great degree of confusion and lack of consensus as to what constitutes protective humanitarian action in crisis situations.

For the purposes of this paper, efforts to enhance protection include, first and foremost, an overall strategic analysis that determines the nature of the factors and circumstances putting lives at risk. Patterns of harm will vary but is categorized here as violence, such as indiscriminate warfare, abuse such as gender-based sexual violence or recruitment of child soldiers, discrimination such as the marginalization of particular groups or the restriction of access to relief and undignified treatment or living conditions such as being confined to a closed camp or demeaning relief distribution systems. Effective and protective humanitarian action is about bringing about change such as reducing exposure to risks, the provision of remedial care such as counseling for rape victims, or securing respect for core humanitarian norms. In sum, "protection" in contentious settings is not, as often depicted, merely a question of advocacy but, rather, sound programming geared to addressing or mitigating patterns of harm that put lives at risk.

This paper argues that the relief system has a responsibility to examine whether it could have been more strategic, assertive and protective in reducing the impact of the war on civilians in Sri Lanka and mitigating the suffering of survivors when the war was over.

The carnage in Sri Lanka has led to an internal United Nations (UN) review that examined the role and effectiveness of varied UN entities and the larger UN system to deliver on its political and protection responsibilities during the final stages of the war. This has, in turn, resulted in two policy

<sup>1</sup> UN, "Report of the Secretary-General's Internal Review Panel on United Nations Action in Sri Lanka," New York, November 2012, p 14.

<sup>2</sup> IRIN, "Thousands missing three years after war ends," May 18, 2009

<sup>3</sup> Roger Nash, "Protecting or Facilitating? A review of the humanitarian response to IDP detention in Sri Lanka, 2009," Fieldview Solutions, 2012, p 2.

<sup>4</sup> The IASC, the primary mechanism for security effective and coordinated humanitarian action defined protection as "...all activities aimed at obtaining full respect for the rights of the individual in accordance with the letter and spirit of human rights, refugee and international humanitarian law." OCHA, "Glossary of Humanitarian Terms, in Relation to the Protection of Civilians in Armed Conflict," New York, 2003, p 21.



statements and initiatives that, in principle, will result in appropriate action on protection problems in the context of humanitarian action in crisis settings. These include a statement by Inter-Agency Standing Committee (IASC) principals (December 2013) that sets out their commitment to ensure “The Centrality of Protection in Humanitarian Action” in all situations of humanitarian concern. The IASC statement also underlines the commitment of the relief system to the humanitarian elements of the UN “Rights Up Front” action plan that emphasizes the imperative to protect those at imminent risk in crises. Both these initiatives are, at the time of writing (mid-2014) at the rollout stage. It is too early to attempt to determine the influence of these policy commitments in headline-making and ignored crises. It would appear, however, that in South Sudan, for example, when clashes erupted in December 2013 between soldiers loyal to the President, Salva Kiir and his former Vice-President, Riek Machar, there was prompt acknowledgement both within the UN and the humanitarian community that the deliberate killings of civilians was a priority concern. There is also growing acknowledgement that the international community needs to re-think its overall approach to South Sudan as both warring parties were, apparently, associated with atrocities committed on a massive scale.<sup>5</sup>

There are significant differences between the Sri Lankan conflict and the politics—local and global—associated with the emergence of the nascent South Sudan state and the issues that led to armed clashes and attacks on civilians at the end of 2013. There are also significant differences between Sri Lanka and other life-threatening crises, whether Afghanistan, the Central African Republic, Syria or Somalia. But there are also some common threads or generic issues that emerge in different crisis situations that substantiate the argument that humanitarians have a responsibility to examine and learn from experience whatever the setting or overall outcome in terms of lives lost and saved.

One of the many critical issues shaping the operating environment in Sri Lanka that has loud echoes and strategic significance elsewhere are

the implications for humanitarian action of an evolving global order that is shaped, in part, by the Global War on Terror (GWOT) and related sovereignty narratives. As the crisis intensified, the relief system lacked the decisiveness and determination needed to counter the inhumanity of unrestrained warfare notwithstanding the well-known ruthlessness and brutality of both warring parties. Humanitarian actors were also poorly equipped to challenge the different narratives of the government and its opponents, the Tamil Tigers, as both entities distorted and exploited civilian suffering in support of their respective agendas.

The ends-justify-the-means stance of the Sri Lankan government and the Tamil Tigers involved not only the killing of thousands of besieged civilians but also an unconscionable, if not unprecedented, level of unrestricted warfare by a state against its own citizens. In contrast to Syria where, at the time of writing, there is no consensus in or outside the UN Security Council on how to end the war, there was broad consensus among key UN member states to give war a chance in Sri Lanka. Colombo authorities were also encouraged to push for the rapid demise of the Tigers. This meant that there was little political interest in curbing a known pattern of unrestricted warfare notwithstanding its catastrophic consequences for civilians. As a result, Colombo authorities were largely indifferent to entreaties to respect the protected status of civilians. The inability of the diaspora or others with leverage to influence the Tigers blatant disregard for civilian safety contributed to the total war dynamics. The conduct of both warring parties should have been a central issue of concern to the humanitarian community given the immediate human costs and the knock-on effects of unchallenged brutality in other war zones.

The human costs of war during its final phase in Sri Lanka can be attributed to various factors such as the failure of prior peace initiatives and feeble diplomatic efforts to secure a ceasefire as hostilities intensified. The failure of the UN Security Council and key Member States to challenge, in a meaningful manner, belligerent policies that were antagonistic to political solutions and detrimental to the safety and wellbeing of those who were

<sup>5</sup> UNMISS, “Conflict in South Sudan: A Human Rights Report,” May 8, 2014.



directly affected by war, deserves particular scrutiny. The underlying causes and ensuing political dynamics that contributed to protracted warfare also need to be examined in the context of the failure of development and human rights initiatives to address longstanding structural inequalities.

Limited interest in the safety of civilians posed many challenges to the humanitarian community. Humanitarians were confronted with the system-wide failure of the UN and the international community to take effective action to end no-holds-barred warfare. However, with a few notable exceptions, the humanitarian system also showed limited competence and creativity in challenging the inhumanity of a war that set new precedents in a pattern of abuse and instrumentalization of relief programs that deepened the humanitarian consequences of the war. The relief community also lacked resolve and ability to counter policies and messaging that appropriated humanitarian narratives for agendas inimical to the stated values and objectives of humanitarian actors.

The consequences of the war in Sri Lanka will likely persist given the human costs involved, the unresolved questions that gave rise to armed conflict, the repressive nature of the Rajapakse regime, and the absence of a credible or viable framework for recovery and reconciliation. Beyond Sri Lanka, consequences of the war may also pose problems given the perceived attractiveness of the Rajapakse counter-insurgency model in other settings, the limited challenge by relief actors to the near total negation of humanitarian values that the war entailed, and more assertive sovereignty-based discourses in the global South where many, rightly, question the role of Northern dominated humanitarian initiatives. Nonetheless, the relief community has so far demonstrated a remarkable indifference to the utility of a system-wide review of its experience in Sri Lanka so that it is better prepared in the future when warring parties or their allies attempt to rationalize policies that are deadly for civilians and detrimental to effective humanitarian action.

The groundbreaking report of the UN Secretary-General's Internal Review Panel on United Nations Action in Sri Lanka (that became available

in a redacted form in November 2012) examined the role of the UN in the final stages of the war, particularly in terms of its peace, diplomatic, humanitarian, and human rights responsibilities. It concluded that the "events in Sri Lanka mark a grave failure of the UN" and represents a systemic failure particularly in relation to human rights, humanitarian law, and crisis management.<sup>6</sup>

The motivation to develop this paper was shaped by the concerns and perspectives of many practitioners who were frustrated at the lack of agency in relief circles to deal with the protection dimension of humanitarian action as the war gained momentum from 2006 onwards. The objective of this review is to identify and analyze the circumstances and factors that shaped decision-making within the humanitarian arena as the war intensified and in its immediate aftermath. It aims to facilitate reflection by humanitarian actors on whether they could have been more effective in inhibiting the deaths of thousands and being more proactive and productive in strengthening the protection needed by survivors. As noted earlier, humanitarians have a responsibility to absorb and apply the lessons of Sri Lanka; this paper has been developed as a contribution to that process.

The bulk of this paper deals with the final phase of the war (2008–2009) and the subsequent internment of those who survived it. The section on structural inequalities provides a snapshot of the historical background and the deep-seated grievances that fuel exclusion and identity politics in Sri Lanka. The end phase of the war was preceded by a number of failed peace initiatives that are summarized in the third section that also highlights the implications of geo-political considerations and the Global War on Terror for the operating environment in Sri Lanka. The following section zeroes in on events in the Vanni—the location of the final military offensive in the northern province—as both warring parties sought to use a captive population to advance their military and political objectives.<sup>7</sup> This section examines

<sup>6</sup> UN, "Report of the Secretary-General's Internal Review Panel on United Nations Action in Sri Lanka," New York, November 2012, p 28.

<sup>7</sup> The area known as the Vanni is distinct from the Jaffna Pen-

how lifesaving was poorly defined and protection concerns de-prioritized, the role of data in the high cost of civilian death and deprivation, and the implications of system-wide coordination processes that made a false dichotomy between getting access to people in need and their need for protection. This section also examines the ability of humanitarians to be effective advocates when confronted with atrocity. The section on internment examines the policies and practices of humanitarian actors in the context of assisting the war's survivors who were confined to closed camps and subjected to inhumane treatment including torture and atrocious living conditions.

This paper has benefitted greatly from the insights of a cross-section of relief and other personnel including many who were working in Sri Lanka as the crisis peaked. Respondents included relief officials (NGO, UN, government), academics, think-tank specialists, human rights staff, and the diaspora. The first-hand accounts of frontline humanitarian personnel, as well as those who were supporting or providing guidance to field operations, were of tremendous value in understanding the factors that shaped decision-making. Interviews were conducted on the phone or in person including in situ with Sri Lankans who survived the siege at the end phase of the war. This exercise has also benefitted from a rich reservoir of published material and a small but growing amount of grey literature as well as a number of reviews conducted by a handful of individual relief agencies and open source materials. The content and conclusions of this report are the sole responsibility of the author.

## II Inequities and Divisive Politics

The war in Sri Lanka could be crudely summarized as a fruitless struggle by an aggrieved Tamil minority to secure respect for its rights in a context where Sinhalization was a defining characteristic of the state since its creation in 1948.<sup>8</sup>

insula that is also part of the Northern Province. The Vanni covers the entirety of Mannar, Mullaitivu and Vavuniya Districts and most of Killinochchi District. It has both a western and an eastern coastline.

<sup>8</sup> The preferential treatment that the majority Sinhalese have enjoyed, for example in relation to language, education, land settlement schemes, religion, the country's symbols

The Sri Lankan conflict, like most others, defies neat summation even if there is broad consensus that it is closely associated with the social, economic and political realities of a deeply divided country. The war can also be traced to the failure of political and parliamentary processes to bring about social justice and inter-communal harmony in post-colonial Sri Lanka.

The competing narratives on the mix of factors that led to warfare in 1983 provide insights to long-held grievances, feelings of victimhood, structural inequalities, and identity politics. The role of ethnicity, and its manipulation by the political elite before and after independence, is key to understanding the dynamics that led to armed violence and the polarization that now defines contemporary Sri Lankan society. However, it is worth noting that the island of Sri Lanka, previously known as Ceylon, has a long history of being home to indigenous groups and others who can trace their origin to different parts of Asia, Africa and Europe.<sup>9</sup> Different groups have, for the bulk of the island's history, co-existed peacefully in a vibrant multi-cultural and plural society that is home to four of the world's major religions.<sup>10</sup>

including the Sri Lankan flag and Sinhala domination of key state institutions including the police, army and the bureaucracy, is widely acknowledged. Nira Wickramasinghe provides an insightful analysis of the history of the different communities and groups that populated the island and the factors that shaped the evolution of their identities, social hierarchies, societal cleavages, political allegiances and the role of the elite in the concentration of power and exploitative politics.

Nira Wickramasinghe, *Sri Lanka in the Modern Age, a History of Contested Identities*, Hurst & Co, London, 2006.

<sup>9</sup> Both the Sinhalese and the Tamils trace their origins to India, the former from the north of the sub-continent and the latter from the south. It remains a matter of dispute in academic and political circles as to who arrived first in Sri Lanka. The Tamils who settled in the arid north and east of the island consider this part of the country their traditional homeland.

<sup>10</sup> Buddhism is the religion of some 70 percent of the population and is an important feature of Sinhalese identity. Other major religions include Hinduism, Islam and Christianity. According to the last, and presumably outdated island-wide census, Tamils constitute 18.5 percent and Muslims 7 percent of the population. <http://www.tourism-srilanka.com/religion.html>.

Jonas Lindberg, Camilla Orjuela, Siemon Xezeman, Linda Akerstrom, "Arms Trade with Sri Lanka—global business, local costs," Swedish Peace & Arbitration Society, Stockholm, 2011, p 18.

Sri Lanka's 450 years of colonial history, that disrupted pre-existing governance structures, began in 1505 with the arrival of the Portuguese in Colombo. The Dutch followed in 1658. British colonial control began in 1796. It led to the island being united for the first time under a single administrative system in 1833. Colonialism changed the island's social and economic structures and impacted greatly on the country's political future. British rule involved the development of a market and plantation economy and the introduction of cheap Tamil labor from southern India.<sup>11</sup> The introduction by the British of periodic censuses and the categorization of people by social class and other factors resulted in ethnicity gaining importance as a process of democratic political representation took hold.

The emergence of anti-colonialism was shaped by religious revivalism and the rise of the Buddhist clergy as the champion of a chauvinistic form of Sinhala nationalism that is a dominant feature of contemporary Sri Lankan politics.<sup>12</sup> The struggle against colonialism reinforced the role and pre-eminence of an English-speaking Colombo elite. Tamils were seen by Sinhalese to have benefitted unfairly from colonial rule in terms of education, English language skills, and public service employment. Tamils are a minority in Sri Lanka but Sinhalese narratives of victimhood thrive on the notion of the Sinhala being a minority in the Indian sub-continent; Tamil Nadu, in nearby southern India, has a population of some 70 million.

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<sup>11</sup> These imported Tamils were at the bottom of the social ladder, suffered extreme deprivation, and became stateless upon Sri Lanka's independence. Their status, and Colombo's negotiations with New Delhi concerning the relocation of some estate Tamils to India, was a contentious issue for decades that was finally resolved in 2003. Minorities at Risk Project, Assessment for Indian Tamils in Sri Lanka, December 31, 2003, available at: <http://www.unhcr.org/refworld/docid/469f3ad4c.html> [Accessed September 29, 2012].

<sup>12</sup> A key element of Sinhalese identity is the narrative concerning their north Indian Aryan origin and the notion that non-Sinhalese are foreigners and interlopers. Saratika Dutt, Book Review, 2007, Nottingham Trent University, Canada, p 152. [http://irep.ntu.ac.uk/R/?func=dbin-jump-full&object\\_id=192926&local\\_base=GEN01](http://irep.ntu.ac.uk/R/?func=dbin-jump-full&object_id=192926&local_base=GEN01).

## ***Structural Fault-Lines***

From the outset, the Constitution lacked adequate safeguards to protect the rights of minorities. In 1949, Tamil plantation workers were disenfranchised. The Sinhala Only Act of 1956 replaced English as the sole official language thereby restricting the employment of Tamils in the state sector. Restrictions on university admissions for Tamils in the wake of a Sinhala youth uprising in 1971, coupled with a new constitution in 1972 that gave Buddhism top ranking as the country's religion, further antagonized Tamils who tend to be Hindus, Muslims and Christians. State-sponsored colonization schemes that benefitted from donor-funded irrigation programs re-arranged the ethnic balance in areas where Tamils, traditionally, were a majority. This added to perceptions among Tamils that they were second-class citizens.<sup>13</sup>

Politics and armed uprisings in Sri Lanka have been shaped by diverse inter-linked contests for electoral supremacy and ever-changing multi-party alliances. Two of the oldest political parties, the United National Party (UNP) and the Sri Lanka Freedom Party (SLFP) have both been allied to extreme nationalist parties. Both parties have used the Sinhala nationalist card to regain power or to disrupt or negate conflict resolution efforts.<sup>14</sup> The radical political left also engaged in divisive nationalist politics. The Janatha Vimukthi Peramuna (JVP), a southern-based Marxist group took up arms against the state in 1971 leading to the loss of some 15,000 lives.<sup>15</sup> When the JVP took up arms again in the late 1980s it had, by then, morphed into a strident Sinhala nationalist organization. It was suppressed violently result-

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<sup>13</sup> Wichramasinghe, op. cit., p 268.

<sup>14</sup> The ICG said "the two main Sinhalese political parties—the Sri Lanka Freedom Party (SLFP) and the United National Party (UNP) ... often outbid each other in ethnic nationalist rhetoric." Refugee Review Tribunal, Research Response Number, LKA31134, January 24, 2007. [www.unhcr.org/refworld/pdfid/4b6fe2960.pdf](http://www.unhcr.org/refworld/pdfid/4b6fe2960.pdf) [Accessed November 28, 2012].

<sup>15</sup> Ahilan Kadirgamar, "Wimal Fernando: Struggles for Democracy in Sri Lanka," South Asian Citizen Web, Colombo, October 23, 2011.

ing in the death of some 40,000 Sinhalese youth and thousands of unexplained disappearances.<sup>16</sup>

Meanwhile in the north of Sri Lanka, Tamil support for a separate state was gaining momentum thanks in part to the failure of parliamentary representatives and a civil disobedience campaign in 1960–61 to get redress for Tamil grievances. In 1976, the Liberation Tigers of Tamil Eelam (LTTE), commonly known as the Tigers, was created under the leadership of Velupillai Prabhakaran. The brutal enforcement of Prabhakaran's claim that the LTTE was "the sole representative of the Tamil people" did silence alternative voices and allowed the Tigers to dictate the political, as well as the military, shape of the separatist agenda.<sup>17</sup> The LTTE's totalitarian approach to Tamil statehood included the expulsion of all Muslims from the Northern Province in 1990 and greatly changed Jaffna's pluralistic character.<sup>18</sup> The LTTE's use of suicide attacks and indiscriminate violence in the south of the country effectively robbed the cause for greater freedom of the legitimacy it needed to secure the support of the Sinhalese as well as the goodwill of others far and near.<sup>19</sup> The conscription of children and youths as LTTE fighters, coupled with the loss of political and other freedoms such as an uncensored media, also dented the reputation of the Tigers.

By the early 1980s, a pattern of low intensity conflict between government forces and Tamil militants had given way to a steady increase in killings, disappearances, and torture. The assassination of 13 Sri Lankan Army (SLA) soldiers in Jaffna district in July 1983 was followed by a retaliatory killing

spree.<sup>20</sup> This resulted in the death of some 5,000 Tamil civilians and the displacement of tens of thousands in the south.<sup>21</sup> An International Commission of Jurists (ICJ) study concluded that the deaths of Tamils were the result of "a series of deliberate acts executed in accordance with a concerted plan, conceived and organized well in advance."<sup>22</sup>

Widespread awareness that the events of 1983 were not spontaneous proved a divisive turning point in Sri Lanka's contemporary history.<sup>23</sup> It also marked the onset of the country's long and bloody war that has further polarized Sri Lankan society. Whereas the Tigers were demonized and feared in the south, the conditions imposed by the LTTE in areas they controlled were seen by some Tamils as preferable to the reality of unending state oppression, discrimination, and repeated humiliations at the hands of the Colombo government. The post-war Lessons Learnt and Reconciliation Commission (LLRC) was told that although the "LTTE and other armed groups" had caused much suffering "the state and their secret agents are feared more by the people and are held responsible for much of their woes."<sup>24</sup>

Sri Lanka's polarized society, and its tolerance for repression, contributed to the war's momentum and shaped the environment within which humanitarian organizations operated. The operating environment was also shaped by the history of the war's dynamics and by the role of external actors. These are reviewed in the next section.

<sup>16</sup> Centre for Documentation on Refugees, UNHCR, Geneva June 1983.

<sup>17</sup> "A Short History of the Conflict in Sri Lanka and the Involvement of NGOs in the Peace Process," World Movement for Democracy, <http://www.wmd.org/resources/whats-being-done/ngo-participation-peace-negotiations/history-conflict-sri-lanka> [Accessed September 30, 2012].

<sup>18</sup> "The Citizen's Commission on the Expulsion of the Muslims from the Northern Province by the LTTE in October 1990," Groundviews, November 21, 2011.

<sup>19</sup> Tamils were united in the face of dedicated discrimination, violence and marginalization but such unity "concealed the many internal conflicts and diverging interests among the Tamils, for instance along geographic, caste, class and other lines."

Lindberg, *op. cit.*, p 20.

