

## **Boycott, Divestment, Sanctions (BDS) Campaign: Stopping GOSL Genocide Against the Tamils**

*Francis Anthony Boyle, Ph.D.*

*Professor of International Law*

*University of Illinois College of Law in Urbana-Champaign, Illinois, USA*

### **Abstract**

The Sinhala-Buddhist Government of Sri Lanka (GOSL) has inflicted outright genocide against the Eelam Tamils in flagrant violation of the 1948 Genocide Convention to which it is a contracting party. For this reason the Eelam Tamils are entitled to an independent state of their own in order to protect themselves from annihilation by and as reparation for the genocide that has been inflicted upon them by the GOSL. Article I of the Genocide Convention requires all contracting parties “to prevent and to punish genocide.” Toward achieving those objectives, the author respectfully recommends that the Eelam Tamils establish a Boycott, Divestment, and Sanctions (BDS) Campaign against the genocidal Sinhala-Buddhist GOSL in order “to prevent and to punish” the GOSL for its ongoing genocide against the Eelam Tamils. A previous worldwide BDS Campaign helped dismantle the genocidal/apartheid regime in South Africa. Launching a BDS Campaign against the genocidal/apartheid GOSL will do the exact same thing for the Tamils. Truth and justice are the side of Eelam Tamils!

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Eelam Tamils living on the island known as “Sri Lanka” have been the victims of genocide as defined by the 1948 Convention on the Prevention and Punishment of the Crime of Genocide by the Sinhala-Buddhist-dominated Government of Sri Lanka (GOSL). I say that because of my practical experience: On 8 April 1993 and again on 13 September 1993 I won two World Court Orders on the basis of the 1948 Genocide Convention that were overwhelmingly in favor of the Republic of Bosnia and Herzegovina against Yugoslavia to cease and desist from committing all acts of genocide against the Bosnians in violation of the 1948 Genocide Convention -- both directly and indirectly -- for a sum total of six different provisional measures of protection. This was the first time ever that any Government or Lawyer had won two such Orders in one case since the World Court was founded in 1921. In addition, on 5 August 1993 I also won a so-called Article 74(4) World Court Order for Bosnia against

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### **Citation**

Boyle, F.A. 2018. Boycott, Divestment, Sanctions (BDS) Campaign: Stopping GOSL Genocide Against the Tamils. Proceedings of the Second International Conference on Tamil Nationhood and Genocide, May 5-6, Ottawa, ON. 2:67-71.

Yugoslavia for genocide. According to I.C.J. Statute Article 74(4), when the Full Court is not in session in

The Hague, the President of the Court exercises the full powers of the Court and can issue an Order to the parties in a lawsuit that is legally binding upon them. The fact that the Hindu, Christian and Muslim Eelam Tamils have been victims of genocide by the Sinhala-Buddhist GOSL only strengthens and reinforces their right to self-determination under international law, including establishing their own independent state of Tamil Eelam.

Article II of the Genocide Convention defines the international crime of genocide in relevant part as follows:

In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;

....

Certainly the Sinhala-Buddhist GOSL and its legal predecessor Ceylon have committed genocide against the Eelam Tamils that actually started on or about 1948 and has continued apace until today in violation of Genocide Convention Articles II(a), II(b), and II(c).

For the past seven decades, the Sinhala-Buddhist Ceylon/Sri Lanka have implemented a systematic and comprehensive military, political, and economic campaign with the intent to destroy in substantial part the different national, ethnical, racial, and religious group constituting the Eelam Tamils. This Sinhala-Buddhist Ceylon/Sri Lanka campaign has consisted of killing members of the Eelam Tamils in violation of Genocide Convention Article II(a). This Sinhala-Buddhist Ceylon/Sri Lanka campaign has also caused serious bodily and mental harm to the Eelam Tamils in violation of Genocide Convention Article II(b). This Sinhala-Buddhist Ceylon/Sri Lanka campaign has also deliberately inflicted on the Eelam Tamils conditions of life calculated to bring about their physical destruction in substantial part in violation of Article II(c) of the Genocide Convention that still goes on today as we convene here now.

