

Paper 18

Why the LTTE is not a Terrorist Organization

by Ms. Karen Parker

Canadians have asked me to set out my views on whether the Liberation Tigers of Tamil Eelam (LTTE) is a "terrorist" organization. *I state categorically that the LTTE is not a "terrorist" organization*, but rather an armed force in a war against the government of Sri Lanka. Characterization of the LTTE as a "terrorist" organization is politically motivated having no basis in law or fact. This memorandum provides a brief legal analysis to support my view.

There is a war in Sri Lanka. By war I mean that there is armed conflict occurring between two parties. An armed conflict is defined by the use of military materiel in an organized fashion by at least two groups organized into military fighting forces fighting each other. The LTTE are organized militarily, with a military commander and military chain of command. The LTTE uses traditional, modern military weaponry in its combat against the military forces of the government of Sri Lanka. The LTTE uses a variety of military tactics, including open warfare, raids or guerilla warfare. The government armed forces use similar military means against the armed forces of the LTTE. Most armies in the past 200 years have utilized essentially the same tactics.

The war in Sri Lanka may be characterized as

either a civil war or a war of national liberation in the exercise of the right to self-determination. A civil war exists if there is armed conflict inside one country between government armed forces and at least one other force having an identifiable command and having sufficient control over territory to carry out "sustained" and "concerted" military action and the practical capacity to fulfill humanitarian law obligations. The LTTE has clearly met this test for more than ten years.

A war of national liberation exists if armed conflict exists between the armed forces of a government against the armed forces of a people that has the right to self-determination. In my view, the war in Sri Lanka is a war of national liberation because the Tamil people have the right to self-determination. This is because the Tamil people, the original inhabitants of the north and east of the island of Ceylon, had their own state complete and separate from the Sinhala state prior to colonization by the British. The Tamil people, primarily Hindu, and secondarily Christian and Muslim, speak their own language and have their own traditions and customs. The Sinhala people are primarily Buddhist, and secondarily Christian and their traditions and customs reflect that heritage.

With the forced unitary rule, first as a result

of colonization and then under the post-colonial Sinhala majority rule, the Tamil people were increasingly threatened. In the late 1970s, after nearly thirty years of attempted peaceful resolution to the many points of profound differences, the Tamil people began forming armed defense forces. At present, Tamil forces are consolidated in the LTTE, which continues to defend Tamil areas in a war against the Sinhala government's armed forces, "home guards" and other armed entities.

If the war in Sri Lanka is a civil war, outside states are required to be neutral – a civil war is by definition an internal affair of a state. This is known as the duty of neutrality. If the war is a war of national liberation, outside states are required to support the side with the self-determination claim – the Tamil side. This is because of the *jus cogens* nature of the right to self-determination. This does not mean that another state must provide direct aid to the Tamil people or the Tamil armed force. However, other states must not engage in any activity with the Sinhala government that in any way undermines the realization of self-determination by the Tamil people.

Both parties to the armed conflict on the island of Ceylon violate the rules of armed conflict or humanitarian law. However, the mere fact that one side or the other violates humanitarian law norms does not deny either the rights or duties of combatant forces. Accordingly, the LTTE may not be called a "terrorist" organization because in the course of the armed conflict, some of its soldiers have violated the rules of armed conflict. In the same light the government cannot be called a "terrorist" state because some of its military operations have violated armed conflict rules. Neither side, of course, can be considered to violate humanitarian law for carrying

out military actions. I have noted "condemnation" of the LTTE by the government and others for carrying out military operations that are not prohibited in humanitarian law. For example, the LTTE shot down a number of airplanes and sank a number of ships of the Sri Lankan forces. These actions were called "terrorist" by the government of Sri Lanka. These are not violations of humanitarian law and therefore cannot be characterized as "terrorist."

I do note, however, the rampant disregard of humanitarian rules by the government forces in persistent and repeated military operations against hospitals, schools, market places, churches and locations with a strong historical and cultural significance to the Tamil people. I also note the difficulty in establishing the culpable party(ies) in a number of situations where the LTTE has been accused by the government of killing civilians. This is not to say the LTTE have not resorted to killing of civilians. However, the fact that the government accuses the LTTE does not mean the LTTE actually carried out the acts in question. The government's rejection of impartial, international fact-finding makes ascertaining the truth ever more difficult.

The International Court of Justice decided that all states have an obligation under Article 1 common to the Geneva Conventions to "ensure respect" for the Geneva Conventions even when not directly or indirectly involved in a conflict. From my point of view, this requirement mandates at least that the international community insist that the government of Sri Lanka allow both humanitarian relief to all victims of the conflict and international, impartial fact-finding to take place.

About the author: See page 197.