<sup>20</sup> Eruptions of mob violence also occurred in 1956, 1958, 1977 and 1981.

<sup>21</sup> Sri Lanka Conflict History, ICG, updated January 2011.

<sup>22</sup> Sri Lankan Guardian, "The Black July 1983 that created a Collective Trauma," April 27, 2010.

<sup>23</sup> After the killings "more and more Tamils saw separatism as the only viable alternative" and the use of violence for this purpose. India's role fuelled nationalist Sinhalese sentiments.

Lindberg, *op. cit.*, p 19.

The violence led to the emigration of thousands of Tamils who swelled the ranks of the diaspora and created an "international support base for Tamil separatism."

ICG, Sri Lanka Conflict History, January 2011.

<sup>24</sup> Catholic Diocese of Mannar, Submission to the Lessons Learnt and Reconciliation Commission, January 8, 2011, <http://www.srilankaguardian.org/2011/01/llrc-submission-by-catholic-diocese-of.html>.



### III War, Geo-politics and the Humanitarian Operating Environment

The exclusivist identity politics that had fuelled opposing narratives of nationalism and victimhood since independence was compounded by the long years of war and the failure of various peace initiatives to generate frameworks for an inclusive form of governance. These failures can be attributed to the persistence of the underlying root causes of conflict, the hardening of attitudes in Sri Lanka, and the approach taken by external peace mediators. The history of the war and the prominent role of geo-political considerations had significant implications for the work of relief actors. The political space needed for impartial humanitarian action shrunk considerably as armed conflict intensified.

India's intervention, after the eruption of violence in 1983, included support for Tamil militants. This greatly benefitted the LTTE and their emergence as kingmaker in Tamil politics.<sup>25</sup> However, New Delhi soon found itself at war with the Tigers who resented the LTTE's exclusion from negotiations that led to the India-Sri Lanka Accord (1987) and the deployment of some 100,000 Indian troops to police it.<sup>26</sup> The Indian intervention misfired spectacularly. Prabhakaran, who received weapons and cash from Colombo, collaborated clandestinely with Premadasa, who became President in 1989, against the Indian Peacekeeping Force (IPKF). Indian troops departed Sri Lanka in 1990.<sup>27</sup>

On-again, off-again talks in the late 1990s were overshadowed by intensified fighting; the SLA re-took control of Jaffna in December 1995 and the Tigers re-established themselves in Kilinoch-

chi at the end of 1998. The LTTE declared a unilateral ceasefire in December 2000. This led to a Ceasefire Agreement between the LTTE and the government in 2002 with the assistance of Norwegian authorities. Norway played a central role in monitoring the ceasefire and was instrumental in linking aid to the peace agenda; this was seen to backfire with deleterious consequences for both peace and aid initiatives.<sup>28</sup>

An independent evaluation of the Norwegian-led peace initiative found that the process "reproduced, rather than transformed underlying structural obstacles to conflict resolution."<sup>29</sup> A "hurting stalemate" led to a measure of political and military parity but this changed dramatically when the LTTE split in 2004; the breakaway Karuna faction joined the government "shifting the military balance decisively in the government's favor."<sup>30</sup>

The powerful Indian Ocean Tsunami of December, 2004 wreaked havoc on LTTE held areas where deaths were estimated at more than 22,000 and some 500,000 were displaced.<sup>31</sup> This level of devastation was unprecedented but a chaotic inflow of agencies and resources led to allegations by Colombo of Western interference and the sidelining of government authorities.<sup>32</sup> Sinhalese nationalists expressed concern about the

<sup>25</sup> M.D Nalapat, "Defeating Terrorism—why the Tamil Tigers lost Eelam—and how Sri Lanka won the war," *The Sentry*, Jewish Institute for National Security Affairs, March 28, 2011.

<sup>26</sup> The Accord included "devolution of power on a regional basis in exchange for Tamil disarmament." Lindberg, *op. cit.*, p 20.

<sup>27</sup> Nalapat, *op. cit.*

President Premadasa (UNP) was assassinated by the LTTE in May 1993. His successor, Chandrika Kumaratunga won presidential elections in November 1994 as head of a coalition of 7 parties and groups, the Peoples Alliance, that was led by the SLFP.

<sup>28</sup> Ayshwarya Rajah, "Liberal Peace and War: Western market interests and the Tamil-Sinhala conflict," Presentation at Political Studies Association Annual International Conference, Belfast, April 2012, available online.

<sup>29</sup> J Goodhand, B Klem and G Sørbo, "Pawns of Peace: Evaluation of Norwegian Peace Efforts in Sri Lanka," Summary in *TransCurrents*, November 11, 2011.

<sup>30</sup> *Ibid.*

<sup>31</sup> Nimmi Gowrinathan and Zachariah Mampilly, "Aid and Access in Sri Lanka," *Humanitarian Exchange Magazine*, #43, June 2009.

<sup>32</sup> A massive increase in NGOs involved in peace-building, humanitarian and development projects, that were significantly shaped by donor objectives, were seen to be pursuing a pro-peace, and by extension, a pro-Tamil agenda. Within a few weeks, elements of the local media began referring to the influx of agencies as a "second Tsunami" as concerns about sovereignty spiked. Many Sinhalese resented that the Western-funded PTOMs (Post-Tsunami Operational Mechanism) channeled funding into LTTE-controlled areas.

Simon Harris, "Humanitarian Agenda 2015, Sri Lanka Country Case Study," Feinstein International Center, Tufts University, October 2007.

“malign influence of Western culture” and the alleged neo-colonial tendencies of aid agencies.<sup>33</sup>

At the end of 2005, Mahinda Rajapakse narrowly won presidential elections that Prabhakaran had ordered Tamils to boycott. Rajapakse won on a platform that was antagonistic to the role of Norway and its Western allies in peace mediation efforts geared to some form of self-rule for Tamils.<sup>34</sup> President Rajapakse was determined to defeat the LTTE. He invested heavily in strengthening the military that had regained control of the Eastern Province by mid-2007 with the use of guerrilla tactics and the capture of significant LTTE military hardware.<sup>35</sup>

Pro-government media was a boon to the Rajapakse regime and its ultra-nationalist narrative that branded opponents “terrorists” and a threat to the country’s sovereignty.<sup>36</sup> Rajapakse’s anti-Western rhetoric was well received by segments of the Buddhist clergy and by hardline nationalists who had helped secure his electoral victory.<sup>37</sup>

Rajapakse’s centralization of power, erosion of the judiciary’s independence, and lethal harassment of media personnel who were not pro-government, transformed Sri Lanka’s particular style of democracy into what is, effectively, a move towards an elected tyranny.<sup>38</sup> This meant that there were few

voices on the island that could challenge Rajapakse’s “war for peace” strategy.<sup>39</sup> The strong populist following that Rajapakse enjoyed meant it was difficult for the relief community to mobilize support in the south for impartial humanitarian action; many Sinhalese bought the government’s line that it was intent on rescuing Tamils from the LTTE.<sup>40</sup>

## *Geo-Political Agendas*

Sri Lanka has long been conscious that it is a small nation with a strategic location just off the southern tip of the Indian sub-continent. Since its creation, it has sought to bolster its independence and was a proud co-founder of the Non-Aligned Movement (NAM) in 1961.<sup>41</sup> It remains sensitive to the regional and international standing of external powers; their influence and interests including post 9/11 agendas greatly informed the momentum and course of the war’s ending.

Relations between Colombo and New Delhi were a key factor in the fortunes of both belligerents. In the latter years of the war, New Delhi was on Colombo’s side and supplied “intelligence assistance to the Sri Lankan government in its confron-

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in Sri Lanka in 2008 became the “worst in any democratic country” marked by “a continuation in murders, attacks, abductions, intimidation and harassment of the media.” BBC, “Drop in Sri Lanka press freedom,” October 31, 2008.

The introduction of the 18th Amendment in 2010 gave the President “unlimited powers with unlimited terms in office” so that there is, effectively, no meaningful opposition. Leela Isaac, “The Cost of Defying Political Authority,” Groundviews, October 22, 2010.

<sup>39</sup> Namini Wijedasa, “Interview with Johan Galtung,” *The Island*, April 26, 2009.

<sup>40</sup> A journalist who was part of an SLA organized trip to the war zone reported over “100,000 civilians were rescued by Military Forces within the first three days of the operation” while the Tigers “in their desperation to hold their last stand shoot and beat up anyone who tries to escape.” Manjula Fernando, “A Sinhala journalist’s point of view on war destructions, killings and fleeing helpless Tamil IDPs,” *DailyNews.lk*, April 28, 2009.

<sup>41</sup> Sri Lanka was host to the fifth NAM Summit in Colombo in 1976. Participants included Libya’s Muammar Qaddafi, Hafez Al Assad of Syria, Marshal Tito of the then Yugoslavia, Khmer Rouge leader Khieu Samphan and India’s Indira Gandhi. The Chair, Prime Minister Bandaranike, sought action on economic issues in the context of the North-South divide on the global economic order. Leelananda De Silva, *The Island*, February 11, 2012.

<sup>33</sup> Oliver Walton, “Between War and the Liberal Peace: the politics of NGO peacebuilding in Sri Lanka,” *International Peacekeeping*, 19:1, 19–34, February 17, 2012, p 21.

<sup>34</sup> This was the first time a rural Sinhala politician became President (SLFP) displacing the urban elite’s long-standing hold on power. “By the end of 2006, more than 40 percent of top jobs had gone to the rural Sinhala segment of the population.”

Nalapat, *op. cit.*

<sup>35</sup> Between 2005 and 2007 the military “almost doubled in size to more than 500,000 including auxiliaries.” Nalapat, *op. cit.*

<sup>36</sup> The president and his aides “control the state media and use intimidation to get privately-owned media journalists to censor themselves.” During presidential elections in January 2010 “96.7 percent of news program air-time was devoted to the president and his aides and less than 3.3 per cent to the opposition.”

Reporters Without Borders, “World Report, Sri Lanka” Updated March 2010 [Accessed October 3, 2012, <http://en.rsf.org/report-sri-lanka,79.html>].

“Sri Lanka and the UN,” *The Economist*, March 23, 2012.

<sup>37</sup> Walton, p 20.

<sup>38</sup> According to Reporters Without Borders, press freedom



tation with the LTTE” as well as “radar equipment to detect LTTE planes.”<sup>42</sup> Other prominent arms suppliers included Russia, Iran, Pakistan and Israel. The Pentagon provided “counter-insurgency training and sophisticated maritime radar” that together with the technical support of Pakistan and Israel “greatly upgraded” Sri Lanka’s armed forces.<sup>43</sup> EU (European Union) data shows that the UK, Czech Republic, Spain, Slovakia and Bulgaria “were the largest (European) suppliers of arms to Sri Lanka between 2001 and 2008.”<sup>44</sup>

Inter-locking and competing Beijing-Delhi interests in Asia saw the rise of China as a major factor in Sri Lankan politics with 2007 a milestone year.<sup>45</sup> In exchange for military hardware, China received approval to develop major port facilities and an airport in Hambantota on Sri Lanka’s southern coast.<sup>46</sup> China, in the latter years of the war, overtook Japan as Sri Lanka’s chief foreign donor.<sup>47</sup> This was important since aid as a percentage of government expenditure grew from 7.3 percent in 2000 to 24.1 percent in 2005, an increase that can be attributed in part to a surge in funding after the 2004 Tsunami.<sup>48</sup> New donors were “less concerned with human rights conditionalities” and “supported the government in its confrontation with the LTTE.”<sup>49</sup>

The US and the West lost influence in Sri Lanka as Cold War politics waned and China gained prominence in Asian politics. Washington has re-assessed its relations with Colombo in light of China’s influence and as positioning in the Indian Ocean intensifies. Meetings mid-2012 saw Colombo and Washington concur on the need to strengthen Sri Lanka’s navy in parallel to the

US “building up its naval presence in the Asia Pacific region to 60 percent of its total forces by 2020.”<sup>50</sup> The Obama Administration, according to one analyst, has “used the threat of war crimes investigations in order to pressure Rajapakse to align more closely with Washington.”<sup>51</sup>

The demonization of the LTTE benefitted from the post 9/11 political landscape and discourses that tended to ignore state-sponsored acts of terror including those of the Rajapakse regime.<sup>52</sup> Colombo was adept at invoking the Global War on Terror (GWOT) narrative and in labeling its role in what was, essentially, a civil war as a counter-terror campaign. Colombo aligned itself with the GWOT “in a largely successful attempt to buy the acquiescence of the rest of the world” as it set about the annihilation of the LTTE.<sup>53</sup>

The limited credibility of international human rights machinery in countries such as Sri Lanka helped Colombo dismiss concerns about the suffering it imposed on civilians.<sup>54</sup> The failure of UN human rights mechanisms to mount forceful challenges to the trampling of international law by powerful Western countries in the course of the Global War on Terror has fed perceptions

<sup>42</sup> Darini Rajasingham Senanayake, “New Asian Donors: China and India in Sri Lanka,” *Lines Magazine*, May 21, 2009, <http://lines-magazine.org/?p=865>.

<sup>43</sup> Harneis, op. cit.

<sup>44</sup> Amnesty Index 2012 op, cit.

<sup>45</sup> MK Bhadrakumar, “Geopolitics Drowns Sri Lanka’s Tamils: The great game,” *Deccan Herald*, <http://www.deccanherald.com/content/4495/geopolitics-drowns-sri-lankas-tamils.html> [Accessed September 26, 2012].

<sup>46</sup> Robert Harneis, “Realpolitik Rules in Sri Lanka,” *Global Research*, March 2010.

<sup>47</sup> Bhadakumar, op.cit.

<sup>48</sup> World Bank, *World Development Indicators*, Washington D.C., 2007.

<sup>49</sup> Senanayake, op. cit.

<sup>50</sup> SarathKumara, “Shifting Landscapes: Sri Lanka tilts towards the US,” *JDS*, July 3, 2012

The same article notes that Sri Lanka’s Defense website indicates that as “a coastal nation, the meetings recognized the pivotal role that the Sri Lanka Navy could play in strengthening the security of sea lanes in the Indian Ocean and resolved to co-operate closely in drawing on their synergies in combating international terrorism.”

<sup>51</sup> Kumara, Ibid.

<sup>52</sup> Definitions on terrorism vary. Richard Falk says, “violence directed against innocent victims is terrorism, whether carried out against the state or by the state.”

“Who Puts the Terror in Terrorism?” quotes Richard Falk in “Pondering IR in Pokfulam,” *Hong Kong University*, March 26, 2009.

<sup>53</sup> Callum Macrae, “Sri Lanka’s Killing Fields,” *The Huffington Post*, March 12, 2012.

<sup>54</sup> When Archbishop Desmond Tutu refused to sit on a Panel on Leadership (2012) that included Tony Blair, former UK Prime Minister, he cited lack of accountability for the latter’s actions in Iraq. In the process, Tutu gave voice to widely-shared concerns on the role of the global North in decision-making that determines who gets invaded and who goes to the Hague to answer charges by the International Criminal Court.

Desmond Tutu, “Why I had no choice but to spurn Tony Blair,” *The Guardian*, September 2, 2012.

of Western double standards. Such perceptions are not new in Sri Lanka and received vociferous attention in the local media including, but not only, when concerns about war crimes arose.<sup>55</sup>

The LTTE invested heavily in public relations and enjoyed the political and financial support of an active, million-strong Tamil diaspora. The reputation of the Tigers, however, and their inability to mend fences with New Delhi, effectively meant that the LTTE had no external supporters, beyond the diaspora, in the final months of the war. Well-founded concerns that the LTTE was determined to hold onto the population it controlled, and its action to inhibit the escape of many who attempted to do so, buttressed Colombo's claim that it was intent on a "humanitarian rescue" mission.

Rajapakse's rescue narrative, coupled with a sovereignty-based discourse on the unacceptability of external concerns about the plight of civilians in the Vanni, enjoyed the support of many Sinhalese, at home and abroad.<sup>56</sup> One pro-government professor argued that the "Responsibility to Protect" (R2P) agenda lacked legitimacy and morality and was little more than a ruse to intervene in the country's internal affairs.<sup>57</sup> President Rajapakse stressed in a 2009 interview that his determination to resist calls for a ceasefire were driven by his desire to avoid foreign intervention and the death of

a lot of Sri Lankans; he claimed that the SLA had ensured that there "were no civilian casualties."<sup>58</sup>

China, together with Russia, used its Permanent Five seat to block the situation in Sri Lanka coming before the UN Security Council.<sup>59</sup> Although China claims that it does not interfere in the affairs of other states, it played a key role in Sri Lanka's domestic and foreign fortunes as the LTTE were destroyed at great cost to civilians.

The politics that led to and shaped the war years, coupled with perceptions that relief aid was detrimental to Sinhala interests, had significant implications as the crisis intensified. Geo-political considerations and support for the Global War on Terror were detrimental to humanitarian objectives. But, as we shall see below, the relief system did not mobilize the leverage it needed to give effect to the humanitarian imperative namely the prioritization of humanitarian life-saving objectives over all other agendas. The relief system was largely inept in challenging the government's anti-humanitarian narrative. It also undermined what limited leverage it had when relief actors declined to challenge the pro-war consensus and the support provided for Colombo's endgame whatever the cost to civilians.

#### **IV The Vanni Bloodbath: Compromise and casualties**

The death of tens of thousands civilians as the conflict in the Vanni came to its bloody conclusion was the outcome of many factors. The LTTE, and many under its control, had false expectations of a truce or intervention that would halt the indiscriminate killing of civilians. Colombo, however, was emboldened by the support it received to defeat the Tigers. It had learned how to deflect and ignore concern about its brutality and impediments to relief programs, and it was skilful in controlling the humanitarian narrative. Both warring parties used the humanitarian situation and related programs to advance their military and political objectives.

<sup>55</sup> Chandrika Kumaratunga, of the illustrious Bandaranike family and President before Rajapakse said "when countries like Sri Lanka fought against terrorists, developed nations worried only about the human rights of terrorist organizations"; she urged Western countries to "change their double-standards."

AFP, "Sri Lanka wants end to 'double standards' in fighting terrorism," September 17, 2001.

<sup>56</sup> A demonstration in London that included the delivery of a petition to the Prime Minister's office in Number 10 Downing street was described as a march to "highlight the challenges faced by the democratically elected government" in Colombo; protesters carried banners that read "Tamil Tigers, The Curse to Civilians."

Hemantha, "R2P—Right to Protest for the sake of Freedom," *Asian Tribune*, February 21, 2009.

<sup>57</sup> Professor Peris described reference to R2P in the Sri Lanka context as a "well orchestrated attempt to rescue the LTTE from being eliminated."

GH Peiris, "Appeal to all Sri Lankans, The R2P threat to Sri Lanka," *Protect Sri Lanka*, December 14, 2012.

<sup>58</sup> Jyoti Thottam, "The Man Who Tamed the Tamil Tigers," *Time*, July 13, 2009.

<sup>59</sup> Thomas Wheeler, "China and Conflict-affected states: Between principle and pragmatism," *Saferworld*, January 2012, p 22.

The weak response of relief actors to warring tactics that directly endangered civilians and maximized the suffering of the besieged population for strategic gain shows that the humanitarian system has yet to internalize its protection responsibilities however difficult the operating environment and related geo-political dynamics. As the killings mounted in the Vanni, there were many uncomfortable echoes of Srebrenica when thousands trapped in the so-called UN safe haven were executed during the Balkans war in 1995. In such situations, credible and decisive humanitarian leadership is key. At a minimum, the humanitarian system has to prioritize, and push to counter or mitigate, the threats, tactics, or patterns of harm that pose the greatest and immediate danger to the lives of civilians. Humanitarian actors were very perturbed by events in Sri Lanka as the war intensified but there was great reluctance to acknowledge that indiscriminate shelling, for example, had massive protection consequences that humanitarians had a responsibility to address in a proactive and strategic manner. In Sri Lanka, inadequate commitment to the protection dimension of humanitarian action, coupled with a perennial preoccupation with institutional interests, contributed to outcomes that are difficult to digest. Few will dispute that it was a painful chapter in the history of organized humanitarianism and only time will tell how the precedents that were set will play out in future crises.

When Sri Lanka is examined against the backdrop of the unfolding crisis in Syria, that has now morphed into a regional, sectarian, and proxy war, ignoring numerous parallels is difficult, notwithstanding the different political and operational contexts. There are many similarities in terms of the brutal conduct and policy positions of the war's protagonists and their backers coupled with the blatant disregard for the protected status of civilians, as set out in International Humanitarian Law (IHL). It is widely understood that tens of thousands of civilians have been slaughtered while some nine million have been obliged to flee their homes and at least a quarter million are struggling to survive in besieged enclaves.