Since 1983 Sinhala-Buddhist Ceylon/Sri Lanka has exterminated approximately 300,000 Eelam Tamils. Nevertheless, apologists for Sinhala-Buddhist Ceylon/Sri Lanka have argued that since these mass atrocities are not tantamount to the Nazi Holocaust against the Jews, therefore they do not qualify as “genocide.” Previously, I had encountered and refuted this completely disingenuous, deceptive, and bogus argument against labeling “genocide” for what it truly is when I was the Lawyer for the Republic of Bosnia and Herzegovina, successfully arguing their case for genocide against Yugoslavia before the International Court of Justice. There the genocidal Yugoslavia was represented by Shabtai Rosenne from Israel as their Lawyer against me. Rosenne proceeded to argue to the World Court that since he was an Israeli Jew, what Yugoslavia had done to the Bosnians was not the equivalent of the Nazi Holocaust against the Jews and therefore did not qualify as “genocide” within the meaning of the 1948 Genocide Convention.

I rebutted Rosenne by arguing to the World Court that you did not need an equivalent to the Nazi Holocaust against the Jews in order to find that wholesale atrocities constitute “genocide” in violation of the 1948 Genocide Convention. Indeed the entire purpose of the 1948 Genocide Convention was to prevent another Nazi Holocaust against the Jews. That is why Article I of the Genocide Convention clearly provided: “The Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake **to prevent and to punish.**” (Emphasis supplied.) You did not need six million dead human beings in order to constitute the international crime of “genocide.”

Furthermore, in support of my 1993 genocide arguments to the World Court for Bosnia, I submitted that Article II of the 1948 Genocide Convention expressly provided: “In the present Convention, genocide means any of the following acts committed with the intent to destroy, in whole **or in part**, a national, ethnical, racial or religious group, as such...” (Emphasis supplied.) In other words, that to be guilty of genocide a government did not have to intend to destroy the “whole” group as the Nazis intended to do with the Jews. Rather, a government can be guilty of genocide even if it intends to destroy a mere “part” of the group. Certainly Yugoslavia did indeed intend to exterminate all Bosnian Muslims if they could have

gotten away with it, as proven by their subsequent mass extermination of at least 7,000+ Bosnian Muslim men and boys at Srebrenica in July of 1995. I would later become the Attorney-of-Record for the Mothers of Srebrenica and Podrinja as well as for the Women of Srebrenica at the International Criminal Tribunal for the Former Yugoslavia (I.C.T.Y.). In that capacity, I convinced the I.C.T.Y. Prosecutor Carla Del Ponte to indict Yugoslav President Slobodan Milosevic for every crime in the I.C.T.Y. Statute for the atrocities he inflicted upon the Bosnians, including two counts of genocide: one count of genocide for Bosnia in general, and the second count of genocide for Srebrenica in particular. Notice 7,000+ murdered human beings were enough to constitute genocide as far as the I.C.T.Y. Prosecutor was concerned. Milosevic died while on trial in The Hague after the I.C.T.Y. itself denied his Motion to Dismiss these charges after the close of the Prosecution's case and sustained all of the charges against him including and especially the two counts of genocide: genocide in general in Bosnia, and genocide in particular against the 7,000+ Bosnian Muslim men and boys at Srebrenica.

But in 1993 it was not necessary for me to argue to the World Court that Yugoslavia intended to exterminate **all** the Bosnian Muslims. Rather, I argued to the World Court that at that point in time the best estimate was that Yugoslavia had exterminated about 250,000 Bosnians out of the population of about 4 million Bosnians, including therein about 2.5 million Bosnian Muslims. Therefore, I argued to the World Court that these exterminated Bosnian Muslim victims constituted a "substantial part" of the group and that the appropriate interpretation of the words "or in part" set forth in Article II of the Genocide Convention should mean a "substantial part."

The World Court emphatically agreed with me and rejected Rosenne's specious, reprehensible, and deplorable arguments. So on 8 April 1993 the International Court of Justice issued an Order for three provisional measures of protection on behalf of the Republic of Bosnia and Herzegovina against Yugoslavia that were overwhelmingly in favor of Bosnia to cease and desist from committing all acts of genocide against all the Bosnians, both directly and indirectly by means of their Serb surrogates. This World Court Order for the indication of provisional measures of protection was the international

equivalent of a U.S. domestic Temporary Restraining Order and Injunction combined. The same was true for the Second World Court Order with three additional provisional measures of protection that I won overwhelmingly for the Republic of Bosnia and Herzegovina against Yugoslavia on 13 September 1993 on the basis of the 1948 Genocide Convention. You can read the oral and written submissions and the debates between Rosenne and me that I made in order to win these World Court Orders against genocide in my book **The Bosnian People Charge Genocide!** (Aletheia Press: 1996).