The over-riding need of war-affected Syrians for basic security—to be protected from the

battlefield tactics of all the warring parties, sexual violence, other abuses and undignified treatment or behavior—does not require elaboration. However, three years into the crisis, the humanitarian system shows how little it has learned from Sri Lanka in that it has yet to define an overall protective humanitarian strategy or allocate requisite infrastructure including human and financial resources. Similarly, the extent to which the issue of access has been a central and dominant theme also mirrors the Sri Lankan experience, even though there has been more attention of late to the direct impact of the war on civilians.

The internal review of the UN concluded that events in Sri Lanka marked “a grave failure of the UN” to the detriment of “hundreds of thousands of civilians” and this occurred “in contradiction with the principles and responsibilities” of the United Nations.<sup>60</sup> The internal review focused, primarily, on the effectiveness of the UN's crisis management apparatus. It looked at the UN's approach from political, human rights, international law, and humanitarian perspectives as the war intensified in Sri Lanka. 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.

Human Rights (HR) organizations had, for decades, routinely profiled the abysmal nature of the human rights situation including, for example, extended periods of emergency rule, widespread discrimination, disappearances, unlawful killings, torture, gender-based violence, restrictions on the media, and the absence of effective legislative

<sup>60</sup> UN Internal Review Panel Report, op. cit., p 28.

and judicial remedies. However, notwithstanding various initiatives and recommendations by the UN High Commissioner for Human Rights, inter-state human rights mechanisms, and diverse lobbying groups, the evidence indicates that the rule of law and human rights situation deteriorated rather than improved in recent decades.<sup>61</sup>

It is important to underline that the death toll during the final phase of the war was first and foremost the responsibility of both sets of warring parties. The UN Secretary General's Panel on Accountability found credible allegations of "a wide range of serious violations of international humanitarian law and international human rights law ... committed both by the Government of Sri Lanka and the LTTE"; if proven, some of these allegations "would amount to war crimes and crimes against humanity."<sup>62</sup>

This paper is concerned with the role of the relief system when confronted with the inhumanity inherent in the events leading up to the bloodbath on the beaches of Mullaitivu and the harsh treatment of the war's survivors. The following sections unpack the issues, constraints, and opportunities that shaped decision-making and related humanitarian action for those besieged in the Vanni.

### ***Poor Preparedness Meant Limited Mitigation***

Aid agencies, local and international, had a long history of engagement in Sri Lanka whether they were active in relief, development or peace consolidation activities. Humanitarian actors also had long experience of interacting with both sets of warring parties and had lots of opportunity to be aware of the changing political landscape. A number of human rights organizations and others such as the International Crisis Group had, over the years, maintained a constant drumbeat on the deteriorating human rights situation and what that meant for citizens and anyone who questioned the suppression of dissent throughout the island.

<sup>61</sup> OHCHR, "UN Experts deeply concerned at suppression of criticism and unabated impunity," Geneva, February 9, 2009.

<sup>62</sup> UN, "Report of the Secretary-General's Panel of Experts on Accountability in Sri Lanka," New York, March 31, 2011, p. ii.

Although human rights initiatives are distinct from the work of humanitarian actors there is often a convergence of concerns in armed conflict settings when civilians face risks that put their lives in immediate danger. Overall, there was no shortage of insights on political and military changes that had humanitarian implications. But, as noted by one interviewee "Sri Lanka is what happens when you reach a crisis but don't recognize it."<sup>63</sup>

Various interviewees indicated that the demise of the LTTE was a surprise and they were poorly prepared for the end phase of the war and its aftermath.<sup>64</sup> Interviewees also noted that by early 2009 the relief system was preoccupied with convoys to the besieged population while simultaneously preparing for an anticipated exodus from the Vanni. This meant that the lack of foresight and policy on a number of contentious and complex problems made consensus-building and effective coordination difficult as the crisis escalated. To put the issue of preparedness in perspective it is worth recalling that several factors had changed the military standing and political alliances of the LTTE and the Colombo government in the four years preceding the end of 2008. As noted above, the decision of the Eastern LTTE Commander Karuna to switch sides, together with a large contingent of fighters in March 2004, was an important game-changer that greatly weakened the Tigers.<sup>65</sup> The victory of Rajapakse "as part of a Sinhala nationalist alliance" with a pledge to crush the Tigers heralded a sea change in Sri Lankan politics as he set about revitalizing the military.<sup>66</sup>

The SLA, under the stewardship of Gotabaya Rajapakse, brother of the President and the Defense Minister captured territory that had been under LTTE control in the East in an offensive that was launched mid-2006. Colombo's tight control of the media was part of a new style counter-insurgency

<sup>63</sup> Interview notes.

<sup>64</sup> "Preparedness" is used here to refer to measures to reduce exposure and increase resilience to threats. It includes strategic and proactive humanitarian planning and resources to give it effect.

<sup>65</sup> Himel Southasian, "Peace process and the LTTE split," March 2004. Karuna became a Minister in the Colombo government in 2009.

<sup>66</sup> ICG, "Sri Lanka Conflict History," January 2011.



campaign.<sup>67</sup> Both sides “suffered heavy casualties” and the Tigers lost their last stronghold in the East mid-2007.<sup>68</sup> The government formally withdrew from the ceasefire agreement in January 2008 as it shifted its focus to the Northern Province and the remaining LTTE controlled territory in the Vanni. Colombo forces captured Kilinochchi, the de facto capital of the LTTE in January 2009 and, a few days later, the strategic Elephant Pass that controls access to the Jaffna peninsula; on May 18, the government declared victory.

The shift in strength, militarily and politically, between 2004 and 2008 gave Colombo an advantage but it appears that this did not register with the LTTE.<sup>69</sup> The loss of key personnel and territory in the East, coupled with a dramatic reduction in funding once the Tigers, but not the government, were proscribed for acts of terror, proved devastating for Prabhakaran and his band of fighters. According to one counter-insurgency expert, by 2009 “the LTTE was a shadow of its former self, bankrupt, isolated, illegitimate, divided, and unable to meet an invigorated government offensive of any kind.”<sup>70</sup> However, the Tigers never appeared to understand the implications of their diminished and pariah status. They and the Tamil diaspora continued to hope, even when LTTE-held territory shrank to the size of a football field, for some kind of external intervention that would oblige Colombo to halt its devastating and deadly bombardments.<sup>71</sup>

<sup>67</sup> Neil A Smith, “Understanding Sri Lanka’s Defeat of the Tamil Tigers,” National Defence University, USA, [Accessed May 12, 2014, <http://www.ndu.edu/press/understanding-sri-lanka.html>].

<sup>68</sup> The ICG also concluded that “20,000 to 30,000” Sri Lankans were killed between 2006 and early 2009; an “estimated 5,000 civilians” were killed in crossfire and targeted attacks during this period. ICG, “Sri Lanka Conflict History” op. cit.

<sup>69</sup> “... the capture of kilinochchi ... is only a symbolic defeat, and certainly of immense propaganda value to the government. The real significance of the kilinochchi battle is that it has convinced the Tigers it’s time to forget the mini-state and resume guerrilla war.”

Vasanthha Raja, “Conquering Kilinochchi: Military Delusions that ruin Sri Lanka,” TamilsForJustice, January 12, 2009.

<sup>70</sup> Smith, op. cit.

<sup>71</sup> Discussions London with Tamil diaspora members, March 2012.

There were also many in the aid community who did not appreciate the significance of the change in the balance of power and its humanitarian implications. The CHAP (Common Humanitarian Action Plan) for 2008 set out scenarios and strategies that, essentially, indicated a continuation, albeit with some deterioration, of the operating environment that obtained in 2007. There was no reference to preparedness nor the necessity of scaling up for a dramatic change or increase in humanitarian need. The focus, with the exception of food aid, was almost exclusively on those who were up-rooted as a result of the changed situation in the East thereby giving the impression that those in the Vanni were at no additional risk.<sup>72</sup>

In addition, the analysis and approach of the relief community undermined its capacity to be effective in mitigating harm when it (a) ignored the manipulation of humanitarian programming, (b) determined that maintaining “access” was its core challenge even though it pulled out of the Vanni without protest, (b) backed off from being up-front on the numbers and scale of suffering involved and (c) did not prioritize attention to protection needs until the end stages of the war when it was near impossible to mobilize support to stop the killings. These inter-twined issues are reviewed in detail in the follow paragraphs.

### ***Instrumentalization***

The manipulation or use of humanitarian action to achieve non-humanitarian outcomes is, regrettably, neither new nor unique. The relief system has long experience of states—whether big powers, donors, crisis-affected countries or major regional powers—as well as armed groups, warlords, politicians or others manipulating humanitarian action for their own ends and, often, at great cost to crisis-affected populations.<sup>73</sup> The history of using relief as a means

<sup>72</sup> “Sri Lanka: Common Humanitarian Action Plan (CHAP),” OCHA, February 2008.

The section on protection indicates that relevant actors would work and coordinate closely with the government and others “to ensure that protection needs and risks are identified and appropriate responses implemented,” p 18.

<sup>73</sup> Antonio Donini (ed), *The Golden Fleece, Manipulation and Independence in Humanitarian Action*, Kumarian Press, 2012.

to advance particular interests also includes the calculations of humanitarians themselves.<sup>74</sup> After a quarter century of warfare, including in particular the offensive against the Tigers in the East, it should have been apparent to senior relief managers concerned with Sri Lanka that the instrumentalization of humanitarianism was a problem with strategic implications. The relief system should have invested in securing support for core humanitarian principles and, by extension, maintaining space for impartial and effective humanitarian action.

The administration of LTTE areas was, in many ways, unique to a conflict setting in that the Government Agent, who presides at the District level, was responsible for the implementation of directives issued by the government. This remained the case throughout the war and “ensured a relatively high degree of service provision” in LTTE controlled territory.<sup>75</sup> Thus, while the Tigers had a monopoly on the use of force, the government apparatus retained a significant say in health and education and the flow of goods in and out of the Vanni.<sup>76</sup> This arrangement was of interest to both warring parties. It helped them maintain their respective relationships with the people in contested territory. However, this meant that service provision, including aid inputs, were part of a wider tug-of-war for leverage and legitimacy. This arrangement also meant that the people of the Vanni were vulnerable to being used by the LTTE and by the government.

Support provided by Colombo and the aid community for the provision of essential services in LTTE areas freed up the Tigers to use their resources for other purposes and helped maintain the allegiance of the diaspora.<sup>77</sup> Tamils under the

control of the Tigers constituted a ready recruitment and conscription pool. Control of the Vanni and its people provided the LTTE with a certain political and military legitimacy as well as a rationale for the armed defense of the separatist agenda. Importantly, the LTTE leadership had calculated, erroneously, that the death of civilians in significant numbers would oblige the international community to undertake some kind of intervention to stop the bloodshed and, in the process, provide some respite to the Tigers. This explains, in part, their determination to hold on to frightened civilians who were used by the Tigers to slow the advance of the SLA.<sup>78</sup> Both warring parties used aid convoys to shelter or camouflage their military movements.<sup>79</sup>

The Sri Lankan government’s determination to use the relief system for its own strategic purposes played out in different ways. Colombo was antagonistic to unfettered access by relief personnel so that it could manipulate population movements by controlling and limiting the amount of life-saving aid, including medical supplies, available to the besieged population.<sup>80</sup> The government presented its military campaign as a “humanitarian hostage rescue” exercise and used endless discussions on “access” to keep the relief community engaged and “to demonstrate the government’s good intentions” and “humanitarian credentials.”<sup>81</sup> The government was keen to avoid scenes of starvations or images that could mobilize international concern. Thus, it allowed the delivery of a small amount of food as this also served its strategy of shaping population movements.<sup>82</sup> By the same token, the government greatly restricted the supply of medicines. According to one donor representative, the government had a long-standing policy of restricting antibiotics and anesthetics to force the re-location of people out of the Vanni.<sup>83</sup>

<sup>74</sup> Instances where relief was used to weaken or strengthen links between a population and the local authority or rebel groups or for some other purpose, range from Biafra in the 1960s, Somalia in the 1970s, the Thai-Cambodian border in the 1980s to Bosnia in the 1990s. In this century examples stretch from Afghanistan to Haiti, Iraq, Libya, Sudan and, still, Somalia.

<sup>75</sup> Gowrinathan and Mimpilly, *op. cit.*

<sup>76</sup> To prevent the LTTE from re-supplying itself “the Government exercised strict oversight over goods entering the Vanni, including through checkpoints on roads, and controls over deliveries by sea.” UN Internal Review Panel Report, *op. cit.*, p 48.

<sup>77</sup> Gowrinathan and Mimpilly, *op. cit.*

<sup>78</sup> ICG, “War Crimes in Sri Lanka,” Report 191, May 17, 2010 pp 24–26.

<sup>79</sup> Gordon Weiss, “The Cage, the Fight for Sri Lanka & the Last Days of the Tamil Tigers,” The Bodley Head, London, 2011, p 105.

<sup>80</sup> David Keen, “Case Study: Sri Lanka, Compromise or Capitulation: Report on WFP and the Humanitarian Crisis in Sri Lanka,” WFP, June 2009, p 55.

<sup>81</sup> *Ibid*, p 55.

<sup>82</sup> *Ibid*, p 63, p 55.

<sup>83</sup> *Ibid*, p 70.



The government used a variety of tactics, including a sophisticated communications campaign, to shape the relief narrative and to maintain leverage over an intimidated and quiescent aid community. Colombo readily accepted assistance from Western donors and aid agencies while it simultaneously accused relief actors of being neo-colonialists who were disrespectful of Sri Lanka's sovereignty. It maintained this rhetoric even though, presumably, it understood that relief was provided without the conditionalities that often accompany development aid. The government presumably also knew that safeguarding the lives of the country's citizens is fundamental to being sovereign.

As the situation deteriorated, desperate civilians were, essentially, obliged to escape or attempt to do so as their survival chances dwindled in the shrinking and Orwellian-labeled No Fire Zones (NFZ).<sup>84</sup> In reality, these were free-fire zones subjected to indiscriminate bombardments. At the same time, the government did not want the LTTE to use the cover of population movements for tactical gain; the concentration of the Vanni population in designated areas was seen to be in the interests of the SLA.<sup>85</sup>

The government used visa and travel permits to intimidate and control relief agencies. It often referred to security concerns to explain its tight control of relief programming such as the massive reduction of humanitarians in the Vanni. While this type of instrumentalization sold well in nationalist Sinhala circles, there were few illusions in the aid community that the real reason for keeping the media and aid workers out of the Vanni was to avoid criticism of the impact of Colombo's military campaign on besieged civilians. The government's counter-insurgency (COIN) strategy lacked any hint of a "hearts and minds" component.<sup>86</sup>

<sup>84</sup> A series of "No Fire Zones" were declared, unilaterally, by the government; it then proceeded to bombard them although civilians had been encouraged by Colombo to concentrate in these areas.

<sup>85</sup> Keen, *op. cit.*, p 64.

<sup>86</sup> There has been significant comparison between US, British and the Sri Lankan COIN model. Major Smith points to a number of unique Sri Lankan features including a "go to hell" attitude in the face of criticism, tight regulation of the media, keeping neighbors advised, and "complete operational freedom."

Niel A. Smith, "Understanding Sri Lanka's Defeat of the

Bernard Kouchner and David Miliband, the French and British Foreign Ministers respectively visited Colombo in April 2009 when it was apparent that the war was ending. The muted advocacy and the public handwringing of these high profile personalities highlighted the use of aid to camouflage the absence of meaningful action by the Security Council and its Permanent Five members to protect civilians from unrestricted warfare.<sup>87</sup>

There are different viewpoints as to whether the relief system could have battled better, and more effectively, to hold a line against Colombo's aggressive war of attrition that intimidated and enfeebled the humanitarian community. But, there is little room for disagreement in the conclusion that relief agencies were "largely subordinated to the government's military and political agendas."<sup>88</sup> In addition to being a cog in a deadly and destructive war machine, humanitarians, whether senior UN or NGO executives, proved unable or unwilling to forcefully challenge the Rajapakse regime in its shameful and shameless hijacking of the humanitarian discourse for a war that was merciless in its treatment of civilians.

Given the constraints faced by relief agencies in Sri Lanka, and the larger issue of Colombo's misappropriation and distortion of the humanitarian discourse, it is unclear why agency headquarters were largely silent on the precedents being set and were not better able to muster a challenge to the dominant and misleading narrative. The relief community, or parts of it, was conscious of its collusion, however reluctantly, with the degradation of humanitarian values by the warring parties and that the actions of Western donors were circumscribed by their common policy "that war should be given a chance."<sup>89</sup> A number of senior UN officials were involved in backchannel efforts to mobilize UN Member States and

Tamil Tigers," NDU Press, Issue 59, 2010

<sup>87</sup> The release of US Embassy Colombo cables via Wikileaks, including one dated May 7, 2009, and published in the British Guardian, shows that Miliband's focus on Sri Lanka at the end of the war was also "driven by a looming crisis in the UK and the importance of British Tamils in marginal constituencies." theGuardian.com, December 1, 2010.

<sup>88</sup> Keen, *op. cit.*, p 55.

<sup>89</sup> Good Humanitarian Donorship meeting minutes, Geneva, February 15, 2011. Available online.

donor agency support for meaningful traction on humanitarian concerns.<sup>90</sup> However, for the most part, humanitarian leaders persisted with discrete diplomacy even when it was apparent that this approach was not productive. There were few credible voices ready to challenge the role of external actors in the catastrophic situation in the Vanni as it unfolded. There was very little said about the implications of the precedents being set in the Vanni for humanitarian action in other crises.

Instrumentalization compounded the systematic abuse of the besieged population whose plight was exacerbated by a broad political consensus to put an end to the LTTE. Most relief actors were aware that there was strong political support for the rapid elimination of the LTTE whatever costs this entailed for civilians.<sup>91</sup> They knew that the Vanni was being emptied of its civilian population who had no say in events that corralled them into an ever-shrinking death zone. Humanitarians knew they were being used as a substitute for credible measures to resolve the crisis but were mostly silent on the implications of being used as a fig leaf for inaction by the Security Council. The relief system became an active partner in instrumentalization when it decided to not acknowledge forthrightly the nature and scale of the problem. The relief system further undermined itself when coordination fora, as discussed in the next section, failed to agree on robust action to counter the impact of the war on civilians.

### ***Coordination and Institutional Interests***

A great deal of time and resources were invested in coordination processes that, frequently, had more to do with the agendas of individual agencies than the impact of warring strategies that were indifferent to the bloodbath in the Vanni.

In Sri Lanka, as in other crisis settings, it was necessary for relief actors to engage with both warring parties to secure and safeguard the space needed for humanitarian action. Nonetheless, there was

<sup>90</sup> Interview notes.

<sup>91</sup> Defence Minister Gotabaya Rajapakse, confirmed to the BBC, “there was a clear aim ... to destroy the LTTE no matter what the cost.”  
Smith, *op. cit.*

no hesitation in ignoring the structural problems inherent in the dual-hatted role of the most senior UN relief official, the Humanitarian Coordinator (HC), who was also the Resident Coordinator (RC). The position of the RC necessitates a close working relationship with government authorities and “strategic support for national plans and priorities” so that the UN is a “relevant and reliable partner” of the government.<sup>92</sup> Such a relationship invariably poses problems when the government is at war with some of the nation’s citizens. The long-term interests of dual-mandate aid agencies also meant that many “NGOs kept their head down” and made decisions that prioritized long-term, development-oriented programs.<sup>93</sup> In addition, “everyone wanted their own deal with the government and the government wanted them divided.”<sup>94</sup>

The HCT, known as the IASC Country Team in Sri Lanka, was not united; large UN agencies did not use their leverage to back a common agenda on protection.<sup>95</sup> UNHCR, notwithstanding its protection-specific responsibilities, was seen as “in bed with the government” and particularly reluctant to challenge egregious instances of harm.<sup>96</sup> It showed limited interest in a collective approach and “cut its own deal” with the government.<sup>97</sup> The WFP, one of the most high profile relief agencies in Sri Lanka, had a good working relationship with the military and other government officials. This was a key element of its ability to maintain a food pipeline that helped ensure that scenes of

<sup>92</sup> UNDP, “Resident Coordinator System,” <http://www.undg.org/index.cfm?P=5>.

<sup>93</sup> Various interviewees expressed concern that aid agencies prioritized their long-term presence given the size of programs, staffing and budgets considerations. It is unclear whether large NGOs have become “too big to prioritize principles” if this threatens their institutional interests.  
Interview notes.

<sup>94</sup> Interview notes.

<sup>95</sup> In Sri Lanka, the HCT was commonly known as the IASC Country Team. In 2008, it included FAO, UNHCR, UNICEF, UNOCHA, WFP, UNFPA, WHO; standing invitees included ICRC, IFRC, ILO, IOM, OHCHR, CHA, FCE, Sevalanka, Sarvodaya, Oxfam, NRC, CARE, World Vision, ACF, ZOA, Solidar, SCISL, Merlin, World Bank, UNDSS. ECHO participated as a donor observer.  
UN Office of the Resident and Humanitarian Coordinator, Memo to the ERC, December 18, 2008.

<sup>96</sup> Keen, *op. cit.* p 81.

<sup>97</sup> Interview notes.

starvation did not derail Colombo's narrative. The LTTE was also anxious that people were fed.<sup>98</sup> As a result, WFP had considerable leverage with the government but failed to use it to bolster the clout of the humanitarian community; it was "isolated from other humanitarian issues and from protection issues in particular."<sup>99</sup>

The absence of a common sense of purpose and consensus included significant Colombo-field differences and a huge level of frustration in Vavuniya. A twenty-two page testimonial, compiled in Haiti by eleven UN former Sri Lanka-based staff with the help of a neutral and unpaid researcher, sets out a long list of concerns primarily, but not only, in relation to child protection issues.<sup>100</sup>

The fragmented and mostly reactive approach to the crisis can be attributed in part to the oppressive operating environment and lackluster coordination mechanisms. Discussions in inter-agency fora were often acrimonious and frequently failed to reach strategic decisions that had the support of frontline workers.<sup>101</sup> In addition to the standard cluster coordination arrangements, Colombo authorities set up a Consultative Committee on Humanitarian Assistance (CCHA) so that relief agencies could maintain a "regular dialogue with the government and the top military leadership."<sup>102</sup> It was chaired by Mahinda Samarasinghe, Minister of Disaster Management and Human Rights, and met monthly with senior relief and donor officials. Given the nature of the government's all-out war in the Vanni, and its history of using humanitarian endeavor to deadly effect, the CCHA could only be seen as an Orwellian struc-

ture that helped keep the relief community in check while also serving as useful propaganda.<sup>103</sup>

Minister Samarasinghe, at a September 8, 2008, CCHA meeting that was focused on the relocation order out of the Vanni, stated that Colombo was committed to ensuring that government officials "have whatever they need to ensure their capacity to deliver needed assistance to IDPs" and requested international relief support in this connection.<sup>104</sup> Even though the government claimed to be fully committed to meeting humanitarian need there was no real challenge to Samarasinghe's comments on several points such as the reasons for insecurity in Kilinochchi, the level of care to IDPs in previous instances of displacement, or the impact of hostilities on non-combatants and their unmet protection needs.<sup>105</sup>

Fear of the government and its machinations drove inter-agency coordination underground. A series of informal and unofficial mechanisms that allowed a small and unrepresentative set of aid officials to meet on a structured basis were initiated. Such "non-meetings," with no official records, were helpful to a certain extent on some issues but they also added to a siege mentality, worked against clear communication and collaboration, and left the relief community open to charges of being neo-colonialist conspirators.<sup>106</sup>

The government's sophisticated "cat and mouse game" kept relief officials busy and contributed to a sense of helplessness.<sup>107</sup> This was compounded

<sup>98</sup> Keen, *op. cit.*, p 93.

<sup>99</sup> *Ibid.*

<sup>100</sup> The list includes alleged conflicts of interest, blocking 1612 child protection reports, inclusion of only one dedicated protection staff in the course of 11 convoys sent to the Vanni, harassment of junior staff to not speak-out on abuses, incompetence, HCR silence to protect its presence, silence on known malnutrition rates, UNICEF sidelining of child protection reports, and protection cluster failings. Julian Vigo, "Independent report on Sri Lanka and UN Human Rights Violations," *Sri Lankan Guardian*, April 11, 2012.

<sup>101</sup> Interview notes.

<sup>102</sup> Shamindra Ferdinando, "Tigers targeted CCHA to thwart relief operations," *The Island*, August 18, 2010.

<sup>103</sup> A Wikileaks cable from the US Ambassador to DC summarizing a CCHA September 8, 2008, meeting on the order to relief agencies to relocate out of the Vanni is instructive for several reasons including the ready acquiescence of donors and the UN to Colombo's eviction notice. Wikileaks, "GSL Orders All INGOs and UN out of Vanni for security reasons," *Scoop*, Independent News, <http://www.scoop.co.nz/stories/WL0809/S00459.htm>.

<sup>104</sup> Wikileaks, "GSL Orders ..." *op. cit.*

<sup>105</sup> A representative of the EU queried whether Colombo was considering "the creation of safe havens for IDPs" which gives the impression that the EU was confident that the government would respect the protected status of civilians in the Vanni. *Ibid.*

<sup>106</sup> Interview notes.

<sup>107</sup> The government was seen to take inspiration from the actions of the Israeli Defense Force in occupied Palestinian lands. Interview notes.

by a lack of solidarity, consensus and a concerted approach to no-holds-barred warfare. Institutional interests, including the long-term presence of organizations in Sri Lanka, featured prominently in decision-making according to many frontline relief personnel.<sup>108</sup> The relief system was deferential in the face of government atrocity but was comfortable challenging the LTTE on issues such as the use of coercion to oblige families to release children to become combatants. The UN practiced its own form of self-censorship to placate the government. UN statements on the death of civilians “failed to mention that reports most often indicated that the shelling in question was from Government forces.”<sup>109</sup> Aid agency concerns about offending the government “even extended to withholding results of nutritional surveys” conducted by UNICEF. These found that 25 percent of children less than 5 were “suffering either severe or moderate wasting” in the Mullaitivu area; this was seen to be indicative of children elsewhere in the Vanni.<sup>110</sup> “Overwhelmingly, we decided at all costs to stay engaged” even though this approach “hasn’t worked” and did not augment the protection of IDPs, noted one UN relief worker.<sup>111</sup>

In formal relief co-ordination fora, both at the senior and working level, there was great reluctance to openly discuss the political dynamics driving the crisis and related strategic issues. Some of the reluctance to have a vigorous debate was understandable given the persistent harassment of relief agencies and, incredibly, the presence of “uniformed and armed soldiers” in relief coordination meetings in Vavuniya.<sup>112</sup> Government intimidation took many forms: the issuance of visas was used to control which relief personnel were allowed to

work in Sri Lanka, several NGO and UN staff were PNG’d (persona non grata) or subjected to character assassination, and a campaign of innuendo projected various NGOs and individuals—including in particular proponents of peace or a ceasefire as the fighting escalated—as “terrorists” who supported the LTTE.<sup>113</sup> As noted above, a high number of national staff lost their lives in circumstances that, at best, pointed to government negligence.<sup>114</sup> Antagonism to humanitarian agencies was also reflected in the pro-government media and was, unquestionably, an issue of considerable concern although relief actors exhibited little solidarity when individual staff was under attack.<sup>115</sup>

Notwithstanding its bullying tactics, Colombo was sensitive to its reputation as demonstrated, in part, by its harassment of the media and efforts to control information and presence in the Vanni. This gave leverage to those who were not fearful of challenging Colombo’s carefully constructed charade and its “good cop, bad cop” routine that kept the relief system off balance and fractured.<sup>116</sup> In the words of one savvy relief official, the “government ran circles around everyone, knew what they wanted to hear, and knew they would provide help.”<sup>117</sup> Humanitarian agencies were also on the defensive and lacked a sound communication strategy as the crisis and the related information war intensified.

There is some evidence to indicate that the general quiescence of the relief system emboldened government authorities.<sup>118</sup> The relief system also lacked an agreed strategy to counter the government’s sophisticated ability to repeatedly out-manuever the humanitarian community

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<sup>108</sup> Many working level relief personnel expressed a great deal of frustration with the overall approach of their organizations that were perceived as prioritizing their presence, programs and budgets over robust action on protection problems.

<sup>109</sup> UN Internal Review Panel Report, *op. cit.*, p 20.

<sup>110</sup> Keen, *op. cit.*, pp 82–83.

<sup>111</sup> Keen, *op. cit.*, pp 81.

<sup>112</sup> Keen, *op. cit.*, p 52.

In 2012, former SLA personnel routinely participated in UN-led relief coordination meetings in Kilinochchi during the “early recovery” phase notwithstanding the security concerns of national staff in particular. Interview notes, Sri Lanka, July 2012.

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<sup>113</sup> Interview notes

<sup>114</sup> Weiss, *op. cit.*, p 160.

<sup>115</sup> Interview notes.

<sup>116</sup> Interview notes.

<sup>117</sup> Interview notes.

<sup>118</sup> Some interviewees were of the view that unhelpful precedents were set as the peace process unraveled when tit-for-tat violence between government-sponsored paramilitaries and the LTTE, resulted in condemnations of the latter and not the former. Similarly, the lack of comment on Colombo’s eviction of the ceasefire-monitoring mission in January 2008 and the rapid withdrawal of relief agencies from the Vanni in September 2008 were seen as an unhelpful signal that emboldened the government. Keen, *op. cit.*, p 79–80.



and its attempts to bring productive attention to the inhumanity of the war in the Vanni.

The relief community should also have been conscious of the dangers inherent in establishing precedents or contributing to normalizing the unacceptable by not challenging, in a compelling manner, the horror unleashed on the besieged population. The approach of the humanitarian community to the policies and practices of the conflicting parties in Syria where massacres, the use of barrel-bombs in urban neighborhoods, the targeting and destruction of health infrastructure, the denial of access to life-saving relief programs and other abominations, provide disturbing reminders of the unlearned lessons from Sri Lanka. Participants at a conference in Washington, DC (January 2014) on “Saving Syria’s Civilians” included a cross-section of humanitarian, diplomatic and development personnel from government, inter-governmental and NGO backgrounds as well as a UN official with senior-level responsibilities in Sri Lanka as the war ended. Notwithstanding the title of the conference, the major focus of the discussion was on refugees, issues confronting Syria’s neighbors, and the difficulties surrounding access problems in different parts of the country. The nature of the war and the way in which the tactics of both sets of warring parties, and their sponsors, pose the biggest threat to the survival of civilians was not discussed.<sup>119</sup>

In Sri Lanka, it is unclear whether a stronger campaign to counter the official narrative would have helped attempts to secure compliance with core humanitarian norms or a pause in the fighting in the latter months of the war. However, few will question that the government was anxious to avoid attention to the issue of civilian casualties given its repeated claims in 2009 that its armed forces adhered to a “zero civilian casualty policy.”<sup>120</sup>

Lack of cohesion in the relief system undermined its overall ability to challenge the conduct of the war and its consequences for civilians. This problem was amplified when humanitar-

ian actors, as discussed in the next section, prioritized their continued presence over assertive action on the policies and practices that put an end to the lives of thousands in the Vanni.

### ***Priorities Other Than Protection***

The government and the LTTE had agreed to respect a “green zone,” or conflict-free area that included Kilinochchi town where many aid agency compounds were located. However, both sides repeatedly disregarded this arrangement as the fight for the Vanni began to move center stage after government forces took control of the Eastern Province, mid-2007.

On the evening of September 3, 2008 after several artillery shells had hit Kilinochchi close to UN infrastructure, the government advised the UN that it could not guarantee the safety of its staff.<sup>121</sup> The UN Country Team (UNCT) decided a short time later to withdraw from the Vanni and did so in mid-September. The UN relocated south to government-held territory in Vavuniya town that then became the hub for northern relief operations. Frightened civilians, apparently with the support of the Tigers, tried to convince UN staff to stay and not abandon them by blockading UN offices for a few days.<sup>122</sup> By the end of September, international NGO staff had also left the Vanni. However, the ICRC took the decision to move deeper into the Vanni to Puthukuddurippu (PTK).

Both the government and the LTTE had controlled movements and supplies in and out of the Vanni so it was not a surprise when the latter refused to issue “passes” for the dependents of national staff, the vast majority of whom were Tamils. This effectively meant that national staff with families in the Vanni were unable to leave and were obliged to retreat further east a short while later as artillery shells rained down on Kilinochchi town.<sup>123</sup> UN and other aid officials did try to negotiate the departure of national staff and their dependents with the LTTE when organizations decided to pull out of the Vanni. When this failed, some organiza-

<sup>119</sup> The Middle East Institute, “Saving Syria’s Civilians: Urgent Priorities and Policies,” Washington, DC, January 31, 2014, <https://www.youtube.com/watch?v=PreHS4CJevw#t=309>.

<sup>120</sup> The Hindu, “Sri Lanka admits to civilian deaths in Eelam war,” August 1, 2011, Chennai.

<sup>121</sup> Weiss, *op. cit.*, p 103.

<sup>122</sup> *Ibid.*

<sup>123</sup> “We felt abandoned but we also felt the UN would do something to save us,” noted one survivor. Interview notes.

tions did make arrangements to maintain communication and provide some practical support to those colleagues who were unable to leave.

The rapid departure of the UN and other international relief personnel, coupled with very limited arrangements for the survival of national staff, signaled the unwillingness of the aid community to forcefully challenge the dramatic reduction of humanitarian space including disregard for the protected status of civilians.<sup>124</sup> As noted by the respected Sri Lankan group, the University Teachers for Human Rights, Jaffna, UTHR(J), the UN has an obligation to endangered people including in situations where its presence is “at the invitation or sufferance of the government.”<sup>125</sup> It added, “given the record of a State that has been bombing and shelling its civilians for over 20 years and freely uses killer squads, the UN knew what the people would confront once they left.”<sup>126</sup>

The UN and the wider relief community declined to confront the decisions that put its staff and other civilians in danger. This approach was taken notwithstanding a string of deadly incidents involving humanitarian personnel that allowed for little confidence in Colombo’s assertions of concern on issues of safety. The execution-style killing of seventeen Action Contre la Faim (ACF) national staff in August 2006, shortly after the Sri Lanka army had retaken Muttur, occurred when there were no expatriates in the vicinity. The aid community lamented and protested the extra-judicial killing of their colleagues but did not treat the situation as a watershed moment that necessitated a re-negotiation of the basis on which humanitarian action could be undertaken.<sup>127</sup>

<sup>124</sup> The term “humanitarian space” has different connotations. It is used here to denote the political and operational space that should be available to give effect to the humanitarian imperative, namely that humanitarian considerations are prioritized over all others when lives are at stake. Humanitarian space refers to respect for (a) the protected status of civilians (b) the impartial provision of relief, (c) the safety of relief assets and personnel and (d) the right to seek asylum.

<sup>125</sup> UTHR(J), “Pawns of an Un-heroic War,” Special Report No 31, October 28, 2008.

<sup>126</sup> UTHR(J), *ibid.*

<sup>127</sup> The Law and Society Trust of Sri Lanka in a submission to a Presidential Commission of Enquiry “produced a list of 58 aid workers killed from 2005 to 2007.”

The business-as-usual approach of the humanitarian community effectively signaled to Colombo that government actions, however reprehensible, would not be challenged in any serious fashion.

Ban Ki Moon, the UN Secretary General, mirrored the approach taken by relief actors. His office issued a statement to advise the world that the UN was leaving the Vanni as the government declined to ensure staff safety. UN and other relief staff would have greatly benefitted from a cessation of bombing of the demarcated Kilinochchi green zone but the SG’s statement did not challenge or make any reference to SLA shelling.<sup>128</sup> The passive approach of the relief community to a deliberate erosion of humanitarian space undermined what limited leverage it had.<sup>129</sup> When the government refused to cease action that endangered relief personnel, how could the UN give credibility to government pledges “to ensure zero civilian casualties” queried the UTHR (J); it added that the departure of expatriates left “their local humanitarian staff and the people in greater danger.”<sup>130</sup>

Many relief staff were alarmed and upset that they were leaving as the crisis was deepening and needs were increasing. There was also a lot of angst that “the UN fell into line without a fight” and took shelter behind “very conservative security guidelines.”<sup>131</sup> The UN quit the Vanni in a period of days rather than pushing for negotiations and acquiring time to put in place arrangements for post-departure programming particularly in relation to protection issues.

It can also be argued that the passive demeanor of the relief system in the face of Colombo’s

Robert C Oberst, “Countries at the Crossroads, Sri Lanka,” Freedom House, 2010, p 568.  
[www.unhcr.org/refworld/pdfid/4be3c8db0.pdf](http://www.unhcr.org/refworld/pdfid/4be3c8db0.pdf).

<sup>128</sup> The statement merely referred to the “government’s request for relocation of UN humanitarian staff.”

UN, New York, “Statement attributable to the Spokesperson for the Secretary-General on Sri Lanka,” September 9, 2008.

<sup>129</sup> A senior UNCT official advised how “the then-recent bombing of UN offices in Algiers had affected the global UNDSS analysis of the UN’s options when confronting security threats.”

UN Internal Review Panel Report, p 50.

<sup>130</sup> UTHR(J), October, 2008, *op. cit.*

<sup>131</sup> UTHR(J), October, 2008, *op. cit.*



aggression undermined the ability of the Humanitarian Coordinator and others to negotiate with the LTTE to release national staff and cease its exploitation and abuse of the people it controlled to further its strategic agenda.

As 2008 came to a close, the war had entered its final and most ferocious phase. The biggest threat to the survival of the people in the Vanni was the military strategy of both warring parties and widespread indifference to the inhumanity involved. The LTTE was determined to hold onto the besieged population and upped its conscription rate of boys and girls to bolster the capacity of the Tigers. Colombo with its overwhelming firepower, strategic intelligence, shelling of the zones where it pushed civilians to concentrate, and restrictions on the delivery of essential medical and food supplies was responsible for the bulk of the death and deprivation during the last five months of the war.

The protection implications of the strategy of both warring parties were profound and can be linked directly to the high death toll. Even though the bulk of the relief system had withdrawn, without protest, from the Vanni food convoys took precedence over the action needed to counter strategies that were harmful to the safety and well-being of civilians. According to one study, there is little doubt that after September 2008, relief convoys “were a major priority within the UN system and among the diplomatic community” with an “excessive proportion” of time and energy invested in delivery “compared to protection.”<sup>132</sup>

The relief system was also preoccupied with putting in place arrangements to assist those who escaped the fighting or found themselves in government-held territory as the frontline changed. The focus of this section is on the people in the Vanni but it is worth underlining that efforts to address the suffering of both population groups were inextricably inter-linked. The humanitarian community did not attempt to prioritize help for one group over another but this is effectively what happened when senior

UN managers and others in the aid arena de-prioritized the protection needs of the Vanni population.

There was a need for food, the primary commodity transported by the convoys that came to a halt mid-January 2009. But, there was an even greater need to counter unrestrained warfare and policies that restricted the availability of such basics as anesthetics and pediatric medicines.<sup>133</sup> The government of Sri Lanka may well have set new lows in the annals of barbarity when it studiously ignored the need for pain relievers and other life-saving medicines notwithstanding the pleas of its own medical personnel. Sri Lankan health staff underlined in an Open Letter, March 2009, that “less than 5 percent of the combined quota of drugs and dressings” that were meant for the last quarter of 2008 and the first quarter of 2009 had been received as a result, apparently, of outstanding security clearance by the Ministry of Defense.<sup>134</sup> The letter stressed that the situation was desperate. It noted that most “hospital deaths could have been prevented” if basic supplies had been available and that most of those who died in hospital “succumbed to severe war wounds.”<sup>135</sup>

The relief system knew that the warring parties were not concerned about the suffering endured by civilians but stuck to a response model that had limited relevance to the policies and practices that were driving up the death toll. Although the relief system has invested heavily since the end of the Cold War in strengthening its ability to address the protection dimension of crisis settings there was little evidence of this in Sri Lanka. On the one hand, there was significant confusion as to what protection in the context of humanitarian action meant as the crisis escalated.<sup>136</sup> On the

<sup>133</sup> A HRW report noted that as a result of restrictions of certain goods into the Vanni there was an acute shortage of “essential medicines including snake serum, antibiotics, pediatric medicines, vaccines, and diabetic medicines.” HRW, “Besieged, Displaced, and Detained, The Plight of Civilians in Sri Lanka’s Vanni Region,” New York, December 2008, p 32.

<sup>134</sup> Office of the Regional Directors of Health Services for Kilinochchi and Mullaitivu Districts, “Undue Deaths due to non-Availability of Essential Drugs at Mullaitivu,” March 16, 2009.

<sup>135</sup> Ibid.

<sup>136</sup> Some managers see protection as the responsibility of staff tasked with addressing particular problems such as the

<sup>132</sup> Keen, op. cit. p 92.

An interviewee, who was based in Colombo at the time, noted that humanitarians were “preoccupied with tarpaulins” and unending negotiations on access when it was clear that unrestrained violence was the critical issue.

other, there was limited acknowledgement that the harm inherent in unrestricted warfare and tactics that sought to augment and exploit the suffering of the besieged people were issues of critical concern to the humanitarian system.<sup>137</sup>

Humanitarians had a responsibility to focus on “changing facts on the ground” This required strategic, sustained, multifaceted and coordinated humanitarian action. It also required a clear commitment to counter the inhumanity of the policies that were systematically wiping out lives in the Vanni. Many senior humanitarian staff related to protection issues that were contentious as “political” and not, thus, a humanitarian responsibility.<sup>138</sup> It is, of course, a rare conflict where any issue of substance does not have political implications or connotations; it was the task of humanitarians to understand the political dynamics of the crisis, to be non-partisan, and to define a strategy that was protective and geared to addressing all the threats that put lives in imminent danger.<sup>139</sup>

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conscription or recruitment of children for soldering or gender-based sexual violence while others ignore that the analysis of threats coupled with the design and implementation of relief programs may impact negatively on the safety, dignity, and wellbeing of crisis-affected groups. In Sri Lanka, a study highlighted the protection implications of the early and induced return of IDPs who had fled fighting in the east of Sri Lanka in 2006 as well as relief registration processes that were discriminatory.