In its final Judgment on the merits in the Bosnia case that was issued on 26 February 2007, the World Court definitively agreed with me once and for all time that in order to constitute genocide, a state must only intend to destroy a "substantial part" of the group "as such": 198. In terms of that question of law, the Court refers to three matters relevant to the determination of "part" of the "group" for the purposes of Article II. In the first place, **the intent must be to destroy at least a substantial part of the particular group.** That is demanded by the very nature of the crime of genocide: since the object and purpose of the Convention as a whole is to prevent the intentional destruction of groups, **the part targeted must be significant enough to have an impact on the group as a whole. That requirement of substantiality** is supported by consistent rulings of the ICTY and the International Criminal Tribunal for Rwanda (ICTR) and by the Commentary of the ILC to its Articles in the draft Code of Crimes against the Peace and Security of mankind (e.g. Krstić, IT-98-33-A, Appeals Chamber Judgment, 19 April 2004, paras. 8-11 and the cases of Kayishema, Byilishema, and Semanza there referred to; and Yearbook of the International Law Commission, 1996, Vol. II, Part Two, p. 45, para. 8 of the Commentary to Article 17). (Emphases added.)

In other words, in order to find the Sinhala-Buddhist GOSL guilty of genocide against the Eelam Tamils, it is not required to prove that the Sinhala-Buddhist GOSL has the intention to exterminate all Eelam Tamils. Rather, all that is necessary is to establish that the Sinhala-Buddhist GOSL intends to destroy a "substantial part" of the Eelam Tamils.

Furthermore, in paragraphs 293 and 294 of its 26 February 2007 Bosnian Judgment, the World Court found that you did not even need 250,000 exterminated Bosnians in order to constitute

genocide, let alone six million exterminated Jews. Rather, even the seven thousand plus exterminated Bosnian Muslim men and boys at Srebrenica were enough to constitute genocide. According to the World Court, these victims constituted about one-fifth of the Srebrenica community. Certainly since the World Court ruled in its 2007 Judgment that the extermination of 7000+ Bosnians at Srebrenica constituted “genocide,” then a fortiori and in spades the Sinhala-Buddhist GOSL extermination of about 140,000 Eelam Tamils in Vanni only two years later in 2009 also constituted genocide.

Historically, the only way a people who have been subjected to genocide like the Eelam Tamils by the Sinhala-Buddhist GOSL have been able to protect themselves from further extermination and final annihilation has been the creation of an independent state of their own. Indeed the entire world witnessed during the first six months of 2009 the Sinhala-Buddhist GOSL wantonly, openly, shamelessly, and gratuitously exterminate about 140,000 Eelam Tamils in Vanni. Yet not one state in the entire world rose to protect them or to defend them or to help them in any way as required by Article I of the 1948 Genocide Convention as well as by the jus cogens (i.e., peremptory norm) customary international law obligation “to prevent” their genocide. The same was true for the entirety of the despicable United Nations Organization itself. So much for the world’s mythical and hypocritical and meaningless and propagandistically bogus doctrine of “responsibility to protect” (R2P). The documentation for these assertions can be found in the Second Edition of my book **The Tamil Genocide by Sri Lanka** (Clarity Press: 2016).

Hence the need for the Eelam Tamils to create their own independent state in order to protect themselves from further extermination and total annihilation by the genocidal Sinhala-Buddhist GOSL, extermination attempts that still transpire today. International law and practice prove that an independent state of their own is the only effective protection as well as the only appropriate reparation for a people who have been the victims of genocide. Bosnia’s Statehood was the only thing that prevented the Bosnians from going the same way the Jews did in 1939. The creation of the independent state of Tamil Eelam will be the only thing preventing the Eelam Tamils from going the way of history. As we meet here today, the genocidal Sinhala-Buddhist

GOSL is “deliberately inflicting on the [Hindu-Christian-Muslim Eelam Tamils] conditions of life calculated to bring about [their] physical destruction in whole or in part” in gross and flagrant violation of Genocide Convention Article II(c) and the jus cogens customary international law obligation to the same effect, inter alia. **Once a genocider, always a genocider!**

In order to prevent yet another and predictable wholesale slaughter and acts of genocide by the already-proven genocidal Sinhala-Buddhist GOSL against the Eelam Tamils, Article I of the Genocide Convention requires that: “The Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which **they undertake to prevent and to punish.**” (Emphasis supplied.) Pursuant to these twin obligations, I respectfully submit that this Conference must “**undertake to prevent and to punish**” the Sinhala-Buddhist GOSL for its still ongoing genocide against the Eelam Tamils by founding a Boycott, Divestment, and Sanctions (BDS) Campaign against the genocidal Sinhala-Buddhist GOSL.