Samir Elhawary, and M.M.M. Aheeyar, “Beneficiary Perceptions of corruption in humanitarian assistance: a Sri Lanka case study,” HPG Working Paper, London August 2008, pp 5–10.

<sup>137</sup> The UN system “lacked an adequate and shared sense of responsibility for human rights violations.”

UN Internal Review Panel Report, op. cit., p 28.

<sup>138</sup> “Issues appear to have been defined as political ... because UN action to address them would have provoked criticism from the Government. Thus, raising concern over who was killing civilians, how many civilians were being killed, or how many civilians were actually in the Wannu were all, at various times, described as political issues.”

UN Internal Review Panel Report., op. cit., p 19.

<sup>139</sup> The absence of a clear statement of what constituted the protection dimension of the overall humanitarian response undermined and complicated the ability of the relief system to prioritize and agree on an effective division of labor, to work synergistically on the most pressing and threatening issues, and to present a united front on key concerns, messages, and interventions.

An interviewee noted, “there was lots of stuff going on called ‘protection’ and lots of training but to what effect it was unclear.”

Relief managers were concerned that protection-oriented interventions would jeopardize their presence or ability to address the material needs of vulnerable communities. However, it should have been clear that it was not a question of sacrificing “relief” for “protection” or vice versa; effective humanitarian action required that the situation of those who were most at risk, and all factors that put their lives at risk, informed decision-making and the overall approach of the humanitarian community. Agencies were also concerned, and rightly so, about the security of their Sri Lankan staff. However many Tamil national staff remained trapped in the Vanni where reduced warfare would have greatly enhanced their security.<sup>140</sup>

The wider relief community, largely, took its lead from the UN notwithstanding a lot of frustration, particularly at the working level, with the overall approach to the crisis. It is worth underlining, however, that a number of individual staff, and especially those in the Vanni, did hold fast to humanitarian values. They challenged policies and approaches that were deemed inappropriate or inadequate given the nature of the task. National staff of the UN worked ceaselessly, often under fire, to help the besieged population. The ICRC team and some NGO staff, including CARITAS, were similarly engaged. Government health care professionals were the embodiment of what it is to be compassionate and exemplary humanitarians as they persisted in their efforts to save the wounded in the midst of shelling and in the most rudimentary field hospital conditions.

In Sri Lanka, it appears that a protection strategy, per se, was not articulated even though the 2009 CHAP did set out a broad set of priorities, objectives, indicators and the implications of goals not being met.<sup>141</sup> Many interviewees indicated that the absence of a clear and concerted approach was troubling although some indicated that it was obvious that the priority protection problem was

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<sup>140</sup> There does not appear to be a recorded figure for the number of national relief staff who died during the period they were besieged or when they were interned.

<sup>141</sup> OCHA, “Sri Lanka, 2009 Common Humanitarian Action Plan,” February 2009.

<http://www.unocha.org/cap/appeals/common-humanitarian-action-plan-sri-lanka-2009>.

indiscriminate warfare.<sup>142</sup> The inter-agency protection working group, apparently, “was preoccupied with population movements,” the amount of support to provide to closed camps, and suffered from “a paralysis of limited consensus.”<sup>143</sup>

CHAPs are automatically reviewed with government and other relevant authorities; in Sri Lanka, this entailed careful enunciation of issues pertinent to humanitarian need. Thus, the extent to which the impact of the war on civilians was not highlighted may or may not be indicative of the overall approach of relief agencies including those with specific protection responsibilities.<sup>144</sup> The CHAP noted that key protection concerns in 2008 “were associated with displacement, conflict and physical security as well as freedom of movement.”<sup>145</sup> There was no reference to child deaths or injuries as a result of war. “Child-friendly spaces and children’s clubs,” however, were highlighted as important achievements.<sup>146</sup> There was no acknowledgment that children are most safe when their families are secure.

The priority needs and response strategy for 2009 made no reference to civilian casualties or indiscriminate warfare. The CHAP did note that “physical insecurity, prolonged and multiple displacements and limits on freedom of movement” would

<sup>142</sup> One interviewee indicated that there was a clear protection plan but the author has not been able to locate such a document; various field level staff indicated that there was no protection strategy in the sense of an agreed or articulated plan.

<sup>143</sup> Interview notes.

<sup>144</sup> Protection objectives as set out in the CHAP were focused on returnees, rehabilitation and civil documentation issues as well as enhancing awareness of human rights and improving the “protection situation of children through increased access to psycho-social support and child friendly spaces; support for particularly vulnerable children such as separated/unaccompanied children and children in institutions; reintegration support and care for children leaving armed groups; mine risk education, surveys and clearance; and continued monitoring, reporting and response to child recruitment and other grave violations against children,” p 40.

<sup>145</sup> It added that adults as well as children “faced recruitment into armed groups, mine injuries and food insecurity.” CHAP 2009, p 6.

<sup>146</sup> Ibid, p 7.

continue to have “an adverse effect on IDP’s coping mechanisms” and that “lobbying would reinforce the need for regular protection assessments and assistance to IDPs and vulnerable conflict-affected populations.”<sup>147</sup> It also noted that “reporting and responses, including programmatic and advocacy on international humanitarian law and human rights issues” would be undertaken.<sup>148</sup> A long list of objectives and indicators, and the likely implications of the non-implementation of the protection plan, does not make any reference to the deepening crisis in the Vanni, the reality of the so-called “safe area” unilaterally declared by the government, the rising death toll, and the deliberate blockage of life-saving medicines.<sup>149</sup> The CHAP made no reference to the deliberate cruelty of a war that was producing a mounting and avoidable number of casualties. This was mirrored in the decision-making of senior managers and their reluctance to tackle the protection issues inherent in the indiscriminate shellfire that rained down inside and outside the government’s so-called No Fire Zones.

Opinion among interviewees on the validity of the overall approach to the crisis varied. Many relief personnel were of the view that a choice had to be made between getting access (initially to the Vanni and, later, to the internment camps where those who fled were held) and robust advocacy on the impact of the war on civilians. Perspectives tended to pivot on the issue of leverage and the extent to which this was lacking or could have been mobilized.

There was broad consensus among relief staff that it was relatively easy for those who did not have staff or programs on the ground in Sri Lanka to point fingers and blame humanitarians for the failure in protection that the majority agreed occurred. It is, practically, an article of faith within relief circles that humanitarians were left high and dry and any learning from the Sri Lankan experience must, for example, examine the effectiveness of human rights machinery as well as the role of the UN Security

<sup>147</sup> Ibid, p 38.

<sup>148</sup> Ibid.

<sup>149</sup> The CHAP’s executive summary indicates that the majority of the Vanni population was “in a ‘Safe Area’ declared by the Government” security risks were high as heavy fighting continued, p 1.

Council and its PoC framework. Chinese support for the Colombo government, and its role in blocking Security Council action, was a common theme. Similarly, the role of New Delhi, and the view that it held cards that others did not have but choose to ignore the plight of civilians, was widely shared. India's role was a source of bitterness and sadness among national staff working with the UN and others in the Vanni. Delhi was seen to have played a self-interested and cynical role as it made "a few pro-forma admonitions" and sent some food and other relief supplies at the end of 2008.<sup>150</sup> Apparently, New Delhi was anxious that Colombo move quickly to defeat the Tigers so that the war was not an issue that could adversely affect the ruling Congress party in general elections held between mid-April and mid-May, 2009.<sup>151</sup> Relief personnel also raised questions about the role of retired Indian army General, Satish Nambiar—brother of the UN Secretary General's chief of staff, Vijay Nambiar, who played a prominent role during the end phase of the war—who had worked as an advisor to the Rajapakse regime.<sup>152</sup>

Against this background, some relief actors concluded that there was little option but to focus on the "practical," which was essentially defined as maintaining access for relief convoys and preparing for the anticipated outflow from the Vanni. It is unclear why pushing for a reduction in civilian deaths was not perceived as a "practical" contribution to saving lives particularly in light of the poor success rate of getting supplies into the Vanni, either before or after January 2009 when convoys ceased. Clarity on the number of people in need of life-saving action would also have made a practical contribution to mitigating the effects of the crisis. This is the focus of the next section.

### ***Russian Roulette: Data, death and deprivation***

The relief system failed to agree on the number of people in need of humanitarian action after

it had withdrawn from the Vanni at the end of 2008. Estimates on the number of people facing an immediate threat to their lives as the crisis escalated at the beginning of 2009 had significant humanitarian implications. This situation was compounded by inadequate support to people in need prior to 2008. The rest of this section examines the relationship between impartiality, contested numbers, and the relevance of this for effective humanitarian action.

To put the humanitarian situation during the end phase of hostilities—defined here as mid-2008 to May 19, 2009—into perspective it is important to note that the people in the Vanni had been facing challenging circumstances for many years.<sup>153</sup> The Consolidated Humanitarian Action Plan (CHAP) for 2008, developed by the Humanitarian Country Team in consultation with the government, donors "and other stakeholders" called for a preparedness plan "for up to 500,000 conflict-affected individuals."<sup>154</sup> It noted that public infrastructure and essential services had been compromised and that internal displacement, fishing bans, "and the inability to access agricultural plots and markets have increased dependence."<sup>155</sup> The CHAP also noted that limited numbers "of qualified health personnel in the conflict areas, combined with access difficulties, has further marginalized vulnerable populations."<sup>156</sup> Nonetheless, even though Colombo claimed donors "were unreasonably targeting the north" data shows that bias in relief programming was detrimental to Tamils.<sup>157</sup> At the

<sup>153</sup> The Vanni was part of the northeastern Sri Lankan coastline that had been the worst affected by the Indian Ocean Tsunami at the end of 2004. A year later, the inauguration of the first Rajapakse Presidency was accompanied with a surge in warfare and a drive to control the distribution of aid so that the needs of the population "increased dramatically."

Gowrinathan and Mimpilly, op. cit.

<sup>154</sup> UN, "Sri Lanka, Common Humanitarian Action Plan" 2008, Colombo, February 2008, p 1.

<http://unocha.org/cap/appeals/common-humanitarian-action-plan-sri-lanka-2008>.

<sup>155</sup> Ibid, p 13.

<sup>156</sup> Ibid, p 13.

<sup>157</sup> A study in 2007 found that only 14.9 percent of the food tonnage requested for the LTTE-controlled areas of Kilinochchi and Mullaitivu was actually dispatched; this contrasts with 53.33 percent for the amount of tonnage requested for other districts in Sri Lanka.

<sup>150</sup> Nalapat, op. cit.

<sup>151</sup> Nitin Gokhale, "How India secretly helped Lanka destroy the LTTE," Rediff.com, August 21, 2009.

<sup>152</sup> Sam Rajappa, "The truth behind India's dilemma with UN resolution on Sri Lanka," Transcurrents, March 20, 2012.



beginning of 2009, one UN aid official indicated that there had not been “a full ration for IDPs in the north since February 2008, estimating deliveries at 50 percent” of what was actually required.<sup>158</sup>

The actual amount of humanitarian support required depended on a number of factors such as coping strategies coupled with the level and nature of vulnerability in the Vanni. Estimating who and how many were in need as the battle for the Vanni got underway was not a straightforward task. Neither was such an exercise more complicated than in most war zones where issues related to outdated census data, changing patterns of displacement, and other such factors need to be addressed. The relief community had a lengthy history of operating in the Vanni where different parts of the UN had, for example, identified the number of people in need for individual programs or sectors such as food insecurity, health and shelter. The UN was also aware of Colombo’s record of reducing and delaying relief supplies and the implications of this for growing levels of vulnerability but failed to agree on the scale of the humanitarian caseload.<sup>159</sup>

At the beginning of 2008, the World Food Programme (WFP) had, in collaboration with the government, agreed to a planning figure of 350,000 for the calculation of food requirements.<sup>160</sup> The SLA, during a November 2008 CIMIC (Civil-Military Coordination) meeting concerned with the implications of the likely changes for people who remained in or left the Vanni, did not have an issue with a planning figure of 400,000.<sup>161</sup> As the situation changed towards the end of 2008, and a small number of people began to leave the Vanni, Colombo challenged UN estimates and a figure of 230,000 was, effectively, negotiated with the government.<sup>162</sup> It is noteworthy that the Catholic Diocese of Mannar, based on information obtained

from local government offices in Kilinochchi and Mullaitivu concluded that the population of the Vanni in October 2008 was 429,059 people.<sup>163</sup>

On the January 19, 2009 a figure of 230,000 IDPs, that cited UN sources, was used in an IRIN article that also quoted John Holmes, the UN Emergency Relief Coordinator (ERC) to the effect that he was concerned about the 350,000 civilians trapped in the Vanni.<sup>164</sup> However, the UN Office for the Coordination of Humanitarian Affairs (OCHA) cited a figure of 250,000 in a Situation Report dated February 6, 2009; a few days later, a figure of 300,000 was cited in the official record of an inter-agency meeting.<sup>165</sup> Meanwhile, early in 2009 the government claimed that the UN’s figures were fabricated and said that there were “no more than 50,000 civilians” inside the war zone.<sup>166</sup>

The low figure claimed by Colombo was not credible and was indicative of the extent of the government’s distortion and manipulation of the humanitarian situation. The inability or reluctance of the UN Country Team to agree on the number of people in the Vanni, and the proportion of those in need of humanitarian action, showed poor leadership and limited commitment to the principle of impartiality. Various interviewees noted that the compromises made on numbers was yet another signal to government authorities, and particularly the Rajapakse brothers, that the relief system was malleable and relatively easily quarantined.<sup>167</sup> A deliberate reduction in numbers of those in need effectively meant a system of Russian roulette that made life more dangerous and precarious for civilians in the Vanni. It had clear implications for the amount of food and other relief items, including medical supplies that could be negotiated onto relief convoys and affected calculations of the number of people who would require help as frontlines changed or people escaped into government-held territory. The

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Keen, *op. cit.*, p 57–58.

<sup>158</sup> *Ibid*, p 58.

<sup>159</sup> It had also been apparent for some time that the government had been able to “control the information environment to a very high degree” to the detriment of humanitarian programming.

*Ibid*, p 56.

<sup>160</sup> Weiss, *op. cit.*, p 178.

<sup>161</sup> Keen, *op. cit.*, p 74.

<sup>162</sup> Weiss, *op. cit.*, p 178.

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<sup>163</sup> Submission by the Catholic Diocese of Mannar to the Lessons Learned and Reconciliation Commission, January 8, 2011, available online.

<sup>164</sup> IRIN, “Rising concerns over thousands trapped in conflict areas,” Colombo, January 19, 2009.

<sup>165</sup> UN Internal Review Panel Report, *op. cit.*, p 39.

<sup>166</sup> Weiss, *op. cit.*, p 178.

<sup>167</sup> Interview notes.

lack of a clear stance on numbers also allowed for great confusion and distortion. When the conflict intensified, Colombo used low population numbers “to rebut allegations of civilian deaths.”<sup>168</sup>

### ***Atrocity: Advocacy and accommodation***

More information has come to light since the end of the war on the scale of the killings and the brutality involved. During the end months of the conflict, from January to mid-May, the Rajapakse regime repeatedly claimed that it was delivering on a “zero civilian casualty” policy. The humanitarian system and the wider world knew that humanitarian law was systematically violated at great cost to civilians in and outside the declared “No Fire Zones.” However, humanitarian actors exhibited great caution in challenging Colombo’s assertions to the detriment of the advocacy, albeit limited, of the relief system. The UN’s Internal Review Panel report is a withering indictment of the UN secretariat and the broader UN family in combating no-holds-barred warfare.<sup>169</sup> The report also shows that there was limited support for the humanitarian imperative within the international community when lives were at imminent risk in the Vanni. This section examines how the relief system compromised its ability to be an effective advocate on behalf of the besieged population.

Beginning in January, Colombo unilaterally declared a series of “No Fire Zones.” Such zones could only prove effective if both warring parties agreed that the demarcated area would not be attacked nor used for military purposes.<sup>170</sup> Frightened civilians streamed into the first “NFZ” and what “government broadcasts had assured them was sanctuary.”<sup>171</sup> However, it became apparent relatively quickly to experienced aid workers

that the first so-called NFZ was a strategic tool that “had little to do with protecting lives.”<sup>172</sup>

Concentrating the population was part of a military strategy to accelerate the war’s timetable by locating civilians close to SLA forces who were advancing eastward after the fall of Kilinochchi.<sup>173</sup> Punching a hole in the Tigers’ defensive positions would, in principle, have allowed civilians to escape into government held areas and deprive the LTTE of the population it was ostensibly defending and using as a conscription pool.<sup>174</sup> Some civilians did want to flee but families whose children had been conscripted were reluctant to leave them behind.<sup>175</sup> “Others were reluctant to cross into government-held territory as they did not trust the government and knew the government did not trust them.”<sup>176</sup> By the end of January, reports also began to emerge of Tiger cadres shooting at escapees to inhibit their departure although some LTTE Commanders allowed civilians to escape.<sup>177</sup> According to one survivor, many of the Tigers were young, conscripted fighters “who were scared and knew that the departure of the people would mean their decimation.”<sup>178</sup>

Indiscriminate bombardment of the NFZs resulted “in astounding levels of civilian casualties” and included repeated attacks on hospital compounds.<sup>179</sup> Eyewitnesses explained that if the LTTE “fired two or three” mortars, the SLA “replied with scores of shells into a wide area” but much of the shelling “was independent of any provocation.”<sup>180</sup> The UN Secretary General’s Panel on Accountability concluded that the government “systematically shelled hospitals on the frontlines” and “all hospitals in the Vanni were hit by mortars and artillery, some of them were hit repeatedly, despite the fact that their locations were well-known to the Government.”<sup>181</sup> In February, “the SLA continuously shelled within

<sup>168</sup> UN SG Panel on Accountability, op. cit., p 39.

<sup>169</sup> UN Internal Review Panel Report, op. cit.

<sup>170</sup> As LTTE controlled territory shrank and the population got pushed closer to the coast, the location of the area described by the government as a “No Fire Zone” changed; the first “NFZ” was declared on January 21, 2009, the second in February and the third in early May.

<sup>171</sup> It was a 22 sq. mile (33.5 sq kilometers) stretch of scrubland north of the A35 road that connects Kilinochchi to Puthukkudiyiruppu (PTK) and the coast. Weiss, op. cit., p 112.

<sup>172</sup> Weiss, op. cit., p 113.

<sup>173</sup> Weiss, op. cit., p 114.

<sup>174</sup> Ibid.

<sup>175</sup> UTHR(J), “Special Report Number 34,” Jaffna, December 13, 2009, p 30.

<sup>176</sup> Interview notes.

<sup>177</sup> Weiss, op. cit., p 181.

<sup>178</sup> Interview notes.

<sup>179</sup> UTHR(J), December 2009, op. cit., p 30.

<sup>180</sup> Ibid, p 32.

<sup>181</sup> SG Panel on Accountability, op. cit., p ii.



the area that became the second NFZ, from all directions, including land, air and sea. It is estimated that there were between 300,000 and 330,000 civilians in that small area” at the time.<sup>182</sup>

On January 26, Dr. Varatharajah, a government doctor operating in the war zone reported the death of 300 civilians and appealed for the urgent provision of medical supplies for the dramatic increase in the number of war wounded.<sup>183</sup> Two days later, the ICRC noted that “hundreds of patients” were in need of emergency treatment while others were “caught in the crossfire, hospitals and ambulances have been hit by shelling” and several aid workers had been injured when helping the wounded.<sup>184</sup>

The Indian Foreign Affairs Minister, Pranab Mukherjee met President Rajapakse in January and advised that Colombo authorities had reassured him “that they would respect the safe zones and minimize the effects of conflict on Tamil civilians.”<sup>185</sup> However, in the Vanni it was “common civilian wisdom that government-marked safe zones were the least safe.”<sup>186</sup>

It was also common knowledge in and outside the humanitarian system that the claims of a “zero civilian casualty” policy had no validity. Similarly, it was quickly apparent that the declared safe areas were killing zones that served strategic purposes. By early 2009, it should also have been clear to humanitarians and others that quiet diplomacy, in the absence of other measures, was not proving effective.<sup>187</sup>

The political arm of the UN Secretariat lacked a strategy to mobilize action by the Security Council or the Human Rights Council.<sup>188</sup> UN headquarters also lacked consensus concerning the role and

responsibility of the Secretary General in relation to key UN Member States that had the leverage to influence events in Sri Lanka.<sup>189</sup> As the crisis moved into its final phase, the Secretary General and his political affairs team relied on a series of visits and telephone calls to the Rajapakse administration and a flurry of statements as the war ended. They declined to challenge the political, military and intelligence support provided to the Rajapakse regime and its plan to decimate the Tigers whatever the cost to civilians. China took pains to protect the Rajapakse regime from any scrutiny or action by the Security Council. India, as the big power neighbor, and with a long and complicated relationship to the island, had the most leverage with both sets of warring parties. But New Delhi opted to express concern about the “perilous” situation while simultaneously “discouraging any move by the West to halt” Rajapakse’s assault on the Vanni.<sup>190</sup> The UN, apparently, was deferential to the approach of India and declined to challenge it, assertively, to use its influence to stop the slaughter of civilians.<sup>191</sup>

Donors and other UN member states such as France and the UK that retain a veto and a permanent seat on the Security Council expressed concern during the last days of the war but this was seen to be more theatrical than tactical in halting indiscriminate warfare.<sup>192</sup> It was not until May 13, five days before Colombo declared victory, that soon-to-be Nobel Peace Laureate, President Obama, called on the LTTE to surrender and asked the government to cease “indiscriminate shelling” with heavy artillery.<sup>193</sup> As noted by John Holmes,

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<sup>189</sup> Ibid.

<sup>190</sup> These insights are based on US Embassy cables, accessed by The Hindu through Wikileaks. Nirupama Subramanian, “How India kept pressure off Sri Lanka,” *The Hindu*, March 16, 2011.

<sup>191</sup> Interview notes.

<sup>192</sup> Some interviewees were of the view that European member states and the US only verbalized their concerns forcefully when it was clear that the LTTE could not mount a counter-offensive.

<sup>193</sup> Obama went public after being pressured by Amnesty International and did so on the day when the last remaining operating field hospital in the Vanni was bombarded “killing at least 50.”

Stuart Whatley, “Obama Asks Tamil Tigers to Surrender, Sri Lanka to Mind Civilians,” *Huffington Post*, May 13, 2009.

<sup>182</sup> SG Panel on Accountability, *op. cit.*, p 28.

<sup>183</sup> UTHR(J), December 2009, *op. cit.*, p 32.

<sup>184</sup> CNN, “Red Cross: Crisis Unfolding in Sri Lanka,” January 28, 2009.

<sup>185</sup> CNN, January 28, 2009, *op. cit.*

<sup>186</sup> UTHR(J), December 2009, *op. cit.*, p 34.

<sup>187</sup> An interviewee noted that many “oldtimers had a dense network of personal relations and felt they were dealing with a rational government.” Another said “Sri Lanka is deceptive” and many have not understood the changed mentality of the governing elite. Interview notes.

<sup>188</sup> UN Internal Review Panel Report, *op. cit.*, p 25.

The UN also lacked a strategy to craft a political solution to the crisis.

UN Under-Secretary General and Emergency Relief Coordinator at the time there “was a bit of a diplomatic dance” by key member states who declined to engage to stop the killings even as some expressed concern about the cost of all-out war.<sup>194</sup> This position was echoed in the views of some donor state interviewees who expressed frustration with a “chaotic” UN secretariat response.<sup>195</sup>

Humanitarians faced an uphill battle in mobilizing political action to stop the indiscriminate killing of civilians. It also lacked a clear communication and advocacy strategy to address issues within and beyond relief circles.<sup>196</sup> The relief system has long experience of working in environments dominated by abusive and intransigent authorities and knows that effective advocacy requires evidence of the harm inflicted on the humanitarian caseload. This task should not be confused with human rights monitoring and reporting which, necessarily, has a different focus and objective to that of humanitarian endeavor.<sup>197</sup> The task of humanitarians in Sri Lanka was to help people survive the crisis. This necessarily required informed, strategic, and robust advocacy. It also required a relief system that was willing and able to deal with contentious relationships with state and other authorities. It also required a system that supported frontline staff.

<sup>194</sup> “There was a bit of a diplomatic dance around all this, with everybody knowing that the end of this was going to be an inevitable military victory for the government and the inevitable defeat of the LTTE, and it was a question of waiting for that to happen, hoping it happened as quickly as possible and that it happened with as few civilian casualties as possible.”

Callum Macrae, “Sri Lanka’s Killing Fields,” *Huffington Post*, March 13, 2010.

<sup>195</sup> Interview notes.

<sup>196</sup> Field personnel, including those trapped behind front lines in the Vanni, indicated a great deal of frustration with a constant demand for information from the UN in Colombo but with no understanding of its end use or utility. Interviewees stressed that collecting data in the circumstances that prevailed was very dangerous. Interview notes.

<sup>197</sup> Humanitarians need to be distinct from those agencies and mechanisms that are, rightly, dedicated to promoting and protecting human rights. Humanitarians also need to be distinct in a manner that some relief agencies currently struggle to achieve in a context such as Afghanistan where alliances with political or military mechanisms, such as ISAF (International Security Assistance Force) blur profiles and hinder access to communities in areas controlled or under the influence of the armed opposition.

The Emergency Relief Coordinator (ERC), John Holmes, did try to promote a number of key concerns so that the relief system conveyed a common message and strengthened its hand in the court of public opinion but humanitarians were neither united nor steadfast when it came to the issue of civilian casualties. The UN had well-documented evidence that the safety and survival of civilians in the Vanni were incidental to Colombo’s core objective but decided to not use this information and further weakened its leverage.

In January 2009, Harun Khan the leader of the last UN food convoy—Number 11—to reach the besieged population tried in vain to negotiate a safe exit for UN national staff and their families.<sup>198</sup> Over a period of two weeks he shared the reality of war with those trapped in the Vanni. Back in Colombo at the end of January, Khan, a combat-experienced international staff, and his colleagues were able to provide first-hand accounts, together with photographic evidence of life and death in the perversely named “No Fire Zone.” UN national staff and others including a reliable network of medical workers, clergy and NGO personnel, continued to provide evidence of the deteriorating situation that also involved the use of cluster munitions.<sup>199</sup> Embassy and UN officials also had access to satellite imagery that clearly showed, over a period of time, the wholesale destruction of areas packed with civilians.<sup>200</sup>

A US State Department report shows that its Embassy in Colombo was continuously alerted to the impact of the war on children and other civilians as well as disappearances and abductions. The report points to a multiplicity of sources that made the Embassy aware of the unfolding catastrophe and its acceleration as the Rajapakses pushed for a rapid

<sup>198</sup> He was also in constant touch with colleagues in Colombo in a frantic and failed attempt to convince the SLA to cease its bombardment of the newly established “NFZ.”

<sup>199</sup> A survivor and UN aid worker reported the use of cluster bombs in February and transmitted pictures to Colombo but the UN apparently withdrew its concerns in the face of vehement government denials. Interview notes.

In April 2012, a UN mine specialist confirmed the existence of unexploded sub-munitions in the PTK area of the Vanni. BBC, “Cluster bombs found in Sri Lanka, UN expert says,” April 26, 2012.

<sup>200</sup> UN Internal Review Panel Report, *op. cit.*, pp 12–13.

military ending to the war.<sup>201</sup> It was also clear that the majority of deaths could be attributed to the SLA as the war reached its bloody finale. However, the UN and the diplomatic community persisted in echoing Colombo's narrative as they focused on the harmful activities and killings that could be attributed to the LTTE.<sup>202</sup> A UN briefing in March, for example, focused on the "international human rights and humanitarian law violations" of the LTTE, including the forced recruitment of men, women and children, extra-judicial killings, the blocking of escape routes, and the placing of weapons in or close to areas of civilian concentration.<sup>203</sup>

The UN, thanks to its Crisis Operations Group (COG) that it had established at the beginning of February, had irrefutable evidence of the nature and impact of the war and its consequences for civilians.<sup>204</sup> The analysis developed by the COG clearly showed the hollowness of Colombo's assertions of its alleged "rescue mission," "No Fire Zones" and "Zero Civilian Casualties" policy. The findings of the COG showed that "almost all the civilian casualties recorded by the UN had reportedly been killed by Government fire" and that two-thirds of the killings had occurred within the second "No Fire Zone," a stretch of coastline, to the east of two lagoons, that had been announced in February 2009.<sup>205</sup>

In briefings to the diplomatic community and others in Colombo on February 3—shortly after UN staff had emerged with the remnants of Convoy 11—and again on March 9, the UN downplayed the gravity of the situation and held back vital information and analysis on the source and pattern

of killings in the Vanni. Members of the diplomatic community, as well some UN personnel, "were frustrated at what some perceived as the UN's hesitation" in providing a forthright analysis and not making full use of the findings of the COG.<sup>206</sup> Nonetheless, it is clear that UN Member States, including those that fund humanitarian programs, were not short of insights on unfolding events in the Vanni. Many had access to strategic information of a military nature that it shared with Colombo authorities. Some members of the diplomatic corps in Colombo reportedly assumed "that the UN had a protection and response system to address attacks on civilians and other violations" but this defies belief and points either to a woeful misunderstanding of humanitarian programming in Sri Lanka or the reality of indiscriminate warfare.<sup>207</sup> Apparently, donors wanted the UN, rather than themselves, to take a stand on the horror of the war and its impact on civilians.<sup>208</sup> But, the UN was reluctant to forcefully challenge the actions of Colombo and its backers. Rather than using the clout that the COG data provided, senior humanitarian managers in Sri Lanka and at agency headquarters, together with the political arm of the UN, opted to not use it. Worse, they denied its legitimacy.<sup>209</sup>

The validity of the civilian casualty and related data on Colombo's war strategy became a divisive issue within the UN.<sup>210</sup> The government was aware of differences among senior relief managers and agency representatives and exploited this to counter humanitarian advocacy and bolster its own narrative.<sup>211</sup> When the UNCT presented its concerns to the government, it swiftly "rejected suggestions that civilian casualties were occurring and the UN was told to re-examine its data-gathering

<sup>201</sup> U.S. Department of State, "Report to Congress: Measures taken by the Government of Sri Lanka and International Bodies to Investigate and Hold Accountable Violators of International Humanitarian and Human Rights Law," Office of Global Criminal Justice, D. C., April 4, 2012.

<sup>202</sup> The UN Internal Review Panel Report elaborates on the UN's pattern of highlighting LTTE-related problems including non-compliance with IHL and HR norms while treading gingerly on SLA killings, p 11.

<sup>203</sup> *Ibid.*, p 73.

<sup>204</sup> The COG triangulated data from multiple sources; the COG would "consider a casualty report as 'verified' only when it had been corroborated by three independent sources."

UN Internal Review Panel Report, p 114.

<sup>205</sup> UN Internal Review Panel Report, op. cit., p 72.

<sup>206</sup> *Ibid.*, p 72.

<sup>207</sup> *Ibid.*, p 19.

<sup>208</sup> *Ibid.*, p 12.

<sup>209</sup> *Ibid.*

<sup>210</sup> Some colleagues were of the view that the UN would be complicit if it did not speak to the data it had. Others, such as the Children in Armed Conflict (CAAC) mechanism opted for a low profile and cautious approach; it was vocal on issues concerning child recruitment but, it appears, ignored the well-established evidence on child deaths in the Vanni. Interview notes.

<sup>211</sup> UN Internal Review Panel Report, p 12.

methodology.”<sup>212</sup> Even though the bulk of the UN’s concern, when writing to the government, focused on LTTE tactics, the HC indicated that the UN was unable to stand by its own analysis notwithstanding the indisputable fact of indiscriminate shelling of “NFZs” and knowledge that the pace of killing had increased significantly.<sup>213</sup>

There were several reasons why the senior humanitarian and political UN, in Colombo and New York, refused to acknowledge what it knew or to translate this into initiatives that would help counter or mitigate the killings in the Vanni. Many senior managers had a poor appreciation of the UN’s core responsibility to protect the lives of civilians in a conflict situation. There also appears to have been a poor or confused understanding within different parts of the UN of the essence of humanitarian action and what constitutes the humanitarian imperative. The UN Internal Report spells out how some senior staff in Colombo “did not perceive the prevention of killing of civilians as their responsibility,” headquarters did not instruct them otherwise, and the overall approach to interacting with the government on the deaths of civilians “collectively amounted to a failure by the UN to act within the scope of institutional mandates to meet protection responsibilities.”<sup>214</sup>

The senior management of the relief system, namely the ERC and the IASC, had a responsibility to maintain attention to the inhumanity of what was happening and to the way in which different actors backed Colombo’s agenda as well as diaspora support for the Tigers. Available data and analysis of the conduct of the warring parties and the consequences for civilians provided leverage to senior managers. Such leverage should have been used to challenge the consensus of those, in and outside Sri Lanka, who effectively made pawns of the people in the Vanni for their own national, institutional or other strategic objectives.

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<sup>212</sup> Ibid, pp 11–12.

<sup>213</sup> UN correspondence dated February 7 referred to the “high probability that fire from both” sides had led to civilian casualties and further noted that this occurred “despite the best efforts” of the government.

UN Internal Review Panel Report, op. cit., p 10.

<sup>214</sup> UN Internal Review Panel Report, p 27.

Senior UN officials concurred at a Policy Committee meeting of the SG on Sri Lanka on March 12, 2009 that available data on civilian casualties was “not verified” and posed numerous questions about the utility and appropriateness of a proposed statement by the High Commissioner for Human Rights, Navi Pillay.<sup>215</sup> In contrast to the situation in Afghanistan where the UN had begun commenting on civilian casualties in 2008, several senior UN officials concluded that COG data was not adequately reliable, were not prepared to stand by it, and allowed a debate on numbers to dominate as war casualties surged.<sup>216</sup> Instead of finding a means to halt the killings of civilians, the Policy Committee focused on a series of issues that led to decisions being adopted on a broad range of concerns.<sup>217</sup> The everything-but-the-kitchen-sink style of crisis management is indicative either of a poor appreciation of the ferocity and intensification of the fight in Sri Lanka or an unwillingness to acknowledge what was at stake for the civilians most directly affected. It appears that the meeting was devoid of any discussion on the inaction of the Security Council and the approach of key member states. Rather than focusing on the central problem of civilian casualties, attention to the issue

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<sup>215</sup> Ibid, pp 66–68.

<sup>216</sup> In August 2008, the UN in Afghanistan made known its concerns, in private and in public, that many civilians died as a result of an airstrike a few days earlier. The UN Assistance Mission in Afghanistan issued a statement noting that it had “found convincing evidence, based on the testimony of eyewitnesses, and others, that some 90 civilians were killed, including 60 children, 15 women and 15 men.” This was the first time the UN in Afghanistan had taken such a stand on the direct impact of the war on civilians. This action was part of a dedicated initiative to lower the human cost of the war. It included periodic public reports that presented an analysis of patterns of harm and formed the basis for discrete and public-based advocacy that was seen to be effective in changing attitudes and practices by both sets of warring parties.

“Air strike killed 90 Afghan civilians: UN,” Reuters, August 26, 2008.

<sup>217</sup> Decisions were taken on the need for continued engagement on “the immediate humanitarian, human rights and political aspects of the situation”; advocacy to press the LTTE “to allow safe passage for civilians and UN staff” and the government “on protection and assistance to IDPs” as well as decisions on a host of other issues such as demining, child protection, transitional justice, reconstruction and political solutions for root causes of the conflict as well as “renewed efforts to establish an OHCHR field office.”

UN Internal Review Panel Report, op. cit., p 67.



was derailed by a debate on numbers at a point when time was running out and the people of the Vanni needed the UN Secretary General to use his moral authority to push for an end to the killings.

The next day HC Pillay did issue a statement notwithstanding the SG's Chief of Staff concerns about the "severity" of the draft that had been shared with several UN Under-Secretary Generals (USGs); Mr. Nambiar expressed concern about the likelihood of "very serious political and legal repercussions" while USG for humanitarian affairs John Holmes worried about the risk "of counter-productive reactions" and noted that "references to possible war crimes" would be controversial.<sup>218</sup>

The HCHR Pillay's statement indicated that certain "actions being undertaken by the Sri Lankan military and by the LTTE may constitute violations of international human rights and humanitarian law."<sup>219</sup> She called attention to the shelling of the "No Fire Zones" and noted, "more than 2,800 civilians may have been killed and more than 7,000 injured since 20 January."<sup>220</sup> She referred to the "brutal and inhuman treatment of civilians by the LTTE" as "utterly reprehensible" and that this should be examined "to see if it constitutes war crimes."<sup>221</sup> In the context of what was happening in Sri Lanka the HC's observations were overdue notwithstanding the low figure provided on casualties. However, in the absence of an assertive stance by the UN and the broader international community the HC's statement was "too little, too late" if the objective was to turn the tide of war.

The following day, March 14, Sri Lanka's Minister for Disaster Management and Human Rights, Mahinda Samarasinghe made a lengthy statement rebutting Pillay's observations. He noted that the government's main issue of contention "was the use of unsubstantiated casualty figures" and said that "the Sri Lankan armed forces have never, and will never, target civilians."<sup>222</sup> Samarasinghe

<sup>218</sup> Ibid.

<sup>219</sup> OHCHR, "Serious violations of international law committed in Sri Lanka conflict: UN human rights chief," Geneva, March 13, 2009.

<sup>220</sup> Ibid.

<sup>221</sup> Ibid.

<sup>222</sup> GoSL, "Government Communicates its Position on the UN High Commissioner for Human Rights' Statement,"

added that the central issue was bringing pressure to bear "on the LTTE to free the civilians they are holding hostage."<sup>223</sup> In the same government statement, Foreign Secretary, Dr. Palitha Kohona, currently (2014) the Sri Lankan Ambassador to the UN in New York and former UN staff member questioned the conduct of the UN High Commissioner's office. Kohona also made positive reference to US Secretary of State, Hillary Clinton who, during a phone call to President Rajapakse on March 13, "expressed appreciation for the Defense Secretary's reassurance that heavy weapons would not be used in the no-fire zone."<sup>224</sup>

The denials of the government, notwithstanding all the evidence that showed how it and the LTTE were ruthless in their disregard for the safety of civilians should have energized the humanitarian system to challenge the inhumanity that led to so much death and suffering. The system had the evidence but lacked the will to be a forceful and credible advocate. In the process, the relief system effectively decided to accommodate rather than act with purpose to protect life and give effect to fundamental humanitarian and human rights norms.

This paper does not claim that evidence-based advocacy alone would have secured the changes that were needed to halt unrestrained warfare in the Vanni. But, there are plausible reasons to believe that it could have made a difference between life and death for many who were denied a modicum of humanity in the "No Fire Zones" and on the beaches of Mullaitivu. The Sri Lankan experience also shows that pulling together a credible picture of activities that are harmful for civilians is doable when there are humanitarians who are dedicated and imaginative enough to do so.<sup>225</sup> The non-use of the data and analysis that was available in Sri Lanka raises questions about the nature of the commitment and accountability at the organizational and system level for protective humanitarian action in conflict or contentious crisis settings

Ministry of Disaster Management and Human Rights, Colombo, March 14, 2009.

<sup>223</sup> Ibid.

<sup>224</sup> Ibid.

<sup>225</sup> At the same time, it is important to acknowledge that "data does not grow on trees" and such exercises almost invariably require dedicated investment and resources.



The difficulties faced by humanitarians and others invested in the struggle to convince or oblige the warring parties to stop harming civilians was highlighted by the resolution adopted at a Special Session of the UN HR Council (HRC) when it met to review the situation in Sri Lanka on May 26 and 27, just eight days after the end of the war. The resolution was adopted on May 27 with 29 votes in favor, 12 against, and with 6 abstentions. It was, from any perspective, a travesty; it commended the government for its actions, denounced LTTE actions only, and reaffirmed the notion that concern about human rights was an interference in the sovereignty of states. All of the countries that voted in favor of the resolution were from the global South and the BRICS, namely Brazil, Russia, India, China and South Africa.

A few days earlier when Ban Ki Moon was visiting Sri Lanka on May 22 and 23, he noted in a press conference that the government was “doing its utmost” and commended “its tremendous efforts” in relation to the survivors of the Vanni.<sup>226</sup> The actions of the humanitarian community to help those who succeeded in fleeing or surviving the battle zone raise their own set of questions that are unpacked in the following section.