So if you are asking me: “What can be done and how can we do it?” Go back and study what the entire world did to dismantle the racist genocidal/apartheid Afrikaner regime in South Africa and do the exact same thing to the racist genocidal/apartheid Sinhala-Buddhist GOSL and for the exact same reasons: a BDS Campaign! I was involved in large numbers of cases in this earlier campaign against the racist genocidal/apartheid South Africa defending anti-apartheid resisters. You can read about it in my book **Defending Civil Resistance under International Law** (Transnational Publishers Inc.: 1987). This included obtaining the first acquittal ever of anti-apartheid protesters in Chicago at the South African Consulate, *Chicago v. Streeter* (1985). We even made the New York Times on that one. I know apartheid and genocide when I see them!

The racist genocidal/apartheid regime in South Africa that we were up against for all those years hired some of the top law firms and lobbying firms in the United States to oppose what we were doing. But eventually they lost and we won because we had Truth and Justice on our side! Today, there is no racist genocidal/apartheid regime in South Africa. Sure they have their problems – we have a lot of problems ourselves. But genocide and apartheid are not two of them.

So this is not a case of our reinventing the wheel here. We already have the wheel! Obviously, there is no way in this brief paper that I can deal comprehensively with all the legal reasons for and strategies behind dismantling the racist genocidal/apartheid regime in South Africa. Fortunately, I have analyzed those at great length in my book **Defending Civil Resistance Under International Law**. You can also obtain a **Special Paperback Edition** (1988) of this book expressly written **For Pro Se Protesters** at Amazon.com for \$10. The extensive materials set forth in this book have already been successfully used all over the United States to help dismantle the racist genocidal/apartheid regime in South Africa. Almost identical legal arguments and strategies can be applied ceteris paribus to dismantle the racist genocidal/apartheid Sinhala-Buddhist GOSL regime. To the same effect is the Palestinian Boycott, Divestment, and Sanctions (BDS) Campaign against the racist genocidal/apartheid Zionist regime in Israel. The historical origins behind and the legal arguments in support of the Palestinian BDS Campaign against the racist genocidal/apartheid Zionist regime in Israel can be found in my books **Palestine, Palestinians and International Law** (Clarity Press: 2003) and **Breaking All the Rules** (Clarity Press: 2008). Today the Palestinian BDS Campaign against the racist genocidal/apartheid Zionist regime in Israel has spread all over the world. It was recently nominated for the Nobel Peace Prize. Almost identical legal arguments and strategies can be applied ceteris paribus to dismantle the racist genocidal/apartheid Sinhala-Buddhist GOSL regime.

Go after the Sinhala-Buddhist money! People's precious money is something everyone in the world

understands and appreciates. Going after their money was something the racist genocidal/apartheid Afrikaner regime in South Africa well understood. Because of that economic motivation in significant part, they ultimately released Nelson Mandela and commenced good faith negotiations with the African National Congress (ANC). The racist genocidal/apartheid Afrikaner regime in South Africa was dismantled. Their racist genocidal/apartheid Afrikaner bantustans for the Black Inhabitants of South Africa were terminated. Today the Blacks Citizens in the apartheid-free Republic of South Africa are now able to determine their own future. The Tamils can do it too!

I cannot predict the future. But given the heavy dependence of the already-bankrupt racist genocidal/apartheid Sinhala-Buddhist GOSL economy on imports and exports such as tourism, textiles, tea, overseas remittances, etc., I think a worldwide BDS Campaign can reduce the racist genocidal/apartheid Sinhala-Buddhist GOSL to their knees within no more than a decade -- maybe sooner. Then the Sinhala-Buddhists will have to deal with the Eelam Tamils!

The racist genocidal/apartheid Sinhala-Buddhist GOSL are not going to do this by themselves: **Once a genocider, always a genocider!** The United States government is not going to do it. The deplorable and atrocious United Nations Organization is not going to do it. It is up to you and me to do it! We must take the future of the Eelam Tamils and of Tamil Eelam into our own hands! Found the anti-GOSL BDS Campaign! Stop the ongoing GOSL genocide against the Eelam Tamils and Tamil Eelam! Start the Tamil BDS Campaign here and now! We will have Truth and Justice on our side!