## V Internment: Imprisoned humanitarianism

It was reasonably apparent to the relief system as agencies withdrew from the Vanni that the war would up-root thousands and oblige many to flee into government-held territory as had happened when Colombo recaptured LTTE-controlled territory in the East of the country (mid-2006-mid-2007). Throughout 2008, there was a slow trickle out of the Vanni as the government’s offensive closed in on the LTTE. A few hundred of those who fled were transported to locations in Mannar and Vavuniya where they were held against their will in closed camps “closely guarded by the Sri Lankan navy, and army per-

sonnel, and the police.”<sup>227</sup> Relief agencies were, rightly, wary of legitimizing “unacceptable government detention policies” and limited their support to such camps.<sup>228</sup> This policy position was influenced by the views of camp residents who indicated that they “did not want their detention legitimized or made more permanent by the building of longer-term camp structures.”<sup>229</sup>

Towards the end of 2008, the humanitarian community began planning for an anticipated massive movement of people as the war intensified. The government was similarly engaged in contingency planning and advised the relief system of its intention to establish transit and more long-term sites that involved clearing three large tracts of land in the Manik Farm area and other locations in or near to Vavuniya district. Despite repeated requests by aid officials, the government “refused to clarify” whether the same “restrictive internment policies adopted in the Mannar area” would apply.<sup>230</sup> As a result, UNHCR developed a useful Aide Memoire that was shared with Sri Lankan authorities with the clear intention of making it known that relief actors could only operate in line with humanitarian principles. The Aide Memoire underlined the importance of the displaced being accommodated, when possible, with host families, freedom of movement and unhindered access by relief agencies; it emphasized that camps should be civilian in character. It also stressed the importance of “transparency, legality, and expediency” of the screening process.<sup>231</sup> The Aide Memoire clarified the basis for humanitarian engagement while simultaneously acknowledging the necessity of a formal screening process to separate combatants from civilians.

As people emerged from the Vanni in the early months of 2009, it was obvious that the government was not treating them as IDPs. It was restricting the presence and work of humanitarian actors and was subjecting many camp residents to repeated rounds of interrogation and torture in so-called

<sup>227</sup> HRW, “Besieged, Displaced, and Detained: The plight of Civilians in Sri Lanka’s Vanni Region,” New York, December 2008, p 12.

<sup>228</sup> Ibid, p 14.

<sup>229</sup> Ibid, p 15.

<sup>230</sup> Ibid, p 17.

<sup>231</sup> UN Internal Review Panel Report, op. cit., p 78.

<sup>226</sup> HRW, “Member States Ignore Need for Inquiry into War-time Violations,” Geneva, May 27, 2009.

“Welfare Villages.”<sup>232</sup> By April 2009, some 50,000 had left the Vanni and this number had surged to 250,000 in Manik Farm alone by May 2009.<sup>233</sup> In the immediate aftermath of the war, the camps were used to detain some 300,000 internees.<sup>234</sup>

Notwithstanding a certain amount of preparatory lead-time and efforts to secure support for a principled humanitarian response, the government’s treatment of the war’s survivors and its overall approach to the post-war situation meant that camp conditions were abysmal and inhumane.

The relief system undermined its humanitarian credentials when it exhibited limited determination to tackle policies that added to the woes of those who arrived “severely malnourished, traumatized, exhausted, and often seriously injured.”<sup>235</sup> There were “at least 2,000 amputees” and some died “while awaiting passes to get basic medical treatment.”<sup>236</sup> A rapid nutrition assessment showed that “around 25 percent of children suffered from acute malnutrition.”<sup>237</sup> The precarious state of many survivors was exacerbated by a chaotic situation that involved the separation of family members from each other. Health care and shelter facilities were inadequate.

The screening process added to the fear and fragility of those who had endured months of warfare and deprivation.<sup>238</sup> Initially, ICRC, MSF and UNHCR staff had some access to the Omanthai camp but they were not allowed to interact in private with detainees. After July 2009, ICRC was excluded entirely from the screening process.<sup>239</sup> Some of those who were taken into custody, as part of the screening process, were executed and thousands remain “disappeared” or

<sup>232</sup> SG Panel on Accountability, op. cit., p 46.

<sup>233</sup> Ibid, pp 41–44.

<sup>234</sup> Nash, op. cit., p 2.

<sup>235</sup> UN Internal Review Panel Report, op. cit. p 13.

<sup>236</sup> SG Panel on Accountability, op. cit., p 41, p 46.

<sup>237</sup> Ibid, p 42.

<sup>238</sup> Screening involved being separated into different groups, being strip-searched, and being transferred to “initial screening sites” in diverse locations; some were then transferred to further screening sites at Omanthai, a location near to Vavuniya town.

Ibid: pp 41–44.

<sup>239</sup> Ibid, p 43.

unaccounted for.<sup>240</sup> There were reports of sexual violence, including women and girls being raped by government forces and by “their Tamil surrogate forces during and in the aftermath of the final phases of the armed conflict.”<sup>241</sup> Screening continued in the closed camps where those who were not “disappeared,” or were not dispatched to so-called surrendee camps, were confined.<sup>242</sup> It is understood that by June 2009 some 9,000 people had been re-located, as a result of screening, to eleven “surrendee” camps; this figure had climbed to 11,000 by the end of the year.<sup>243</sup>

Screening was the major rationale provided by the government for holding people against their will, and doing so indefinitely, in what were, effectively, internment camps.<sup>244</sup> The government also claimed that the civilians who survived could not go home before the Vanni was cleared of landmines.<sup>245</sup> However, some internees could have stayed with relatives and other host families and insecurity or landmines was not a reasonable justification to hold people in closed, militarized camps. Despite the “humanitarian rescue” narrative of the government, it had done little to prepare adequately for the hundreds of thousands who needed help in the immediate aftermath of the war. The government was opaque about its intentions but its actions were not difficult to decipher. It insisted on closed, militarized enclosures, put major restrictions on

<sup>240</sup> Some 70,000 or more people remain unaccounted for. SG Internal Review Panel Report, op. cit., p 14.

<sup>241</sup> SG Panel on Accountability, op. cit., p 44.

<sup>242</sup> “Surrendee camps” is another Orwellian term widely used in the Sri Lanka context. Various interviewees underlined that there was little evidence that those who were subjected to screening “surrendered” willingly.

<sup>243</sup> UN Internal Review Panel Report, op. cit., p 78.

<sup>244</sup> UN Internal Review Panel Report, op. cit., p 77.

According to international law, legitimate and pressing security concerns “may justify the internment of civilians during the height of a conflict, but it must not last longer than absolutely necessary” to address security concerns. Internment decisions must be made on an individual and not on a group basis. Those who are arbitrarily detained should be made aware of the reason for their internment and be given “a genuine opportunity to have this decision reviewed by an independent body.”

UN Press Release, “Freedom of movement for a quarter of a million displaced, UN Representative discusses with Sri Lankan government,” Geneva, September 19, 2009.

<sup>245</sup> SG Panel on Accountability, op. cit., p 44.

the presence and actions of relief agencies, barred effective monitoring in the screening areas, and used the camps to conduct interrogations, that on occasion, included torture.<sup>246</sup> The actions of the government showed that the primary purpose of the internment camps was to control the population and information about its activities before and after the end of the war. At the same time, the government was preoccupied with eliminating any traces of the LTTE or any hint of its resurgence.

### *Impractical Pragmatism*

The relief system, throughout 2008 and 2009, rationalized avoiding or giving limited attention to contentious issues—such as civilian casualties—to maintain a working relationship with the government. Relief actors concluded, erroneously, that this approach would facilitate access to, and the organization of lifesaving programs for the war's survivors. The relief system had few illusions about the character of the Rajapakse regime and its attitudes to those who survived the war. The nature and purpose of closed camps, and the implications of the government's internment policy for those who were arbitrarily detained, were abundantly clear to the humanitarian community.<sup>247</sup> It was also unquestionably the case that the women and children, elderly, youths, those who were injured, those who were ill, hungry and traumatized, and all those suspected of being associated with, or

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<sup>246</sup> The SG's Panel on Accountability notes that the government's Criminal and Terrorist Investigation Departments "maintained units inside the camps in Menik Farm and conducted regular interrogations.... Some of them were tortured as well. The sounds of beating and screams could be heard from the interrogation tents. The UNHCR recorded at least nine cases of torture in detention. Some detainees were taken away and not returned."

SG Panel on Accountability, op. cit., p 46.

<sup>247</sup> Closed camps are not the norm but the relief system is not unaware of their ramifications. In the 1980s on the Thai-Cambodian border, Cambodians who were the survivors of the Khmer Rouge genocide were housed inside barbed-wire enclosures that were a product of, and shaped by, Cold War politics. This instance of instrumentalization, the collaboration of the relief community, and its protection ramifications have been documented and analyzed.

Norah Niland, "Protection and Instrumentalization, The Contemporary Solferino?" in *The Golden Fleece, Manipulation and Independence in Humanitarian Action*, Antonio Donini (ed), Kumarian Press, 2012, pp 219–240.

supporters of, the LTTE, were facing acute and dangerous threats that imperiled their lives. In other words, it was obvious that the militarized enclosures were detrimental to the safety, wellbeing, and survival of those who were interned.

The task of the relief system in the lead up to the end of the war, and its immediate aftermath, was to figure out how to give effect to the humanitarian imperative. It needed to do so without aiding and abetting the harmful, prolonged, and illegal internment of civilians whose survival chances were undermined when their fundamental rights were routinely and systematically violated. The humanitarian system had, to its credit, invested in a lot of debate and identification of tentative policy options, to determine the most optimal and most viable approach to deliver on its humanitarian responsibilities. Nonetheless, it tended to label and relate to the Vanni exodus as "IDPs." The logistics of constructing and maintaining camps—including an unending preoccupation with "tents and tarpaulins"—had the effect of obscuring the need for an overall protective humanitarian strategy to guide the work of different relief actors.<sup>248</sup>

The relief system lacked strong leadership and cohesion at its apex and at the working level notwithstanding a dedicated Protection Working Group. The relief system undermined its ability to develop a cogent and credible analysis when it got locked into a pointless debate on the purported value, or otherwise, of pursuing a "principled" or a "pragmatic" approach. Analysis in the relief community was also distorted by a narrative on "dilemmas" that led to the prioritization of material supplies including for the construction of closed camps.<sup>249</sup>

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<sup>248</sup> Interview notes.

<sup>249</sup> Humanitarians are frequently trapped in a debate on "dilemmas" that tends to paralyze or distort decision-making. Contentious operating environment are, almost invariably, complex. This necessitates an ability to distinguish between what is required from a deontological or ethical humanitarian perspective and what are the consequences of acting or not acting to address all humanitarian need. In sum, a framework that is both deontological and consequential is necessary for effective decision-making. In almost all complex situations, a division of labour is required between different relief actors to give effect to a strategic, coherent, and protective humanitarian program.

Many humanitarians, rightly, did not wish to be complicit with a war strategy that had been so deadly and detrimental to the people of the Vanni. Such humanitarians were also aware that, left to its own devices, the government would likely prove no less callous when dealing with Tamils who had been under the control of the LTTE than it had been in the past. Indeed, some relief personnel feared another “bloodbath” if the relief system did not stay engaged.<sup>250</sup> However, reluctance to face up to the problems posed by internment obscured the necessity of a multi-pronged and coherent approach that identified the nature of the threats that were putting lives at risk and the context in which these occurred. The relief system’s decision-making was distorted by the self-imposed “dilemma” of helping or abandoning a vulnerable population trapped in closed camps.<sup>251</sup> Humanitarians did have a responsibility to help those who had barely survived the war but needed to operate in a manner that challenged rather than reinforced the conditions that increased the dangers faced by the internees. The failure of the relief community to reach an objective and agreed analysis of the post-war situation meant that humanitarian actors got locked into supporting internment when they should have been objecting to it and advocating forcefully for its rapid termination.

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<sup>250</sup> Interview notes.

<sup>251</sup> There are many examples where relief agencies were united in a framework of principled humanitarianism to counter egregious instances or patterns of abuse that threatened the safety or wellbeing of at-risk populations. When the Taliban regime held sway in Afghanistan in the autumn of 1999, they pursued a scorched-earth policy in the Shomali Plains just north of Kabul as they sought to dislodge the forces of Ahmed Shah Massoud. Some of those who were up-rooted, headed north to the Panjshir Valley; others were taken by the Taliban to the location of a former IDP camp in the desert near to Jalalabad city. The humanitarian community was called upon to help but resisted doing so in order to counter additional coerced displacements. Water and a very limited supply of food and medical care were provided while the HC and his team negotiated, successfully, with the Taliban. They agreed to allow Shomali residents to return and to desist from further coerced population movements to advance their strategic war aims. Personal notes, Afghanistan, 1999.

## *Joint Planning and Unilateral Programming*

There was no shortage of debate within the humanitarian community on what constituted appropriate humanitarian policy in relation to those who survived the war. There was a broad consensus that survivors were in a fragile state and should not be penalized further because they were held against their will in camps controlled by the Sri Lankan military. However, humanitarians could not agree on a strategy to secure the availability of essential services while simultaneously pushing for a rapid end to internment. The preference of many relief actors was to focus on service provision without taking into account the context in which it was provided. This effectively meant that they were partners, however unwilling, to the government’s agenda of holding people in atrocious conditions in internment camps.

Most relief actors persisted in relating to internees as IDPs; this contributed to a preoccupation with mobilizing a “return and reintegration” program rather than pushing for a change of policy and a dismantling of the infrastructure of internment.<sup>252</sup> Human rights NGOs were vocal in calling attention to the lack of freedom of movement and many other egregious human rights violations. Some humanitarians, including the ERC and other senior officials, were active, behind-the-scenes and in public, in pushing for changes that, over time, did result in some improvements in the safety and the wellbeing of internees. Those held in camps in the immediate post-war period included some national relief agency staff.<sup>253</sup> By August 2009, some of the most pressing problems posed by the lack of adequate shelter, medical care, and sanitation had been addressed and the situation in relation to material needs had stabilized. However, this was not the case in relation to the many protection issues posed by internment.

By virtue of the Aide Memoire and related policy development processes, humanitarian agencies had identified some “red lines” demarcating the frame-

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<sup>252</sup> Interview notes.

<sup>253</sup> Agencies, rightly, felt a strong duty of care to colleagues and their families who had remained behind LTTE lines. Interview notes.



work within which the relief system would collaborate with the government to address the needs of those who fled or survived the war in the Vanni. The relief system, however, had no “Plan B” when the government essentially ignored the Aide Memoire. A communication from the HC to Minister Samarasinghe on November 28, 2008, indicated that “substantive changes” were required to secure donor and relief agency support for those exiting the Vanni.<sup>254</sup> This was still the situation in January and April 2009 when, ERC Holmes, Professor Kälin, the Representative of the UNSG on the human rights of IDPs and the British and French Ministers of Foreign Affairs visited Sri Lanka.<sup>255</sup> The government reiterated that access, including in relation to screening, would improve but beyond these verbal “assurances” showed little interest in the terms of engagement set out in the Aide Memoire.<sup>256</sup>

Humanitarians in and outside Sri Lanka were mostly reluctant to challenge the government’s abusive practices or to make known their concerns in public. This was the case even when a UNHCR and UNOPS driver were abducted in Vavuniya, tortured, and kept in incommunicado detention until they were accidentally located in a prison in Colombo.<sup>257</sup> After UN national staff raised concerns with the media, the UN Country Team issued a statement (June 2009) indicating that its staff had been “arrested” and that it was unaware whether any charges had been made; the UN added that it was in touch with the government and would provide all possible assistance to the authorities “in the interest of due process.”<sup>258</sup> The following day the UNHCR representative in Sri Lanka was quoted in a local newspaper to the effect

<sup>254</sup> UN Internal Review Panel Report, op. cit., p 78.

<sup>255</sup> Mr. Kälin “welcomed the Government’s acknowledgement of its responsibility to protect and assist” IDPs and “recognized measures already taken in this regard.”

UN News Centre, “UN expert calls for ‘humanitarian pause’ to save trapped civilians,” April 7, 2009.

<sup>256</sup> Ibid, p 77.

<sup>257</sup> Interview notes.

<sup>258</sup> Matthew Russell Lee, “As Sri Lanka Arrests Two UN Staff, UNHCR Offers Praise After Staying Silent,” Inner City Press, New York, June 19, 2009.

UN Country Team, “Statement on arrested staff members,” Colombo, June 20, 2009.

[http://reliefweb.int/report/sri-lanka/sri-lanka-statement-arrested-staff-members.](http://reliefweb.int/report/sri-lanka/sri-lanka-statement-arrested-staff-members))

that the post-war situation looked “very promising” including a “very bright future for the IDPs”; he added that given his experience in eleven crisis settings around the world “the camps in Vavuniya” were in “relatively (in) good condition.”<sup>259</sup> This experienced UN official applauded the UN’s good working relationship with Sri Lankan authorities including the military; he noted that whereas “there were issues with poor facilities” initially, conditions were improving and there was a “vast improvement” in so far as health was concerned.<sup>260</sup> UNHCR had “recorded at least nine cases of torture” and knew of the disappearance and killing of some internees but it appears that physical and psychological harm, as a result of inhumane treatment, did not feature in the assessment that health conditions had improved in the internment camps.<sup>261</sup>

Local and international NGOs, with a few exceptions, effectively delegated public advocacy to the UN, including in particular to UNHCR.<sup>262</sup> This meant that there were few humanitarian voices calling attention to the brutal nature of the fighting and its cost to civilians. At the height of the fighting, Oxfam International, for example, called for a pause in the battle “to allow trapped civilians to leave safely and for humanitarian workers to reach the sick and wounded.”<sup>263</sup> A short while later it issued a statement calling for improved access as thousands were “arriving from the war zone in a very weak condition”; it underlined that without “appropriate staff and access for vehicles” agencies were restricted in providing urgent care.<sup>264</sup>

In Sri Lanka, the relief community had few supporters within the majority Sinhalese community that, in general, had little sympathy for the war’s Tamil survivors. The reluctance of the relief system to voice its concerns in public and mobilize support for universal humanitarian values meant that

<sup>259</sup> Shanika Sriyandana, “IDP camps in good condition—UN envoy in Sri Lanka,” Sunday Observer Colombo, June 21, 2009.

<sup>260</sup> Ibid.

<sup>261</sup> SG Panel on Accountability, op. cit., p 46.

<sup>262</sup> Nash, op. cit., p 17.

<sup>263</sup> Oxfam, “Oxfam International aids thousands displaced by Sri Lankan conflict,” Press Release, Oxford, April 24, 2009.

<sup>264</sup> Oxfam, “Oxfam urges Sri Lankan government to lift restrictions as conditions in displaced camps deteriorate,” Press Release, Oxford, May 21, 2009.



the government's narrative was rarely questioned. In October 2009, HRW queried why people were "penned up unnecessarily in terrible conditions" that were likely to worsen with the arrival of monsoon rains.<sup>265</sup> A senior official in the Ministry of Disaster Management and Human Rights, acknowledged that there were problems with toilets and drainage but "blamed the UN for the situation, accusing it of not fulfilling promises to upgrade or repair facilities" and doing "very shoddy" work in the camps.<sup>266</sup> Such blatant misrepresentation of the situation mostly went unquestioned.

The relief system was aware that the government was sometimes amenable to change when confronted with a united challenge to questionable. Colombo, for example, dropped its assertion in 2009 that Manik Farm and other such camps were needed for three years when this proposal was resisted by humanitarian agencies and donors.<sup>267</sup> After persistent advocacy, the government introduced a "pass" system in December 2009 that gave camp residents a small measure of freedom.<sup>268</sup> Nonetheless, a Guidance Note prepared by UNHCR in January 2009, that was a follow-up policy document to the Aide Memoire, "largely accommodated the Government's approach" to closed camps and effectively re-defined the basis for engagement as "safety and security (including the civilian character of camps) and unrestricted humanitarian access."<sup>269</sup>

The experience of the relief community in post-war Sri Lanka shows that the humanitarian system lacked the inclination to operate in a concerted and coordinated manner when confronted with protection issues in a contentious operating environment. This raises questions about the impact of various humanitarian reform processes launched in 2005. These were initiated to achieve greater predictability, effectiveness, and accountability within

<sup>265</sup> Al Jazeera, "Sri Lanka defends internment camps," October 12, 2009.

<sup>266</sup> Ibid.

<sup>267</sup> Nash, *op. cit.*, p 17.

<sup>268</sup> Some saw the "pass" system as a "sweetener" ahead of presidential elections in January 2010. The system had different elements including a 15-day pass that obligated camp residents to return on a specific date or face retribution. Some were allowed to leave the camp permanently but had to report to the police regularly.

<sup>269</sup> UN Internal Review Panel Report, *op. cit.*, p 79.

and between sectors. The Sri Lankan experience also raises questions about the utility of the investment made in the development of system-wide plans and strategies to protect the survivors of the Vanni given the lack of unity to secure traction on principled and protective humanitarian programming. All in all, there was limited support for initiatives that were geared to the overall benefit of the humanitarian caseload when the relief system's strategic agenda was deemed at odds with short-term or institutional interests.

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The camps at Manik Farm and other sites finally closed in September 2012 more than three years after the war was over. The role of the relief system in the different initiatives that were launched since the end of 2009 to facilitate a safe and durable post-war recovery requires its own dedicated review. Suffice to say that, mid-2014, there is little prospect of genuine reconciliation and recovery until the policies and problems that wrought so much havoc in the past are addressed. The ongoing centralization and abuse of power by the Rajapakse regime, untrammled discrimination against minorities, and a divisive narrative that claims that ethnicity is not an issue in the social, political and economic life of the country are not conducive to a healing or genuine reconciliation process.

In the course of a short visit to the country in 2012 it was readily apparent that the suffering and humiliation of the Tamil people in the north of the island was a real and daily occurrence that was exacerbated by the dominant role of the military and a far-reaching Sinhalaization program. It was hard to escape the impression that the aid community wished to "close the door" on the events of 2008 and 2009. It was difficult to see how any "recovery program" that did not attempt to address long-standing structural fault-lines could contribute to a viable healing and reconstruction process.

## VI Conclusions

Learning from experience in different crisis settings has long been a central tenet of everyone who argues in favor of more accountable and

effective humanitarian action. This paper is focused on Sri Lanka given (a) the nature of the politics and atrocities that drove the killings during the end phase of the war, (b) the danger of precedents being established when agendas that are antagonistic to humanitarian values are not challenged in a robust manner, (c) the perennial de-prioritization of the protection needs of at-risk civilians even when military strategies are geared to maximizing suffering and represent the biggest threat to life, and (d) the absence of any formal initiative by the relief system to examine and learn from its experience in Sri Lanka.

Conflicts will, invariably, have a number of context-specific features. However, it is also apparent that in a fast-changing and inter-connected global order, post-Cold War and post-9/11 politics are significant factors shaping the operating environment of contemporary crises and, by extension, the space available for humanitarian action. In settings as varied as Afghanistan, Syria, Somalia and Sri Lanka, armed opponents of the government are vilified and demonized as “terrorists” whatever their make-up, political goals, or tactics on and off the battlefield. Such labeling is deemed useful in justifying GWOT narratives and related approaches however illegal or harmful to civilians. At the same time, ruling regimes whatever their governance record or role in squashing dissent or the unlawful deaths of their fellow citizens are quick to use sovereignty arguments to rationalize means and methods of warfare that decimate civilians.

None of this is news to the humanitarian community. The incidence of warfare when measured in large historical timeframes is on the decline. However, it is well known that those engaged in hostilities in contemporary war zones including low profile conflicts such as Balouchistan, Myanmar, or Southern Thailand, share a history of flouting international norms and ignoring the protected status of civilians. In Sri Lanka, the political calculations that led to the deaths, deprivation, and displacement of thousands of the Vanni population, were not that unique however diabolical the tactics employed by both warring parties.

There is broad consensus that the crisis in Sri Lanka represents a systemic failure within and

beyond the humanitarian community. The response to the crisis highlighted the limited willingness and capacity of the relief system to counter life-endangering threats when these were contentious and involved difficult relations with government or other authorities.

Many humanitarians will rightly note that much of the responsibility for the death and suffering of civilians can be attributed to the strategic agendas of the warring parties and the consensus of key Member States to green-light the rapid demise of the LTTE notwithstanding the evident cost to the besieged population. Humanitarians should also note that people died and others were subjected to brutal conditions and indignities when the relief system, by design and omission, failed to deliver on its protection responsibilities. The analysis and approach of the relief system facilitated the manipulation of humanitarian action to the great detriment of those in need. Critical failures included the decision to leave the Vanni and to do so rapidly, the de-prioritization and sidelining of key protection problems, withholding available information on the numbers of civilian war dead and government bombardment of the “NFZs” where the besieged were encouraged to concentrate, and uncritical support for internment camps where the war’s survivors faced additional threats to their lives and wellbeing.

The rest of this section is concerned with the relationship between decision-making in relation to the crisis in Sri Lanka and weaknesses in the relief system that need to be tackled so that strategies and programs are better able to address the protection dimension of effective humanitarian action in the future.

### ***History and Humanitarian Experience: An irrelevance?***

The problems that confronted the humanitarian system in Sri Lanka were not unique, however context-specific the different factors shaping the operating environment. Nonetheless, it appears that insights from prior experience were ignored or not deemed of value in defining the humanitarian response to the crisis. In the process, the humani-

tarian system failed to prepare or face up to the protection implications inherent in the policies of the conflicting parties and a dramatic surge in warfare as the decades old crisis entered its final phase.

A key lesson, for example, from the Rwandan genocide was the absolute importance of engaging the UN Security Council, and the wider international community, on the nature and scale of such crises and their humanitarian consequences. A key lesson from Srebrenica was that the responsibilities of the humanitarian system include measures to counter methods of warfare that are antagonistic to the protected status of civilians. A key lesson from Afghanistan was that informed, impartial and strategic protection-oriented action can mitigate war-related patterns of harm.

One of the common themes that emerged in the course of research for this paper was the extent to which efforts to counter the direct impact of the war on civilians were seen to be somebody else's responsibility. The warring parties denied their own role or blamed others for the mounting death toll as the war intensified. HR personnel complained about the self-interested and tunnel vision approach taken by humanitarian organizations. Various relief practitioners were of the view that HR entities with a limited if any presence in Sri Lanka had few qualms about the consequences of their statements for operational agencies and the inevitable blowback inherent in references to the ICC. Humanitarian NGOs tended to blame the UN while the latter pointed to the way UN member states with leverage were only comfortable in excoriating Colombo when it was apparent that the war was coming to an end. Some UN member states, including those with permanent Security Council seats, complained about the lackluster approach of the UN secretariat even as member states, in general, declined to engage in meaningful measures to halt indiscriminate warfare and targeted attacks on health care facilities.

As the crisis deepened, the humanitarian system operated on the basis that the world was aware of the killings in the Vanni and that there was limited or no political will to deal with the mounting death toll. Both assumptions were valid. Relief actors nevertheless had a responsibility

to be indignant and to challenge the indifference of the UN Security Council to the reality and consequences of unrestricted warfare.

The lack of productive engagement of UN inter-governmental fora, and the duplicitous policies of many countries in relation to Sri Lanka complicated matters. But, the political obstacles should have emboldened rather than weakened the resolve of the relief system to challenge policies that were deadly for the people in the Vanni. At a minimum, humanitarians should have been fearless in articulating the inhumanity driving up the death toll and challenged the SC and the supporters of the Rajapakse regime and the LTTE to acknowledge their respective roles in the events unfolding in the Vanni.

The IASC needs to review why it was comfortable, if not complacent, in being a partner to policies that favored behind-the-scenes UN diplomacy over a robust challenge to the inhumanity of the war and the political support such warfare enjoyed among UN member states. In addition to recent IASC decisions to augment its attention to the protection dimension of conflict settings there is a clear and urgent need to review the results of crisis-specific protection strategies in conflicts where civilians are routinely targeted or their suffering is used for strategic gain.

### ***Instrumentalization: An old if ignored phenomenon***

The humanitarian system has long experience of instrumentalization processes that impact on the safety of the humanitarian caseload. Nonetheless, in Sri Lanka, the relief community allowed itself to be co-opted into collaborating with agendas that had obvious ulterior motives and were inherently harmful to those in need of effective and protective humanitarian action.

Relief agencies were keenly aware that both warring parties, and their backers, were using the people in the Vanni to achieve political and military objectives. It was also apparent that the warring parties were pursuing their objectives in a manner that was inherently deadly, never mind, detrimental to the safety and wellbeing of

those in need of humanitarian action. However, the relief system ignored the protection implications of being instrumentalized and, in the process, misdiagnosed the nature of the crisis.

The humanitarian system needs to acknowledge the implications of instrumentalization and the importance of being proactive to avoid being used in a manner that is harmful to at-risk populations. The humanitarian system has a responsibility to avoid being used as a substitute for the action needed to pre-empt or end warfare or for measures that are needed to safeguard civilians from tactics that do not respect their protected status. Humanitarians need to be forthright in articulating the limits of humanitarian action and the dangers inherent in its use as a fig leaf for inaction to resolve crises. The IASC should consider developing policy guidance on this issue and ensuring that inter-agency evaluations routinely examine whether humanitarian programs have been used to achieve outcomes at odds with humanitarian values and objectives and, when this is the case, the cost involved to the humanitarian caseload.

### ***Systemic Failures***

This paper focused on the end phase of a protracted war that originated, in part, in the island's colonial history and a state formation process disfigured by discriminatory policies. The war exacerbated long-standing structural inequalities that were not addressed, or were made more pronounced, by socio-economic development processes, peacemaking exercises, and ineffectual attention to a human rights situation resulting from exclusionary, elitist, and majoritarian politics. Thus, any reflection on the failures that can be attributed to the humanitarian community—that is not designed nor equipped to address chronic, deep-rooted problems—cannot be divorced from a long history of systemic failure to deal with the structural fault lines that have shaped ethnic conflict in Sri Lanka.

Experience in Sri Lanka highlights the significance of the relationship between chronic and acute problems and the importance of rapid action to strengthen crisis management when situations deteriorate and threats to life escalate.

Almost invariably, such trajectories will heighten protection concerns and necessitate vigorous and increased attention to policies and practices that threaten the dignity, safety and wellbeing of at-risk groups. This requires leadership and the organization of humanitarian strategies that are protective and inform relief programs.

### ***Humanitarian Leadership***

Leadership of the humanitarian system, with a few rare exceptions, was in short supply within Sri Lanka, at agency headquarter offices, and within the IASC. The relief system did not use what limited leverage it had with the government, Rajapakse's external supporters, and with the Tamil diaspora. Evidence on the tactics of the warring parties, the role of Colombo's allies, the catastrophic situation in the Vanni, and the inhumane conditions in the internment camps gave leverage to senior humanitarian managers and coordination mechanisms. This leverage could have been an asset had there been a strong commitment to push for action to end the inhumanity of the war.

The crisis in Sri Lanka shows that leadership—and not just at the senior level—is key to delivering on the responsibilities inherent in saving lives when operating under the banner of humanitarianism. The crisis also shows that leadership requires a relief system that backs the defense of humanitarian values and those who challenge abusive authorities and the subterfuge of powerful states.

The repeated failure of the humanitarian collectivity to live up to its protection responsibilities in Sri Lanka bring into question the effectiveness of various reform initiatives designed to make the system “fit for purpose.” The decision to withdraw from the Vanni, to downplay the direct effects of the war on civilians, to relate to internment as an IDP problem and to refrain from robust advocacy on the reality and consequences of unrestricted warfare are indicative of a system that has lost its humanitarian compass.

Crisis management in Sri Lanka points to the need to ring-fence humanitarian action from political and individual agency institutional interests. An objective examination of the merits

of combining responsibilities for humanitarian action and development cooperation, or any other combination, in crisis settings should be undertaken. Such an exercise should take account of the changing global order, the rise of a sovereignty discourse at odds with humanitarian principles and the implications of the Global War on Terror for long-held universal values.

Similarly, the framework for humanitarian decision-making at the global and local level needs urgent examination.

### ***Protective Humanitarian Action***

The relief system in Sri Lanka was not unique in its reluctance to deliver on the protection dimension of humanitarian action. The approach of the relief system to humanitarian conditions in Syria, for example, point to the need for investment in strategic measures to counter attacks on civilians and services essential for their survival.

In the early months of 2009, the humanitarian system in Sri Lanka operated in line with the assumption that its primary task was to focus on the provision of goods and services. Humanitarian actors persisted with this approach even when it was apparent that they were unable to secure safe access for convoys and that the biggest threat to life was not a shortage of supplies, however critical, but the tactics used by both warring parties.

The decision of humanitarian and other decision-makers, including the UN Secretary General and his office, to not use unassailable evidence that civilians were being killed indiscriminately and in ever-increasing numbers in what were, effectively, “free fire zones,” is illustrative. It shows

either a poor understanding of humanitarian action or a limited commitment to lifesaving in the face of indiscriminate bombardments and threats to long-term agency programs. Similarly, the relief system should have understood that the containment of the war’s survivors in internment camps was un-humanitarian and needed to cease. Pushing for an end to internment was not incompatible with measures to address acute health and other material needs in a setting where internees were subjected to inhumane treatment.

The repeated prioritization of material over non-material needs even when the latter were critical to survival requires in-depth reflection. Skewed analysis, outdated perceptions of what constitutes humanitarian action, and a number of false dichotomies all served to undermine the task of saving lives and mitigating suffering. Erroneous either-or propositions included “access vs. advocacy,” “pragmatism vs. principles” and “material vs. protection needs.” Mis-representation of the humanitarian imperative worked against sound policy development and its application.

The Sri Lankan experience shows that the humanitarian system needs to determine, on an urgent basis, why protection in the context of humanitarian action is routinely misunderstood and relegated to Cinderella status to the detriment of those in need of life-saving action. Analysis and needs assessment exercises need to be examined to determine why protection concerns are not identified, ignored, downgraded or sidelined in the context of inter-agency and individual agency programming. There also needs to be a better understanding of the respective protection responsibilities of human rights and humanitarian actors in crisis settings.



## Acronyms

AWOL	Absent Without Official Leave	JVP	Janatha Vimukthi Peramuna
CCHA	Consultative Committee on Humanitarian Assistance	LTTE	Liberation Tigers of Tamil Eelam
CHAP	Common Humanitarian Action Plan	MSF	Medecins Sans Frontiers
COIN	Counter Insurgency	NAM	Non-Aligned Movement
COG	Crisis Operations Group	NGO	Non-Governmental Organization
ERC	Emergency Relief Coordinator	NFZ	No Fire Zone
GA	Government Agent	OHCHR	(UN) Office of the High Commissioner for Human Rights
GoSL	Government of Sri Lanka	PTK	Puthukuddurippu
GWOT	Global War on Terror	R2P	Responsibility To Protect
HCT	Humanitarian Country Team	SLA	Sri Lankan Army
HCHR	High Commissioner for Human Rights	SLFP	Sri Lankan Freedom Party
HR	Human Rights	TULF	Tamil United Liberation Front
HRW	Human Rights Watch	UPFA	United People's Freedom Alliance
IASC	Inter-Agency Standing Committee	UNCT	United Nations Country Team
ICC	International Criminal Court	UNP	United National Party
ICJ	International Commission of Jurists	UNICEF	United Nations Children's Fund
ICRC	International Committee of the Red Cross	UNHCR	United Nations High Commission for Refugees
IPKF	Indian Peace Keeping Force	UNHRC	United Nations Human Rights Council
IDP	Internally Displaced Person	USG	(UN) Under-Secretary General
ICRC	International Committee of the Red Cross	UTHR(J)	University Teachers for Human Rights (Jaffna)
JHU	Jathika Hela Urumaya	WFP	(UN) World Food Programme

## Timeline

Sri Lanka has been inhabited for thousands of years; many early migrants arrived from India in the fifth century BC. A long period of colonialism began in 1505 with the arrival of Portuguese in Colombo. They were followed in 1658 by the Dutch who established control over the whole island with the exception of the Sinhalese Kingdom in Kandy in the hill country of central Sri Lanka. Dutch rule was challenged in 1796 when the British annexed Colombo and Jaffna. By 1815, British colonial rule was extended throughout the island; this included the rise of a plantation cash crop economy and the introduction of indentured laborers from South India to work, primarily, on the large tea plantations.

1915: Sinhalese-Muslim riots

1927–28: Lord Donoughmore Commission on Constitutional Reform,

1948: Independent dominion status and 1947 constitution given effect

1956: SLFP's Bandaranaike wins elections. Sinhala Only Act enrages Tamils

1957: Tamil-Sinhala pact on "devolution" agreed

1958: Tamil-Sinhala pact abandoned in face of Buddhist, Sinhalese opposition

1958: Anti-Tamil riots, displacement, and retaliatory attacks

1959: Prime Minister Bandaranaike assassinated by Buddhist monk

1960–61: Civil disobedience campaign for Tamil language rights suppressed

1965: UNP wins elections on platform to reverse SLFP nationalization policy

1970: SLFP led United Front coalition wins elections advocating new constitution

1971: JVP/Marxist uprising; some 15,000 killed; six years of Emergency rule

1972: Constitution disadvantageous for minorities, Buddhism accorded primacy

1972: Ceylon re-named the Socialist Republic of Sri Lanka; no longer a dominion

1972: LTTE established; demands a separate Tamil state in north and east

1975: LTTE gain notoriety upon assassination of Jaffna's mayor

1976: Non-Aligned Movement fifth Summit meeting in Colombo

1977: Landslide UNP election win; separatist TULF win all but one Tamil seat

1977: Post-election anti-Tamil riots results in some 300 deaths

1977: Erosion of welfare state and move to export-led economy

1983–1987: Eelam War I

1983: LTTE kill 13 soldiers; anti-Tamil riots result in some 5,000 deaths

1985: LTTE-Government peace talks fail

1987: IPKF deployed to give effect to Indo-Sri Lanka Accord designed to end war

1987: 13th Amendment, devolution package joining Northern, Eastern provinces

1987: Anti-Indian sentiment, north and south, fuel war and JVP resurgence

1989: JVP uprising suppressed; at least 40,000 killed

1989: President Premadasa and LTTE concur that IPKF should depart Sri Lanka

1990: IPKF depart at Premadasa's request

1990–1994: Eelam War II

1990: Premadasa-LTTE peace talks fail; LTTE resume attacks

1990: Muslim, Tamil-speakers, evicted by LTTE from the north

1991: Rajiv Gandhi killed by Tamil female suicide bomber

1993: Premadasa assassinated by suicide bomber at May Day rally

1994: SLFP led People's Alliance win parliamentary elections

1994: Chandrika Kumaratunga elected President; new push for peace

1995–2002 Eelam War III

1995: Peace talks collapse when LTTE sink two navy gunboats.

1995: Government military campaign results in its control of Jaffna Peninsula

1995: LTTE pursue widespread, indiscriminate bombing campaign in the South

1996: Central Bank, Colombo, truck-bomb attack kills scores, injures hundreds

1997: Proposal for a federal form of government opposed by UNP, nationalists

1997: US declares the LTTE a terrorist organization

1998: Suicide bombers attack important Buddhist shrine in Kandy

1999: Kumaratunga survives assassination attempt; she wins elections

1999–2001: protracted violent stalemate; some LTTE territorial gains

2000: Parliament (JVP, UNP) reject proposed devolution plan

2001: Suicide/Commando attack on Katunayake airport

2001: UNP narrowly win parliamentary elections on peace platform

2002: Oslo-brokered ceasefire agreed, opening way for peace talks

2002: Embargo on food, medicine lifted; Vanni mobility restrictions relaxed

2003: After six rounds of talks, the LTTE withdraw but CFA holds officially

2004 February: Kumaratunga dissolves parliament in feud with Prime Minister

2004 March: Karuna splits from LTTE; violent internal LTTE clashes ensue

2004 April: SLFP led-UPF Alliance with JVP win parliamentary elections

2004 April: Kumaratunga appoints Mahinda Rajapakse as Prime Minister

2004 December: Tsunami kills 30,000; northern coastal areas devastated

2005 June: dispute over LTTE role in US\$3bn Tsunami aid distribution

2005 August: Foreign Minister assassinated; state of emergency imposed

2005: JVP, JHU support Rajapakse on anti-federalist, renegotiate CFA pledge

2005 November: LTTE boycott helps Rajapakse win presidential elections

2006 February: resumed peace talks in Geneva inconclusive

2006 April: Canada bans the LTTE

2006, May: LTTE branded as terrorists by the European Union

2006–2009: Eelam War IV

2006 July: Tigers blocked reservoir/water in tri-ethnic neighbourhood

2006 July: Government counter attack

2006 August: 17 NGO staff executed in their compound in Muttur

2006 September: Colombo begins to retake territory in Eastern province

2006 October: Supreme Court ordered the demerging of the North-East Province

2006 October: Failed meeting on peace in Geneva effectively ends peace process

2007: Colombo stresses GWOT, anti-R2P, sovereignty line on war

2007: Colombo regains control of Eastern province; offence on Vanni begins

2008 January: Colombo withdraws from CFA; repression, hostilities surge

2008 May: Colombo wins local elections Eastern Province

2008 September: Vanni aid agency expulsion order announced/implemented

2008 October: Karuna joins parliament as a UPFA member

2009 January 2: Kilinochchi reverts to government control

2009 January 9: Government re-takes Elephant Pass and entire A9 highway

2009 January 21: “No Fire Zone” declared unilaterally

2009 January 16: UN convoy/staff trapped in the Vanni

2009 March: Karuna faction joins the SLFP

2009 March 13: HCRC refers to “credible evidence of war crimes...”

2009 April 21: Army breaks through the Tigers’ defenses in Mullaitivu

2009 April 29: Kouchner, Milliband visit Colombo

2009 May 8: HRW refers to 30 attacks on medical facilities since December 2008

2009 May 14: 60,000 attempt escape across the lagoon

2009 May 16: SLA takes the last LTTE coastal position

2009 May 18: Government declares victory; ICG indicates some 30,000–40,000 killed



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